

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on February 8, 1996 in Room 123-S of the Capitol.

All members were present except: Senator Moran and Senator Vancrum, who were excused

Committee staff present: Alan Conroy Legislative Research Department
Kathy Porter, Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Revisor of Statutes
Judy Bromich, Administrative Assistant
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Linda Fund, Legal Counsel, Department of Administration
Bill McGlasson, Division of Personnel Services, Department of Administration
Tracy Galvin, Conservation Officer, Department of Wildlife and Parks
Master Trooper Steve McKinzie, Kansas Highway Patrol
Special Agent Richard Vick, Kansas Bureau of Investigation
Richard Blevins, representing the investigators from the office of the State Fire
Marshal
Gene Hatfield, Alcoholic Beverage Control Enforcement Agent, Kansas Department
of Revenue
Mike Aushard, past president of KU Classified Senate

Others attending: See attached list

The Chairman told members that the Committee would address pay issues of state employees that might be problems. He asked that conferees be concise in their testimony because of the number who had requested an opportunity to appear.

A memorandum from the Research Department regarding two issues (hours of work required before overtime pay is allowed for law enforcement personnel of KHP, KBI, Wildlife & Parks, ABC, and the State Fire Marshal, and overtime for hours actually worked versus "in pay status" hours) was distributed to members (Attachment 1).

Linda Fund, Manager of the Legal and Labor Relations section of the Division of Personnel Services, appeared before the Committee and reviewed copies of her written testimony (Attachment 2). She addressed hours of work and pay for law enforcement officers. She reviewed the lawsuit filed by the troopers, conservation officers and special agents regarding calculation of their salaries and what constituted overtime pay.

In response to Senator Karr, Ms. Fund stated that the Alcoholic and Beverage Control officers are part of the KBI special bargaining unit, and KAPE is the certified representative for that bargaining unit. She stated that she had addressed concerns of the troopers and conservation officers in her testimony, but she understood that fire investigators, who are not in the certified bargaining units or the lawsuits, may wish to raise the same issues.

Chairman Kerr asked whether it would be possible to reach a Memorandum of Agreement for the conservation officers, the KBI special agents, the ABC officers and the fire investigators. Ms. Fund stated that she expects their representatives to come to the table to discuss issues under PEERA which is the process that results in a Memorandum of Agreement. In response to a question from Senator Petty regarding the meet and confer language under the PEERA law, Ms. Fund stated that the Legislature is in a position to make a decision about what salaries are appropriate, but the Department intends to abide by the act as it stands even though there are some concerns about it.

Bill McGlasson, Director of the Division of Personnel Services, presented information to the Committee regarding job classification, compensation practices, and the Fair Labor Standards Act (Attachment 3). He pointed out graphs which illustrate that Kansas special agents and conservation officers receive higher than average salaries and which illustrate the impact of a 40 hour workweek on the hourly rate for troopers and conservation officers as compared with other states. In answer to Senator Rock, Mr. McGlasson stated that there is no obligation on the part of the state to provide more than 40 hours of work in a week for troopers or conservation officers. Senator Rock's point was that if only 40 hours of work are provided, the employee's

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on February 8, 1996.

salary is obviously reduced.

Senator Karr expressed concern that the policy regarding "in status pay" may cause some employees to be less enthusiastic about working on weekends or in emergency situations.

Tracy Galvin, a conservation officer for fifteen years with the Department of Wildlife and Parks, appeared before the Committee to discuss "inequities" for conservation officers under the ShaRP pay plan. He compared conservation workers to conservation officers, noting that conservation workers are on the same step range as conservation officers but work an 80 hour period in two weeks whereas the conservation officers work 86 hours before they're eligible for overtime. He added that since the implementation of SHaRP, conservation officers must use 86 hours of leave time if they're gone in a two week period. This affects sick leave, vacations and has an impact on the benefits of retirees. He stated that conservation officers' hourly wage was computed by dividing the annual salary by 2,223 hours while other state employees' hourly wage was computed by dividing the annual salary by 2,080 hours. Mr. Galvin stated that conservation officers are not upset about receiving straight time pay for work up to 86 hours, but believe that their hourly wage should have been computed like that of other state employees and believe that the issue regarding leave time should be resolved. Addressing the issue of "in pay status," Mr. Galvin stated when a holiday falls within a pay period, the overtime threshold is raised to 94 hours (86 hours of actual work and 8 hours of compensated holiday time). Written testimony from Bruce Bertwell, a conservation officer, was distributed to members (Attachment 4).

Master Trooper Steve McKinzie, Kansas Highway Patrol, appeared before the Committee to review how troopers had been treated differently than other law enforcement personnel. He told members that it was not true that the troopers had not attempted to remedy the issues surrounding the FLSA prior to the lawsuit, but that they were unable, after several meet and confer instances, to resolve the issues. He said that troopers have always been scheduled to work 171 hours in a two week period. He said that the FLSA does not regard mealtime as compensable time, so the troopers gave up paid mealtime to protect the integrity of their hourly pay rate. Otherwise, their hourly pay rate would have been reduced by approximately 7% as it has been for other law enforcement officers. This decision has caused troopers to work more days but not more hours in a year. He stated that by doing this, troopers' leave time is calculated on the same basis as work hours in the two week period. In summary, Trooper McKinzie stated that troopers are paid an hourly rate based on their annual salary divided by 2,080; they are paid straight time up to 80 hours that are scheduled; they are paid overtime after working 86 hours in a two week pay period.

