

Approved: February 28, 1995  
Date

## MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 7:30 a.m. on February 24, 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  
Bob Nugent, Revisor of Statutes  
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Steve McKinzie, Kansas State Troopers Association  
Paul Dickhoff, Kansas Association of Public Employees  
Debbie Snow, Communication Workers of America  
Jerry Marlatt, Kansas State Council of Firefighters Association  
Wayne Maichels, AFL-CIO

Others attending: See attached list

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

Linda McGill submitted written testimony on behalf of Steve McKinzie, Kansas State Troopers Association stating the Association's opposition to SB 292. See attachment 1

Paul K. Dickhoff, Jr., Director of Negotiations, Kansas Association of Public Employees, testified in opposition to SB 292 stating it would effectively abolish the Public Employer Employee Relations Act (PEERA). This proposed legislation is a result of the Department of Administration's adversarial position. Mr. Dickhoff stated the purpose of the act, enacted 20 years ago, was to aid in the "development of harmonious and cooperative relationships between government and its employees". It was passed due to the failure of public employers to allow public employees to organize. As a result of the Department of Administration's failure to bargain in good faith, there are currently more complaints pending before the Public Employment Relations Board (PERB) than at any time in its history. KAPE welcomes a relationship where problems are discussed to resolution rather than litigated. SB 292 seeks to remove many mandates over which litigation has been filed. The proposed amendments may reduce the number of complains filed with PERB, however they will do nothing to remove the sources of the complaints. See attachment 2

Debbie Snow, President, Local 6401, Communications Workers of America, testified in opposition to SB 292. Ms. Snow advised that Local 6401 of CWA entered into a contract with the City of Topeka 15 years ago and has never found the need to take a case to the PERB; however, having that option lends credibility to the process. It is necessary for any business to operate with a binding contract with vendors and clients; such is a contract between employees and management. It establishes a professional partnership that provides a forum to resolve differences. There will be a number of challenges and responsibilities in the coming years; employees will handle these challenges more professionally if they feel secure in their rights and receive an impartial and fair audience. See attachment 3

Jerry Marlatt, Kansas State Council of Firefighters, appeared in opposition to SB 292. Mr. Marlatt stated the proposed amendments are not in the best interest of the State. There are two basic issues that the Committee needs to address: (1) There is no local option in the statute. There are thousands of public employees that to not come under this Act. (2) Binding arbitration should be included; the State should meet and confer with good intent.

Jerry Powell, City of Topeka, requested to be heard, but was not present.

The hearing on SB 292 was concluded.

The Chair appointed a subcommittee of Senator Harris ( Chairman), Senator Kerr and Senator Petty to review SB 292 and testimony presented during the hearing and to report back to the full Committee the middle of March.

Upon motion by Senator Ranson, seconded by Senator Feleciano, the Minute of the February 23, 1995 meeting were unanimously adopted.

**SB 106- Employment security, benefit disqualification for leaving work voluntarily or misconduct**

Bob Nugent, Revisor of Statutes, reviewed the provisions of SB 106. for the Committee's consideration as follows:

Senator Burke moved, seconded by Senator Gooch that the amendments set forth below be adopted. The motion was unanimously adopted by voice vote.

Page 1, Line 21 following the word "work" by inserting the word "assignment"  
Page 3, Line 43, strike the "," and insert the word "or";  
Page 4, in lines 13-16., in lines 23-26, and in lines 31-34 striking the amendatory language and inserting: "the test is required by and meets the standards of the drug free work place act, 41 U.S.C. 701 et seq. or the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment"  
Same language to appear on Page 3, Lines 39-43.

Senator Ranson moved, seconded by Senator Kerr, SB 106 be amended by inserting a new section that reads as follows: Page 10, Line 42

"(j) Any finding of fact or law, judgment, determination, conclusion or final order made by the board of review or any examiner, special examiner, referee or other person with authority to make findings of fact or law pursuant to the employment security law is not admissible or binding in any separate or subsequent action or proceeding, between a person and his present or previous employer brought before an arbitrator, court or judge of the state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts."

