

Approved: February 24, 1995
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 23, 1995 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Evan Johnson, Director of Labor Relations, Division of Personnel Services
Merrill Werts, Past Member, Public Employee Relations Board
Judy Rickerson, Human Resource Director, Department of Corrections
Janie Kelly Coates, Director of Labor Relations, Department of SRS
Don Zavodny, American Federation of State, County & Municipal Employees
Steve Bukaty, Attorney, State Lodge of Fraternal Order of Police

Others attending: See attached list

SB 292 Defining purpose and scope of public employer-employee relations act

Evan Johnson, Director of Labor Relations with the Division of Personnel Services, Department of Administration, presented the purpose of SB 292 and explained the proposed amendments to the Public Employee-Employer Relations Act (PEERA). Mr. Johnson informed the Committee that the PEERA was enacted in 1971 and has been studied by the legislative interim committees which have made recommendations on three occasions: 1976, 1985 and 1995. The legislation clarifies that PEERA is a pure "meet and confer" act, not a collective bargaining act. The present law, as interpreted by the Public Employees Relations Board (PERB), requires the state to "bargain" about subjects that are set and controlled by other legislation. The proposed legislation, requested by the Department of Administration, removes fringe benefits from the definition of employment (Sec. 2(t) and Sec. 5(C) and reflects the legislature's ultimate responsibility for appropriations and funding for state agencies; changes certain procedures as to existing work practices (Sec. 4(h) and Sec. 7 (b)(8); clarifies procedure for adopting personnel regulations and provides procedure for approval of memorandums of agreement. SB 292 also provides for judicial review and a new section, Sec. 8, the "savings clause". See attachment 1

Merrill Werts, a past member of the Senate and a member of the PERB for 5 years, appeared in favor of SB 292. Mr. Werts testified that when the PEERA was enacted in 1971 the Legislature considered whether to provide for "meet and confer" or collective bargaining. SB 292 clarifies legislative intent in 1971.

Judy Rickerson, Department of Corrections, testified in support of SB 292, citing her agency's experience with interpretation of PEERA provisions in two instances. The PERB held in one incident that the Department could not rely on the state pay plan but had to propose a specific pay increase and a specific proposal regarding increases in health insurance premiums. Even so, the order did recognized that both issues were controlled by legislative action and the Department had no authority to implement any provision agreed upon. Ms. Rickerson testified the amendments proposed in SB 292 provide a reasonable, balanced, workable process for discussing work conditions and resolving problems for state employees. See attachment 2

Janie Kelly Coates, Director of Labor Relations, Department of SRS, appeared in support of SB 292. Ms. Coates cited her agency's experience during the past 4 years and stated that she had been involved in eight different "meet and confer" negotiations. These negotiations were time-consuming and involved a number of state employees. The negotiations had reached a stalemate. The provisions contained in SB 292 would alleviate this type of situation, and new section 8 would greatly assist the process.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on February 23, 1995.

Don Zavodny, American Federation of State, County & Municipal Employees, testified in opposition to SB 292, stating "if it ain't broke, don't fix it". Mr. Zavodny advised it should be the concern of the Committee to make the current law work. There is an unwillingness on the part of the Department of Administration to bargain. He encouraged the Committee to review similar employment laws in Nebraska and Iowa. Mr. Zavodny in responding to a question stated that wages can be used only as a "bargaining chit" as wages are under the purview of the legislature and not under the control of a department of government.

Senator Petty asked Mr. Zavodny to furnish the Committee with statutory bargaining provisions in other states.

Steve Bukaty, Attorney, Kansas State Lodge of the Fraternal Order of Police, testified in opposition to SB 292. Mr. Bukaty informed the Committee that the PEERA, when enacted in 1971, was intended to include bargaining. Professor Goetz, Kansas University School of Law, prepared a paper in 1971 on the Public Employee-Employer Relations Act, setting forth legislative intent, subsequently upheld by the Supreme Court, which identified the bargaining provisions included in the statute. The Kansas PEERA was one of the first such acts in the United States and was used as a model for the various states. Mr. Bukaty stated that SB 292, if adopted, takes away rights public employees have exercised for over 20 years; defeats cooperative relationships between government and its employees; could result in public employee strikes, lower employee moral, and emasculate a Kansas law which has become a model for public employee-employer bargaining through the country. SB 292 will do away with the requirement that employers and their public employees negotiate in good faith. See attachment 3

The Chair stated the remaining conferees will be heard Friday at 7:30 a.m.