Special Agent Richard Vick, KBI, testified that the Attorney General had been in attendance at the meeting and endorsed the testimony of the law enforcement officers. Agent Vick stated that the FLSA does not require 171 hour of work in a 28 day period as the Department of Administration has reported. He reviewed his written testimony which expounded on the inequities addressed by the conservation officers (Attachment 5). Mr. Vick stated that his agency believes that these "inequities" can be corrected only through legislative action.

Mr. Richard Blevins, representing the State Fire Marshal's Investigators, distributed copies of his written testimony (Attachment 6) and told the Committee members that the complaints that had been voiced by other law enforcement officers were those of the investigators as well. He stated that the fire investigators had been denied an opportunity to enter into an agreement like that of the troopers.

Mr. Gene Hatfield, Alcoholic Beverage Control Enforcement Agent, told members that his agency's concerns about pay issues were the same as those already enumerated by earlier conferees.

Mike Aushard, past president of the KU Classified Senate, distributed and reviewed copies of his written testimony (Attachment 7). Mr. Aushard testified against 1994 SB 824 which based overtime pay on hours "in pay status". He called attention to a letter from the Associate Director of Housing at KU which indicates that the policy regarding in pay status has resulted in employees not responding to emergency "call-backs". In answer to questions, he stated his work week is based on a 40 hour week and any hours over 40 are considered overtime.

In answer to Senator Karr, a representative from the Department of Corrections stated that corrections officers are on duty 8 hours straight. They do not take and are not paid for mealtimes.

The Chairman announced that **SB 373** which was scheduled for a hearing today would be rescheduled due to the lateness of the hour. He adjourned the meeting at 12:15 P.M. The next meeting is scheduled for February 9, 1996.

SENATE WAYS AND MEANS COMMITTEE GUEST LIST

DATE: February 8, 1996

NAME	REPRESENTING
JERRY MAGNUSON	DoA
CARA L. SPRAGUE	TREASURER'S OFFICE
Joe Lienemann	Kansas Wildlife Officers Assoc
John Purvis	"
Mark Gauntt	KS Wildlife Officers Assoc
TRACY GALVIN	KS Wildlife Officers Assoc
Mike Auchard	KU Classified Employees
MARK MCLEARY	KS FIRE MARSHAL DEPT.
DON WATKINS	STATE FIRE MARSHAL DEPT
David L. Pater	KS State Fire Marshal Dept.
Gale Haag	S.F.M.O.
Elena Nuss	SJMO
Denny Burgess	Kansas Dist Judges Assoc
MELVIN L. Dale	KS FIRE MARSHAL DEPT
B. Mariani	Dept of Adm.
Dick Rosebrough	KS Fire Marshal Dept
Kevin Titterman	KS Fire Marshal Dept
Connie Hafenstine	KDOT
Judy Pickerson	KDOR

Larry Ridgway

Richard Vick

Brenda Owens

Sandy Wicks

Sen. Rock

KBE

SRS

SRS

Donna Calhoun

SENATE WAYS AND MEANS COMMITTEE GUEST LIST

DATE: February 8, 1996

NAME	REPRESENTING
Jan Hughes	D of A
Jim Coder	St. Fire Marshal Dept
Amy Traeger	Sen. Moran
Paul Shelby	OIA
Judy Wolff	SRS
Sandy Powell	SRS- Admin. Asst.
P.M. Fagan	DEPT. OF REVENUE (CRIMINAL FINANCIAL)
Paul Oldridge	FIRE MARSHAL (Dept Investigation)
Elaine Frisbie	Division of the Budget
Liz Ince	Library
Outie McKiel	KSTA
RS McKinzie	KSTA
Anne Porunt	KBI
Kale Singer	KBI
Carla Stovall	AO
Susan Duffin	Kansas Dept of Revenue
Heather Gray	Sen. Harris Office
Sue Kische	Sen. Pres. Off
Amy Sledin	Sen. Salisbury

MEMORANDUM

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February 8, 1996

State Employee Overtime Issues

Two issues involving overtime pay for state employees have recently been the subject of Subcommittee testimony. Both are issues recently reviewed by the Legislature. **Neither issue was made necessary by the implementation of SHARP; rather, the SHARP system has allowed the state to implement the overtime change in issue 2 and has allowed the state to more easily track the number of hours actually worked by law enforcement personnel.**

Issue 1 -- Hours of Work Required before Overtime Pay Is Allowed for Law Enforcement Personnel Employed by the Kansas Highway Patrol, KBI, Department of Wildlife and Parks, Alcoholic Beverage Control, and State Fire Marshal

The Fair Labor Standards Act allows partially-exempt law enforcement officers to earn overtime compensation for any hours actually worked in excess of 171 hours in a 28-day work period. Because the state has gone to a 14-day work period, these employees must now work 86 hours in a 14-day work period before they are eligible for overtime pay.