The amendment was unanimously adopted on a voice vote.

Senator Feleciano moved, seconded by Senator Petty, that SB 106 be amended on Page 3, Line 36 through 38, by striking all the new language and reinserting on line 36 "was substantially adverse to the employers interests. The amendment was not approved on a voice vote.

Senator Feleciano moved, seconded by Senator Gooch that SB 106 be amended on Page 4 by striking new language in lines 13 through 16, lines 23 through 26 and lines 31 through 34. The motion failed on a vote of 5 ayes, 7 nays.

Senator Hensley moved, seconded by Senator Petty that SB 106 be amended on Page 3, by reinserting the on Line 27 the following language: "action which is adverse to the employer's interest."

The meeting recessed at 9:00 a.m. until adjournment of the Senate.

The Senate Commerce Committee reconvened at 1:30 p.m. in Room 254 E of the State Capitol Building.

Senator Hensley called for a discussion of the amendment before the Committee:

The question on the amendment was called. The amendment was defeated on a vote of 5 ayes, 6 nays.

Senator Hensley moved, seconded by Senator Feleciano, that SB 106 be amended on Page 5, Line 17 to insert following the word "employer's" the word "reasonable". The voice vote was against adoption of the amendment 5 ayes, 6 nays.

The Chair submitted a letter addressed to Senator Kerr regarding absenteeism. Senator Burke stated that the concepts contained in the letter regarding the criteria that should be considered for absenteeism is new, and there have been no hearings. The Committee expressed interest in the suggested criteria, and the Chair

reported the letter would be forwarded to the House Commerce, Labor and Industry Committee.

Senator Downey moved, seconded by Senator Gooch that SB 106 be amended on Page 5, on Line 18 by inserting the following language: "(C) the employer gave or sent written notice to the individual that future absence may result in discharge". The voice vote was in favor of the adoption of the amendment.

Senator Harris moved, seconded by Senator Ranson, that SB 106 be amended by inserting a new section that reads as follows: Page 1, Line 14

K.S.A. 77-703 (4)(A)(v) following the word "week" add the following: "or is a position to which a person is appointed to serve a term of specific length".

The amendment was unanimously adopted on a voice vote.

Senator Ranson moved, seconded by Senator Reynolds, that SB 106 be passed as amended. The recorded vote was in favor of the motion: 8 Ayes, 3 nays, 2 not present.

The Committee adjourned at 2:30 p.m.

The next meeting is scheduled for Monday, February 27, 1995.

# SENATE COMMERCE COMMITTEE GUEST LIST

DATE: \_\_\_\_\_

NAME	REPRESENTING
Dennis Phillips	Topoka Firefighters <sup>local 83</sup> IAFF
James A. Lock	KS77A
Robert S. Wing	K.C.K. Firefighters #64
John Peterson	Ryantheon Aircraft
Deane Guy	KDHR
James A. Pope	United Rubber Worker Union
A.J. Kotich	DHR
Edwin W. Angler	DHR
PAUL BICKNELL	KDHR
Bill Laves	KDHR
Myrlene Kelley	KAPE
Paul Diekhoff	KAPE
Art Griggs	Dept. of Adm.
Linda Fung	D of A.
Faith Loretto	"
Marylou Maritt	KANSAS NEA



**TESTIMONY OF**

**STEVE MCKINZIE**

**OF THE**

**KANSAS STATE TROOPERS**  
**ASSOCIATION**

**PRESENTED TO THE**

**SENATE COMMERCE COMMITTEE**

**SB 292**

**FEBRUARY 24, 1995**

*February 24, 1995*  
*Commerce*

*Attachment 1*



## KANSAS STATE TROOPERS ASSOCIATION

Good morning. My name is Steve McKinzie. I am now and have been for thirteen years a trooper with the Kansas Highway Patrol. I am also the current president of the Kansas State Troopers Association, which represents all 400 troopers in the Patrol with regard to bargaining and other matters. I am here today to speak against the passage of S.B. 292.