Upon motion by Senator Reynolds, seconded by Senator Burke, the Minutes of the February 22, 1995, meeting were unanimously adopted.

The next meeting is scheduled for Friday, February 24, 1995 at 7:30 a.m.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: FEB 23 1995

NAME	REPRESENTING
Steve McKinzie	STATE TROOPERS ASSOC.
LINDA McGill	KSTA
Jerry Powell	City of Topeka
NORM WILKS	KASB
Debra J. Snow	Communications Workers of America ^{Local 6401}
Wayne Maichel	} K. AFL-CIO
Jim R. Hoff	
Hang Nelson	
Jane Kelly	SAS
Judy Ricketson	DOC
B. Marian	Dept of Adm.
Bill McAlister	Dept of Adm.
Jessie Cornijo	AFSCME - Council 64
Don Gwynn	AFSCMF
Duane Guy	KDHR
Ken Hughes	DPS
Linna Fual	DAA
Evan Johnson	DPS
Paul K. Dickhoff	KARE

ALLAN D. DAVIDSON

KDOT

Fall
Bridget Guy

SEAK

Testimony To The
SENATE COMMERCE COMMITTEE

By Evan Johnson
Director of Labor Relations
Division of Personnel Services

Thursday, February 23, 1995
RE: Senate Bill 292

Madame Chairperson and members of the committee, my name is Evan Johnson and I am the Director of Labor Relations with the Division of Personnel Services. I am appearing today to testify on behalf of the Department of Administration in support of Senate Bill 292.

The Public Employee-Employer Relations Acts (PEERA) has been studied by legislative interim committees five times since the law was enacted in 1971. Each time the Interim Committee recommended that the meet and confer nature of the law be reaffirmed.

The interim committee report to the 1976 Legislature noted:

The Committee concludes that the Public Employee-Employer Relations Act is confusing and has created expectations of collective bargaining in the minds of some. The Committee believes that this exceeds the original intent of the legislature . . .

The interim committee report to the 1985 Legislature noted:

. . . the Committee is convinced that PEER Act interpretations have caused the law to evolve into a far more burdensome and restrictive process than was ever envisioned."

The interim report to the 1995 Legislature noted:

"The Committee recommends that the appropriate standing committees undertake a more thorough review of this issue and determine the precise requirements of the meet and confer process as the law has been interpreted by state and federal courts."

The Department of Administration concurs that the Legislature needs to review PEERA and consider changes. We prepared Senate Bill 292 to clarify that the PEERA is a pure "meet and confer" act, not a collective bargaining act. [Sec. 1(b) and Sec. 2(m)]. One of the main problems with the current law, as interpreted by the PERB, is that it requires the state to "bargain" about subjects that are set and controlled by other legislation such as the Civil Service Act. This is nowhere more apparent than on the subject of wages. K.S.A. 75-5515(e) (1) provides that "The annual wages for each position shall be fixed pursuant to the Kansas Civil Service Act...".

The PERB has found that the state did not "bargain" in good faith when it offered to follow that legislative mandate. The Board said that it was a prohibited practice to offer the wages requested by the Governor and enacted by the Legislature. The Board would require that

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Attachment 1 thru 1-3

the state offer a specific percent increase and attempt to compromise the difference between the state offer and the employee organization's higher demand.

The bill makes the following additional amendments to PEERA:

1. *Appropriation and Legislative Matters.* Personnel matters that have significant costs for state agencies, such as wages, health care benefits and retirement benefits, are removed from the definition of conditions of employment. [Sec. 2(t) and Sec. 5(c)]. This amendment reflects the Legislature's ultimate responsibility for appropriations and funding for state agencies. SB 292 provides a more realistic mechanism for employee organizations to communicate with appropriate state officials regarding pay issues and conserves state agency and employee organization resources. [Sec. 6(c)].
2. *Existing Work Practices.* The bill confirms that the employer may change existing work practices without first meeting and conferring if the change does not conflict with applicable laws, regulations or memorandums of agreement which are in effect. [Sec. 4(h) and Sec. 7(b)(8)].
3. *Adopting Personnel Regulations.* The bill clarifies that it is not a prohibited practice for the Secretary of Administration to adopt, amend or revoke personnel regulations and to implement the regulations throughout the state without first meeting and conferring with each of the 43 organized unit of state employees. Current law allows the Secretary of Administration, with the Governor's approval, to adopt regulations to carry out the Civil Service Act to ensure consistency among all classified state employees.
4. *Approvals.* The bill stipulates that the Secretary of Administration and affected agency heads are the governing body for units of state employees and provides a procedure for review and approval of memorandums of agreement.
5. *Private Sector Case Law.* The bill strengthens PEERA language concerning the relative significance of private sector case law when interpreting PEERA.
6. *Judicial Review.* Amendments clarify that decisions of arbitrators are subject to judicial review under K.S.A. 77-601 et seq. and that the courts can enter corrective orders. Where memorandums of agreement provide for binding arbitration, the arbitrator's decision can have a significant impact on agency operations, and in some cases may have a substantial fiscal impact as well. [Sec. 5(b)].
7. *Conflicting Law.* A new section clarifies that provisions of other statutes relating to wages and conditions of employment for state employees and regulations implementing such statutes are not amended, repealed or modified by PEERA and that conflicts between such statutes or regulations and PEERA are to be resolved in favor of the other provisions, rather than PEERA. Any right created by PEERA is subject to amendment or nullification by legislative acts or regulations. [Sec. 8].

By focusing meet and confer topics on matters which are under the control of the affected state agencies and the Secretary of Administration, SB 292 may result in more effective, shorter meet and confer proceedings. In recent years, employee organizations have frequently filed prohibited practice complaints, and as a result, the length of time required to reach agreements has grown, as well as the time required to defend and litigate the complaints. It is anticipated that enactment of the bill would reduce the time needed to reach agreement as the emphasis would be placed on communication in the meet and confer process rather than protracted litigation.

The Department of Administration offers this legislation as a starting point of discussion concerning the Public Employee-Employer Relations Act. Past experience has demonstrated the cumbersome nature of the Act and at times contradictory statements. The administration feels that it is time to look at this Act and have a healthy discussion about amendments to make it more beneficial for both employees and employers. Certainly, this would be a change in the Act. Some, of course, will oppose change. However, the administration feels it is important to put forth a proposal and begin the discussion. The administration looks forward to answering questions from both the committee members and interested persons.



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Bill Graves
Governor

Charles E. Simmons
Acting Secretary

MEMORANDUM

DATE: February 23, 1995
TO: Senate Commerce Committee
FROM: Judy Rickerson, KDOC Human Resource Director
SUBJECT: SB 292

The Department of Corrections has been involved in two prohibited practice complaints in the past two years, the issues of which are impacted by proposed amendments to PEERA contained in SB 292.

In the first case, the Department of Corrections was found to have committed a prohibited practice by not meeting and conferring in good faith on the issues of wages and health insurance. The employee organization submitted a proposal calling for a 6.5% increase in wages for each year of a three-year agreement, as well as a proposal that all increases in health insurance premiums for the three years be paid by the state.

After discussing these issues in the meet and confer process for more than a year, the employee organization filed a prohibited practice complaint. The order of the Public Employee Relations Board was that the Department had failed to meet and confer in good faith on these issues. In effect, the order held that to be in good faith the Department could not rely on the state pay plan but had to propose a specific pay increase and a specific proposal regarding increases in health insurance premiums. The order, however, recognized that both issues were controlled by legislative action and the Department of Corrections had no authority to implement any provision agreed upon which deviated from the pay plan or Health Care Commission decisions.

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The second case involved a decision to discontinue the use of preshift roll call and 30-minute meal periods at four correctional facilities. The meal periods were intended to be noncompensable and duty free. However, three lawsuits were filed under the Fair Labor Standards Act, alleging that the meal periods should be compensable since the corrections officers claimed they were performing work related duties. In one case a jury returned a verdict that the meal periods were in fact compensable. As a result of this litigation, and facing a potential overtime liability of up to \$10,000 per day, the Department of Corrections in January 1993 discontinued the preshift roll call and meal periods. In a recent order the Public Employee Relations Board held this to be a prohibited practice, ruling that the action was a change in existing practice which could be implemented only after the meet and confer process, which for the four facilities has yet to be completed. As such, the potential overtime liability would have continued to accumulate over the past two years.