Before the state went to an hourly pay rate for these employees, they were compensated at their annual rate of pay, whether they worked the full 171 hours or worked fewer hours in a pay period. Now, the state can compensate employees on an hourly basis and can more readily track hours worked by individual employees. As a result, those employees must work the full 171 hours to receive the same annual pay they received previously. This is not a change in policy, but rather reflects enforcement of the state's policy regarding these employees.

1995 H.B. 2169 (House Appropriations) would allow Highway Patrol, KBI, and Wildlife and Parks law enforcement officers to receive overtime compensation for any hours actually worked in excess of 160 hours per month.

Issue 2 -- Overtime for Hours Actually Worked Versus "In Pay Status" Hours

The 1994 Legislature passed 1994 S.B. 824 (K.S.A. 1994 Supp. 75-5537), which provides that **"only hours actually worked may be considered in determining whether overtime compensation is due**

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Attachment 1*

and the amount of overtime compensation due, whether in the form of overtime pay or compensatory time off in lieu of overtime pay.”

This policy is allowed by the Fair Labor Standards Act and replaces a more liberal policy, which allowed overtime after 40 hours in pay status, which would include holidays, vacation time, and sick leave.

The typical situation that has been mentioned in inquiries is that an employee could be off work for a holiday on a Monday, work regular hours on Tuesday through Friday, and then be called in to work on Saturday. **The employee would be paid at the regular rate of pay for working on Saturday, but would not get overtime.** Overtime is paid only after the employee actually works for 40 hours.

Testimony To The
SENATE WAYS & MEANS COMMITTEE

By

Linda J. Fund
Division of Personnel Services

Thursday, February 8, 1996

Mr. Chairperson and members of the committee, thank you for the opportunity to appear before you today. I am Linda Fund, Manager of the Legal and Labor Relations section of the Division of Personnel Services. Today, I will discuss hours of work and pay for law enforcement employees which represent 7 classes out of more than 750 classifications of state employees.

Law enforcement officers for the State of Kansas are important and the Administration is supportive of them. We respect the work that they do and believe that they perform a valuable service. Therefore, we have taken their complaints regarding their pay very seriously and have investigated them to determine whether or not they were being paid properly. The result of that investigation is, yes, they are being correctly and legally paid.

The state is bound to follow the Fair Labor Standards Act (FLSA). This federal law sets overtime standards and minimum wages for workers. Law enforcement officers qualify for a 207(k) partial exemption from that act. This means that FLSA allows them to work 43 hours in a seven day work period before being paid overtime, or 86 hours in a fourteen day work period, or 171 hours in a 28 day work period. These facts are known when their salaries are set by the Director of the Division of Personnel Services who has statutory responsibility to set pay.

These employees had their hours of work reduced from more than 200 per 28 day work period to 171 per 28 day work period by the FLSA in 1986. However, in 1991 the conservation officers, KBI special agents and troopers claimed that they were not getting paid for the hours they worked between 160 and 171 in a 28 day work period. Rather than seeking a remedy through the negotiation process, they sued the State of Kansas in cases under the captions of *Collier v. State of Kansas* and *Schmitt v. State of Kansas*.

The troopers were scheduled to work 171 hours in a 28 day work period. The claim by conservation officers and special agents assumed that the officers and agents were indeed working hours between 160 and 171 in a 28 day work period. However, many of these officers and agents were only working 160 hours in the 28 day work period. Agencies had allowed these employees to work fewer hours while receiving the full salary for 171 hours. The troopers are different than the conservation officers and special agents both in their work schedules and ability to set their own schedules.

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Attachment 2

In their suit, troopers, conservation officers and special agents claimed the state had violated the FLSA by not paying them for the hours they worked between 160 and 171. The judge concluded that the state had not violated the FLSA and that these employees' salaries did cover 171 hours in a 28 day work period. The judge verified the state's position that salaries were legally correct in his decision on September 24, 1994. The defense of this case was expensive in staff time by the affected agencies' personnel offices, the employees' supervisors, the Division of Personnel Services' staff and the legal staff defending the state.

In 1994, K.S.A. 75-5515 was amended to read that hourly pay is determined for those classes of employees who have deviations from the standard workweek on file (this includes law enforcement officers) by dividing the annual salary by the number of hours in the deviated work schedule as approved by the Secretary of Administration. This statute follows the decision of the federal judge that the salary covers all non-overtime hours worked by these employees.

A decision was made late in 1994 to convert all non-exempt employees to hourly pay and to pay all exempt employees a salary. That decision was implemented on December 17, 1995. This method of pay is legally consistent with and more easily enforceable under the FLSA. Conservation officers and KBI special agents now claim that they have to work 171 hours to earn the same salary they use to receive. One can easily see that this argument is not consistent with their earlier argument put forth in the *Collier/Schmitt* case.

Both the court case and the statute clearly indicate that these employees are being paid the appropriate hourly rate and that their work schedule is correct. The suit was instigated to get them the same pay raise they now seek through the legislature. The employees among this group who have worked only 160 hours and received their full salary want what will amount to about a 7% - 7.5% increase in pay. This is true even though this request is being made in a year that other state employees, who also want raises, will be receiving little, if any, raises. Generally the legislature has deferred its decision in a matter when a court case has been instigated. The Secretary believes that legislative deferral is the proper action in this case.