S.B. 292 is contrary to the overall purpose of the Public Employee-Employer Relations Act (PEERA) because it would create an illusory meet and confer system that would frustrate, rather than promote, the desired harmonious and cooperative relationship between state government and its employees. This bill would take away the existing, long-standing right of public employees to meet and confer in good faith with their employer regarding wages, health insurance, retirement benefits and any other matters which could be the subject of legislative appropriation--a right that has long been enjoyed by state employees across this country. In its place, the employees would merely be afforded the right to lobby the legislature on these matters--a right that they already enjoy in common with all other citizens of the State. These financial subjects are the heart of the bargaining process, but they would be expressly removed from the scope of the meet and confer process by the proposed amendment to K.S.A. 75-4322(t).

Then, the proposed amendments to K.S.A. 75-4326 in the form of new sections (h) and (i) would permit the state to take unilateral action on mandatorily negotiable subjects without first engaging in the meet and confer process. Unilateral action on negotiable subjects is universally considered the antithesis of a meaningful meet and confer process. However, section (h) permits the state to unilaterally change "existing practice" as to terms and conditions of employment which can have a profound effect on the work environment. The past practices of an agency are important components of the conditions of employment which, though not expressly stated in a Memorandum of Agreement, are uniformly relied upon by the employees. Subsection (i) is especially troublesome because it would permit the DOA to promulgate new personnel regulations that are directly contrary to the terms of an existing Memorandum of Agreement, totally stripping the meet and confer process of any meaning. The proposed new language at the end of K.S.A. 75-4333(a) would also remove this type of unilateral action from the definition of a prohibited practice, thus making clear that such action is condoned.

Additionally, the proposed new language to be added to K.S.A. 75-4330(c) regarding binding arbitration is totally inconsistent with the worthwhile purposes of arbitration. It would mean that instead of binding arbitration being the final step of a contract interpretation dispute, it would merely be the first step in a lengthy and expensive court battle. Arbitration is designed to provide to sophisticated parties a quick, informal, and relatively inexpensive procedure for resolving disputes and its use in labor law is time honored. Kansas law strictly enforces arbitration awards where the parties have agreed that the arbitration award is to be binding. The Kansas Supreme Court has reasoned that if knowledgeable parties have contracted to accept the honest opinion of an arbitrator, they should be bound by the arbitrator's award. This affords a level playing field to both sides and a quick resolution of a dispute, thus promoting labor peace and harmony. Parties to MOAs have operated under the existing PEERA language for better than 20 years without one PEERA arbitration award being appealed into the Kansas Court system, but in 1993, the Department of Administration lost an arbitration under the KSTA/KHP Memorandum of Agreement. The DOA refused to comply and, instead, appealed to Shawnee County District Court. The DOA argued that the award should be treated like an "agency action" of a state agency with the full scope of review as afforded under K.S.A. 77-621. However, the Court specifically ruled against the DOA and held that the award was binding. This traditional process should be left in place.

Finally, the proposed new language of K.S.A. 75-4323 (d) (2) which provides that PERB would not have jurisdiction over any issue or claim determined by another administrative body is extraordinarily broad and ominous. It is unclear as to exactly what is intended by such language. What is another "administrative body"? Under what circumstances will the administrative body be deemed to have "determine(d) any issue or claim" so as to deprive PERB of jurisdiction? The ambiguous, unusual and broad scope of this language is sure to generate controversy and litigation. Moreover, there is no demonstrated need for such a radical departure from the existing (PEERA) law.

State employees do not have the traditional labor device of the right to strike, but instead have been given the right to meet and confer on matter affecting their terms and condition of employment. This right should not be watered down and reduced to a nullity. S.B. 292 should not be approved by this committee.



1300 South Topeka Avenue Topeka, Kansas 66612 913-235-0262 Fax 913-235-3920

Testimony of Paul K. Dickhoff, Jr.  
Director of Negotiations  
Kansas Association of Public Employees  
In Opposition to  
Senate Bill 292

Madame Chair and members of the committee good morning. My name is Paul Dickhoff and I am the Director of Negotiations for the Kansas Association of Public Employees. I appreciate the opportunity to address the committee this morning in opposition to Senate Bill 292.