These two cases point to flaws in the existing statutory provisions as they have been interpreted by the Public Employee Relations Board. In the first case much time and effort was spent discussing issues over which the agency had no control. We do not believe it was intended that individual state agencies be placed in this position. In the second case, in litigation the employee organization claimed that what the Department was doing was wrong, but then argued before the Public Employee Relations Board that the Department's actions to address the problem should not have been undertaken. We do not believe it was intended in the enactment of PEERA that state agencies not have the capability to address quickly a problem carrying the potential of substantial financial liability.

We recognize and agree that state employees should have a process for discussing work conditions and resolving problems. The amendments proposed in SB 292 provide a reasonable, balanced, workable process for doing so.

JR:dja

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ROBERT L. DAMERON**
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CURTIS G. BARNHILL**
CHARLES R. SCHWARTZ
ROBERT J. HENRY*

February 23, 1995

**REMARKS OF STEVE A.J. BUKATY,
STATE LODGE ATTORNEY FOR THE
KANSAS STATE LODGE OF THE
FRATERNAL ORDER OF POLICE**

* admitted in Kansas
* admitted in Missouri, Nebraska
and Washington, D.C.
** admitted in Kansas and Missouri

**TO: Chairperson Alicia Salisbury and the Members of Senate
Commerce Committee**

Madam Chairperson and Members of the Committee:

As an attorney who regularly practices before the Public Employee Relations Board, I speak to you today about the concerns of the members of the organizations I represent about the potential impact of Senate Bill 292.

Stated below, in outline form, is my background and the concerns of my clients and their members:

BACKGROUND:

*Practiced before PERB for past 15 years.

*Negotiated dozens of public employee Collective Bargaining Agreements.

*Represent state, municipal and county employees: police officers, fire fighters and numerous civilian public employees.

CONCERNS:

*S.B. 292, if adopted in its present form, will:

- Take away rights public employees have exercised in this State for over 20 years.
- Defeat the Act's purpose of "The development of harmonious and cooperative relationships between government and its employees."

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- Result in substantial labor unrest and dissatisfaction among the organized public employees throughout the State.
- Force public employees to become more politicized and more politically active.
- Discourage public employees from bargaining and will force them to take all of their concerns to the public.

*Could result in numerous public employee strikes, and

- Will lower employee moral resulting in less government efficiency and, certainly in the public safety sector, endanger the lives and property of public employees and citizens.
- Will make it more difficult for public employers to recruit competent individuals.
- Will emasculate a Kansas law which has become a model for public employee-employer bargaining statutes throughout the country.

*Will do away with the requirement that employers and their public employees negotiate in good faith.

*The present Public Employee-Employer Relations Act has well-served the citizens of Kansas and their employees and has resulted in:

- Improved labor-management relations; there has not been a public employee strike in the State of Kansas since 1978, due in large part to the dispute resolution procedures set out in the Act.
- Improved employee morale.
- Giving employees meaningful input into establishing their terms and conditions of employment.
- Retained for public employers the right to have the final say on what is contained in a collective bargaining agreement.
- Kept labor-management relations for public employers and their employees out of the political arena.
- Maintained efficient and relatively inexpensive procedures for resolving disputes which has had the

concomitant result of reducing, if not completely eliminating, walk-outs and other forms of work stoppages.

- Made fact finding and arbitration the preferred method for resolving public employee-employer disputes.
- As a result, the Act has truly benefitted all citizens of the State.

Adoption of Senate Bill 292 would have the result of emasculating one of the most progressive and highly respected pieces of public employee-employer legislation in the country to the detriment of the State's public employers, public employees and the citizens they are supposed to serve.

Thank you for your attention and allowing me to address the Committee.

Very truly yours,



Steve A.J. Bukaty
State Lodge Attorney
Kansas State Lodge of the
Fraternal Order of Police

SAJB/kkw