In addition, these employees are members of certified bargaining units. Under PEERA, K.S.A 75-4321 *et seq.*, they should be bringing this matter to the negotiation table rather than the legislature. In fact, we are waiting to meet and confer with these units. I have forwarded letters to KAPE, the representative of the organized bargaining units, trying to initiate the proper process to deal with this concern and to take the issues to the table for meet and confer. Although they have not yet been willing to bring this matter to the table for negotiation, we believe that pursuant to legislative directive, meet and confer is the proper forum and the Secretary hopes you will allow that process to work.

It was the meet and confer process under PEERA which resulted in the trooper Memorandum of Agreement which requires them to work 104 more hours per year and 13 more days on the road per year for no increase in cost. Under their Memorandum of Agreement, they are scheduled to work 80 hours in a 14 day work period and have given up one hour of paid lunch per work day. They receive straight hourly rate between the hours of 80 and 86 per fourteen day work period and receive time and one half pay or compensatory time after 86 hours in a fourteen day work period. Although we hear from the conservation officers and the special agents that they want

to be like troopers, they have truthfully never been like troopers. They have never had regularly scheduled hours and they have not had a Memorandum of Agreement.

The Legislature has directed the Director of the Division of Personnel Services to determine salaries for all classified employees. Director McGlasson will now address related compensation issues.

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Testimony To The
WAYS & MEANS COMMITTEE

By
William B. McGlasson, Director
Division of Personnel Services

Thursday, February 8, 1996
RE: Kansas Classification and Compensation Practices and
The Fair Labor Standards Act (FLSA)

Mr. Chairperson and members of the committee, thank you for the opportunity to appear before you today. I am Bill McGlasson, Director of the Division of Personnel Services. Today, I will discuss classification and compensation procedures and the Fair Labor Standards Act (FLSA). In addition, I will answer fiscal questions raised about the changes made during the 1994 legislative session regarding hours that count toward overtime thresholds.

The Division maintains a classification plan that applies to all classified state employees. The classification plan includes unique descriptions of job duties, responsibilities, and the required qualifications for over 29,000 classified state employees in over 750 job classifications. Various factors are considered in adopting job classifications, such as the kind of work performed, the scope of assigned duties and responsibilities, consequences of actions and decisions, physical demands, and environmental conditions; as well as required knowledge, skills and abilities. Accurate descriptions of work are necessary to allow effective recruitment of qualified persons and accurate comparisons of positions with other employers so we can establish competitive salaries.

The appropriate compensation for job classifications is based on the results of labor market surveys, the internal alignment of job classes reflecting organizational structure, and the consideration of labor market conditions, including recruitment and retention factors. The State of Kansas uses the annual survey of the Central States Compensation Association (CSCA). These are 19 centrally located states, including Kansas, that exchange compensation information and study compensation practices and classification issues. Other relevant labor market data is obtained from both public and private sector employers.

The pay rates for law enforcement jobs in state government were studied and established as a part of the statewide Comprehensive Classification and Job Rate Study in June, 1989. Subsequent annual compensation surveys have determined that the current pay rates continue to be very competitive for law enforcement officers such as Conservation Officers and KBI Special Agents. The relatively low turnover rate in these job classes and the high number of job applicants is further evidence that these pay rates are appropriate.