This bill seeks to amend the Public Employer Employee Relations Act commonly known as PEERA. The amendments proposed would effectively abolish the act, its purposes, and its values.

Before recommending such an action, KAPE would encourage the committee members to note the purposes for which this act was passed over twenty years ago. By its own language the act was passed to aid in the, "development of harmonious and cooperative relationships between government and its employees". It was also passed because of, "the denial by some public employers of the right of public employees to organize and the refusal by some to accept the principle and procedure of full communication between public employers and public employee organizations" which the 1972 legislature recognized could lead to, "various forms of strife and unrest".

Based on that recognition, the 1972 legislature saw fit to clearly explain what they expected to occur under this act within K.S.A. 75-4321 (b), which states:

"it is the purpose of this act to obligate public agencies, public employees and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the framework of law. It is also the purpose of this act to promote the improvement of employer-employee relations within the various public agencies of the state and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be represented by such organizations in their employment relations and dealings with public agencies."

*February 24, 1995*  
*Commerce*

Affiliated with the Federation of Public Employees / AFT / AFL-CIO



*Attachment 2.*



The 1972 legislature even felt so strongly about the value of these communications that they made it an illegal act not to participate in this process in "good faith".

The 1972 legislature was somewhat prophetic in the passage of this act. Many of the most robust and profitable corporations in this country today will attest to the fact that their recent gains are the product of improved labor management relationships through the involvement and empowerment of their employees.

In an effort to study this phenomena and, share its successes with other interested employers, the Federal Government has established the Office of the American Workplace within the U.S. Department of Labor. In case after case, that agency reports on corporations in this country who have experienced remarkable increases in productivity, coupled with decreases in labor relations disputes, as a result of their employee empowerment efforts. In fact, a recent article from the Office of the American Workplace, which reported on a survey of CEO's from "high performance work systems", contains two quotes which best sum up this principle, they are:

"CEO's know that better labor management relations are the way to go, but building them isn't quick or easy."  
and,  
"Local unions are most aware of the needs in their respective companies and are the primary vehicle to help change along."

The State of Kansas is not unlike a corporation established to serve its customers, the citizens of Kansas. Like other progressive corporations, we should learn from the successes of others. Unfortunately, the relationship between the state Department of Administration and state employees has historically been adversarial. Today more complaints are currently pending before the Public Employee Relations Board than at any other time in their history. The reason is a fairly simple one. That is, while the statutes require certain actions on the part of the Department of Administration, they provide no meaningful sanctions for not fulfilling those mandates, nor any incentive to do so. Time and time again, employee organizations have prevailed in complaints of bad faith bargaining under this act. Time and time again, the orders for the employer to cease and desist its illegal acts have been ignored.

Neither KAPE nor the State of Kansas improves their service to the citizens by continuing this adversarial relationship, but without a mutual effort toward cooperation, litigation is our only avenue of recourse. This year, as in years past, KAPE is again trying to establish a positive working relationship with the elected

leadership of this state. KAPE would welcome a relationship where problems are discussed to resolution rather than litigated. KAPE, however, is only one party to the relationship. It takes two willing parties to build such an alliance. Bills such as this reduce the possibility of building such a relationship.

It is obvious that Senate Bill 292 now seeks to remove many of the mandates over which litigation has been filed. KAPE would view such an action as equivalent to removing the prohibitions against theft as a means of reducing the number of thefts. No member of this committee would be duped into supporting that type of proposal, nor should they apply that kind of logic to this bill. Decriminalizing a problem does not eliminate the problem. And while the amendments proposed may well reduce the number of complaints which are filed with the Public Employee Relations Board, I can assure you they will do nothing to remove the sources of those complaints.