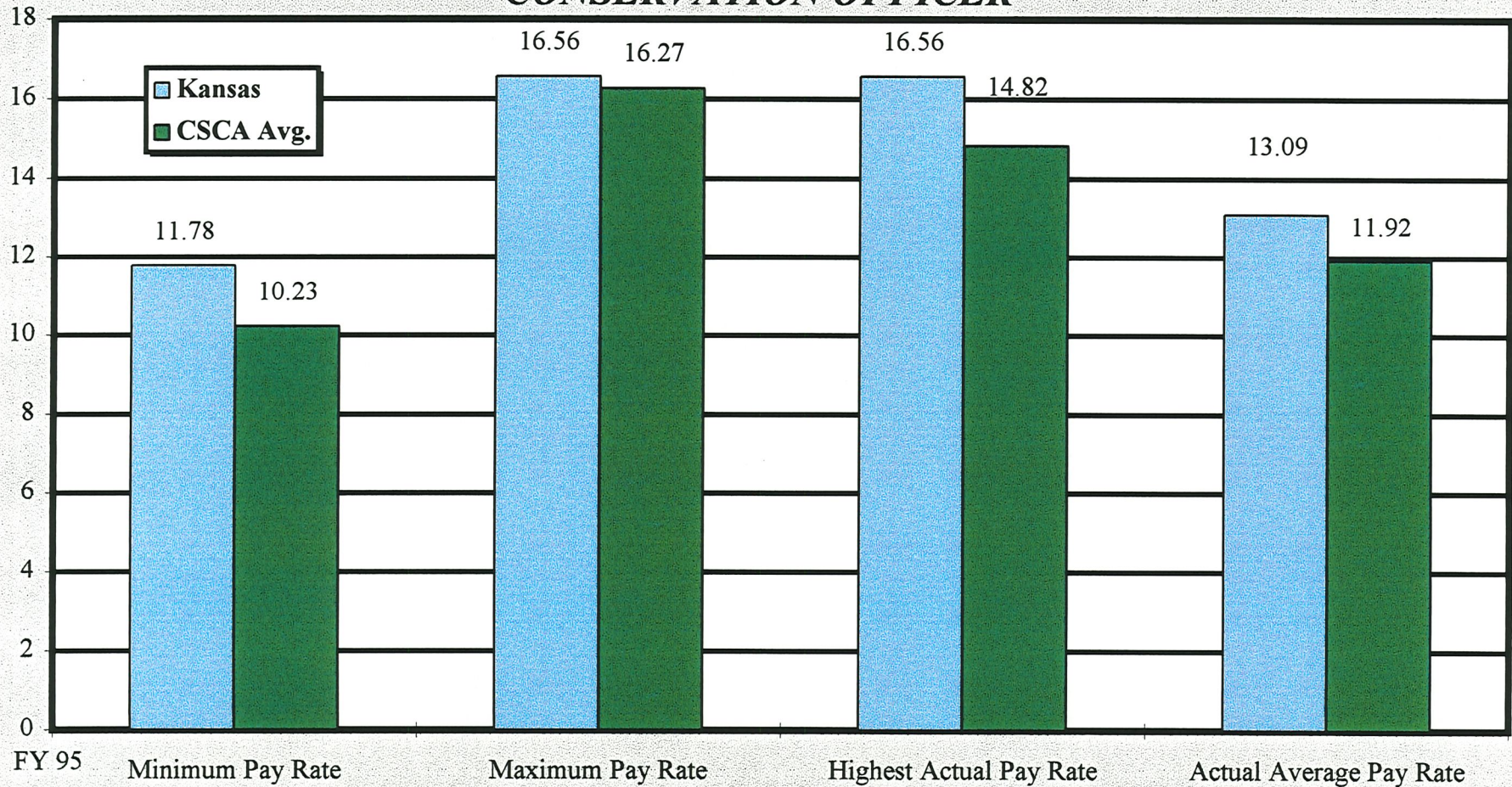
Based on an actual hourly pay rate survey conducted in 1994, the average hourly rate of Conservation Officers and KBI Special Agents exceeds the average hourly rate of all other central states with the same job classifications. As you will note in Charts 1 through 4, the hourly rates for Kansas are higher when comparing hourly rates based on 171 hours in a 28 day work period, or when comparing based on a 40-hour workweek.

The State of Kansas has traditionally treated all employees in a similar way in terms of pay administration, benefit administration, and in disciplinary actions. When employees filed lawsuits against the state in 1991, we became painfully aware that nonexempt (hourly) employees and exempt (salaried) employees are, in fact, different groups of employees under the law. As a result, statutes and regulations have been changed to conform more closely with requirements of the FLSA. Biweekly salaries have been established for exempt employees; hourly pay for nonexempt employees. In other words, the number of hours worked by a nonexempt each pay period times the hourly pay rate determines the amount of pay for the period. This is very different from the former monthly salary for nonexempts that covered a variable number of hours in each monthly pay period. For example, pay periods included as few hours as 160 and as many as 184 hours. The monthly salary was still the same each month. These revised processes clearly distinguish exempt from nonexempt employees in administering the FLSA.

I would also like to address questions about changing overtime thresholds to exclude hours "in pay status." During the 1994 legislative session, we recommended a change in the way the state calculated hours toward overtime thresholds. At that time, we allowed paid time away from work to count toward the overtime threshold. This pay practice was very costly and uncommon among other employees in the state. In an effort to align the state's overtime pay practice more closely with the private sector and other government organizations, Senate Bill 824 was passed in the 1994 legislative session which allows only hours actually worked to be counted toward the overtime threshold. In the Division's fiscal note prepared for that bill, we estimated a cost savings of \$2.9 million based on the statutory change concerning overtime thresholds. If this legislation is reversed, we believe we would experience a similar increase in overtime costs next fiscal year.

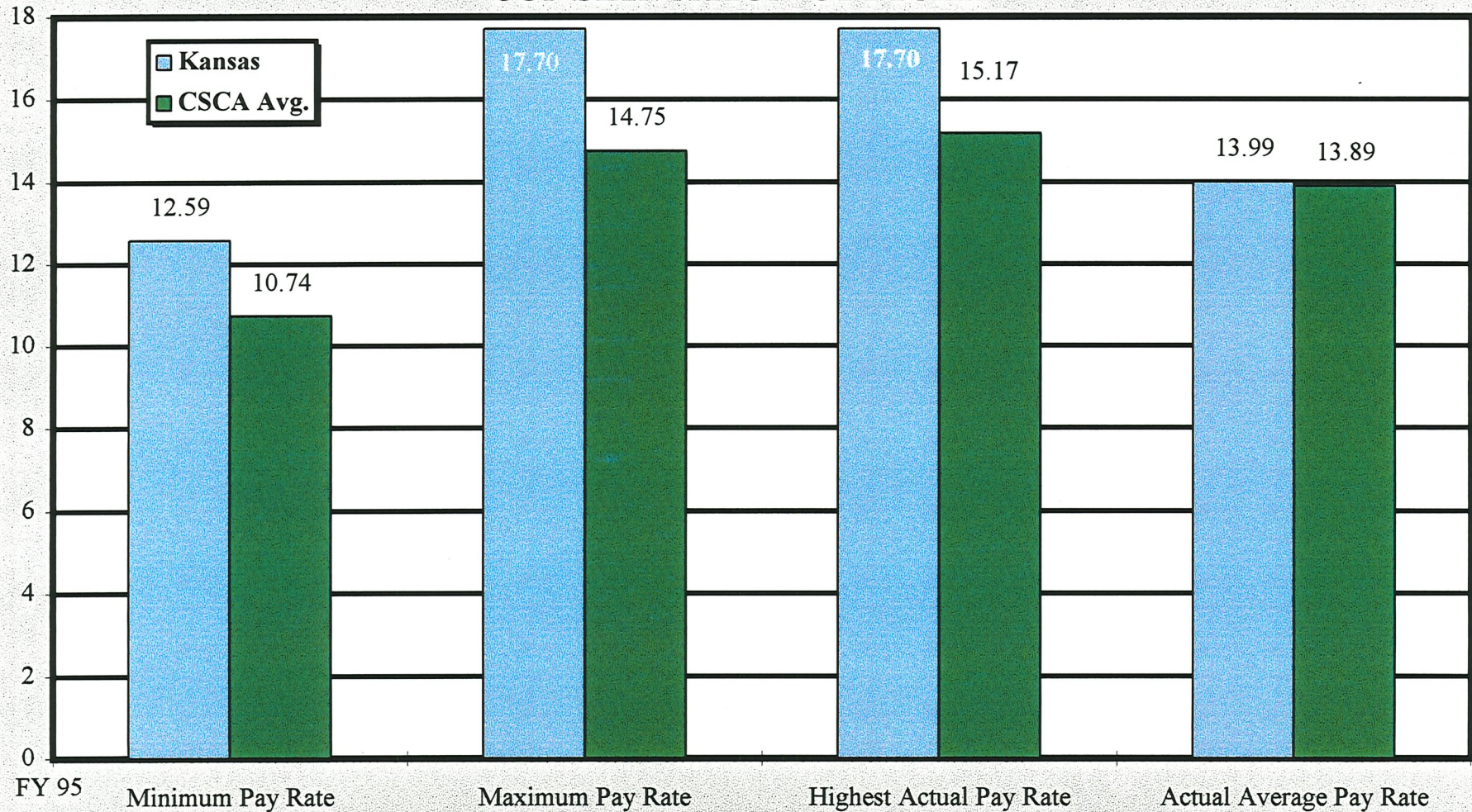
The Division of Personnel Services appreciates your concern in this matter. Thank you for your attention. I would be happy to provide you with any additional information.

**CONSERVATION OFFICERS UNDER 171 HOUR,
28 DAY WORK PERIOD
207(k) PARTIAL EXEMPT HOURLY RATE COMPARISON
CONSERVATION OFFICER**



1994 - Of the 16 central states surveyed, only 9 reported a job class which matched Conservation Officer.

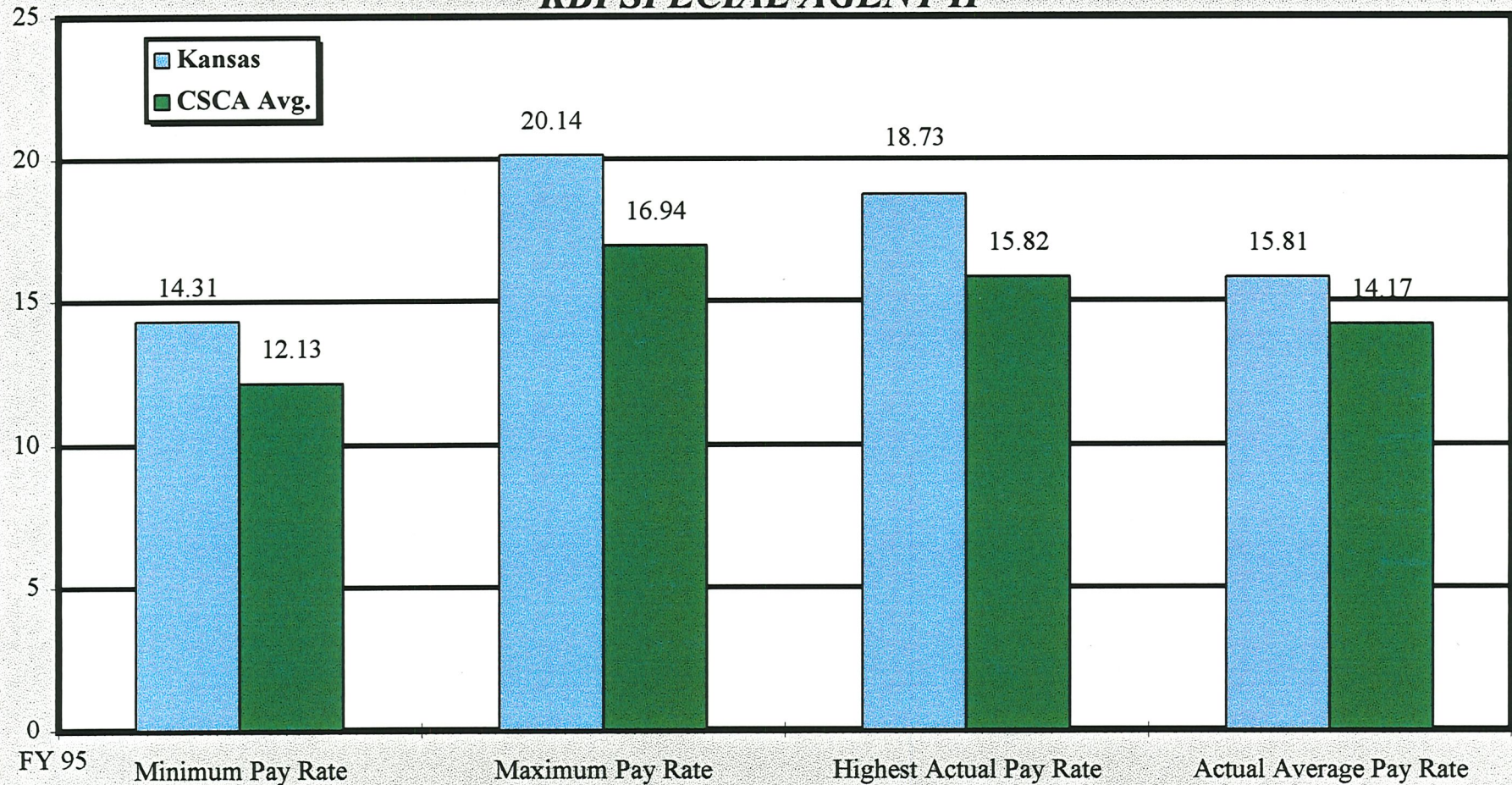
IF CONSERVATION OFFICERS GO TO 40 HOUR WORKWEEK 40 HOUR WORKWEEK HOURLY RATE COMPARISON CONSERVATION OFFICER