On many occasions KAPE has come before the Kansas legislature seeking amendments to this act which would help to empower your employees and insure a more productive labor management partnership. Your employees are your greatest resource, and are the source of success or failure of all state programs. They want to assume the role of partner in making Kansas government a model for other states. In doing so they ask that they be accorded the rights and respect accorded to every other working man and woman in the private sector. The rights to organize and be dealt with as equals in good faith by their employer. The current act falls painfully short of these goals, and the provisions of Senate Bill 292 are a giant step backward in that effort. The citizens of Kansas deserve the most productive and efficient state government possible, and the private sector has given us a list of the new tools necessary to build that success.

I direct your attention to the closing comments of Governor Graves in his State of the State address, and I quote;

"This message is not about mindless budget cutting and slashing. Programs that are not proving themselves will not be supported; while programs that are critical to our future will find strong and often increased support."

I submit to this committee that a harmonious and productive relationship with the state employee work force is as critical to the future of this state as it has proved to be in the private sector. I would further submit to the committee that Senate Bill 292 is a convenience for a few at the expense of many. In KAPE's view it is an expense no one can afford. KAPE, therefore, respectfully encourages you to vote against Senate Bill 292.

Thank you for your attention and I will attempt to answer questions.

Testimony of Debbie Snow  
President, Local 6401,  
Communications Workers of America  
Speaking in Opposition to  
Senate Bill 292

Madame Chair and honored members of the committee, good morning. My name is Debbie Snow and I am president of Local 6401, Communications Workers of America. We represent nearly 550 workers here in Topeka, most of whom find employment in the telecommunications industry. We also are quite proud to represent a unit of public employees at the Topeka Emergency Communications Center. These are the dispatchers who answer your calls to "911", something we hope doesn't happen too often. But if tragedy strikes, skilled CWA members take pride in assisting the public by dispatching the proper emergency personnel to the scene while providing comfort and advice to victims in the interim.

These dispatchers perform some of the most stressful duty on the face of the earth. They work sometimes long hours with little relief. In this pressured situation, they have the comfort of knowing their contract spells out rules and conditions of work. If violated, a grievance may eventually come before the PERB for resolution. This contract has been in effect for better than fifteen years and we have never found the need to take a case all the way to the PERB, but having that option there lends credibility to the process leading up to that point, much like the higher levels of the judicial system encourage settlement at lower levels.

Just because the case load gets high, should we eliminate the Supreme Court?

The grievance procedure provides an honorable and dignified method of resolving problems in the workplace. The employee doesn't always prevail. The grievance simply provides due process to air the problem, and sometimes results in a stronger manager/employee bond, which often leads to mutual gains in productivity. Instead of an adversarial climate, bringing workplace problems to the fore in a professional manner helps managers understand a perspective of the situation that often results in better policy and improved performance.

No legitimate business would dream of operating without legal binding contracts with vendors and clients. A contract between employees and management keeps things on the high road. It establishes a professional partnership that gives all parties a forum and point of contact to resolve differences.

When Southwestern Bell advocated legislation that would enable the company to respond more quickly to market conditions and would benefit the state of Kansas with an improved high-tech communications network, CWA stood with the company to advocate this pioneering act, known as the expansion of TeleKansas. This

*February 24, 1995  
Commerce  
Attachment 3*

Page 2.

Testimony of Debbie Snow  
President, Local 6401,  
Communications Workers of America  
Speaking in Opposition to  
Senate Bill 292

type of partnership results in a win/win situation for both parties.

The state of Kansas should look to its employees as a valuable asset, partners in promotion of the good of the state. These people could well ask, "What have we done to deserve this - why does our employer want to reduce the protection of due process we have before the PERB?" Loyalty cuts both ways. Loyal employees produce better results, while loyal employers empower their workers to go the extra distance for the good of the whole. The political climate is such that our state workers may face many new challenges and responsibilities in the coming years. They will handle this shift better if they can feel secure in their rights and that their concerns will receive an impartial and fair audience.

In closing, I appreciate your kindness in giving me the opportunity to address this committee and encourage you to please vote against Senate Bill 292.