1994 - Of the 16 central states surveyed, only 9 reported a job class which matched Conservation Officers.

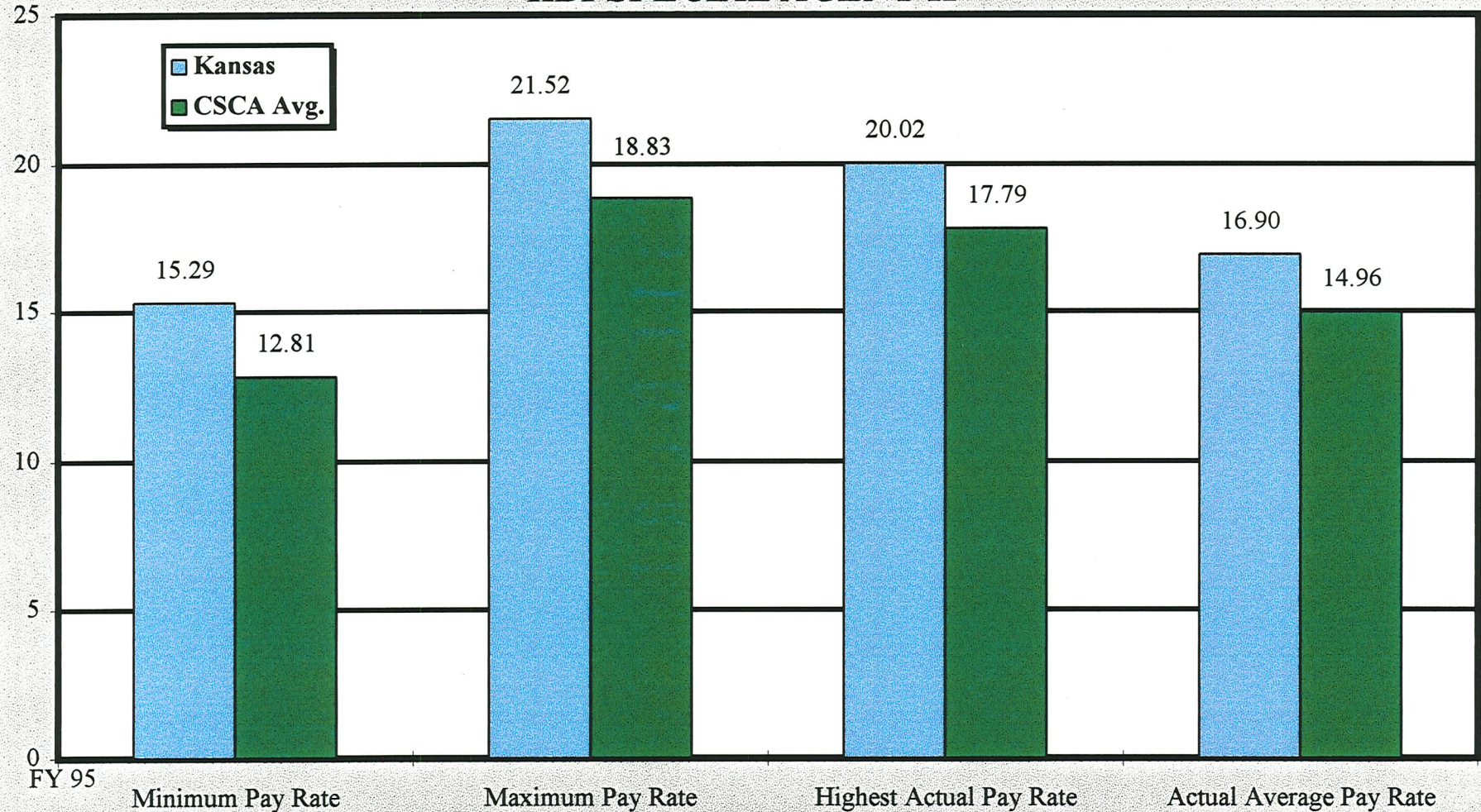
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**KBI SPECIAL AGENTS UNDER 171 HOUR,
28 DAY WORK PERIOD
207(k) PARTIAL EXEMPT HOURLY RATE COMPARISON
KBI SPECIAL AGENT II**



1994 - Of the 16 central states surveyed, only 6 reported a job class which matched KBI Special Agent.

IF SPECIAL AGENTS GO TO 40 HOUR WORKWEEK 40 HOUR WORKWEEK HOURLY RATE COMPARISON *KBI SPECIAL AGENT II*



1994 - Of the 16 central states surveyed, only 6 reported a job class which matched KBI Special Agent.

CONSERVATION OFFICERS - WAGES AND WORK HOURS

Mr. Chairman and committee members: My name is Bruce Bertwell. I'm a Conservation Officer employed by the Kansas Department of Wildlife and Parks. I live in Olathe. I and the other Conservation Officers here today are here on our own time by invitation. We represent ourselves and other officers of like mind. We are not here to represent Kansas Wildlife and Parks.

We have come to state our position on an issue of fairness- the change that occurred on December 17, 1995, at the same time the new SHARP state human resources plan took effect. The change I will discuss occurred because state policy changed, not because of SHARP. Since December 17th, C.O.s and other state law enforcement officers have received the pay we're accustomed to, but we have to work more hours to get it. Other state employees have not been burdened in this way.

Conservation Officers make up the law enforcement branch of Kansas Wildlife and Parks. The L.E. Division represents about one-sixth of the agency's total employees. L.E. Division C.O.s are widely distributed across Kansas but we are spread awfully thin. Each C.O. has responsibility for one to three counties. Our primary duty is enforcement of laws governing hunting, fishing, boating, and trapping. We're also active in public education, assist with wildlife management programs, and regulate public use of some agency properties.

L.E. Division C.O.s are not paid with state tax dollars. Our funding comes from sportsmen and women who purchase licenses and pay in other ways to keep us working for Kansas natural resources. We are covered by the Kansas Public Employee's Retirement System and don't have the benefits that accrue to other law enforcement officers covered by Kansas Police and Fireman's retirement.

We work as needed at all hours of the day or night, in extremes of weather. We sometimes face hostile people and dangerous situations. We work most weekends and a number of holidays. We have done this for years without being paid shift differential or standby pay. There has never been extra pay for callback after making it home following a long day or night. We set our own hours, sometimes working split shifts for the good of the resource and the people who use it.

Until December 17th, we were only required to work 160 hours in a 28 day work period. We could work as many as 171 hours without any extra pay or other compensation. After 171 hours we were eligible for overtime, but paid overtime has been virtually unknown to us. Despite

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Attachment 4*

all this, many of us often worked 171 hours. Some occasionally worked more than 171 hours and just didn't report the excess.

The 11 extra hours without compensation were and are allowed under the Fair Labor Standards Act. Those of us in law enforcement are the state employees referred to as 207k employees. The law establishes that L.E. personnel can be set apart from other employees in some ways and we accept that we are often held to a higher standard.

There are Conservation Officers that do what I've described and Conservation Officer/Park Rangers also employed by Kansas Wildlife and Parks. They specialize in enforcement, public use control, education, visitor assistance, and other duties in State Parks. They are funded by the park fee fund. A fraction of their pay comes from state tax revenues. They are 207k employees too. There are about 22 field level C.O./Park Rangers, which is about one-third the number of L.E. C.O.s with field duties.

Effective December 17, 1995, we are required to work 86 hours in a 14 day work period. We get paid straight time for 80.5 hours. After 86 hours we are eligible for overtime. This means that we must work or use paid leave amounting to an extra 5.5 hours per 14 days just to make what we used to for 80 hours. This adds up to 143 extra hours in a year.

This came about following a lawsuit initiated a few years ago. A number of state law enforcement officers (including some C.O.s) challenged the state's interpretation that no compensation was required for hours exceeding 160 up to the 171 hour overtime threshold established by the Fair Labor Standards Act for a 28 day work period. In September, 1994, a U.S. District Court Judge found for the State, ruling that FLSA allowed the extra hours without extra compensation, because officers were paid monthly for all hours worked.

The judge stated that "The disparity may be unfair, and the court believes it is, but it is not a violation of the FLSA". He also said: "Though the court ultimately finds that the State is within the law, the court is concerned the State's practice sends an unwelcome, albeit unintended, message to a particularly valuable group of State employees".

With that decision in hand, the state chose to refigure the hourly wage for C.O.s and other L.E. officers based on 2,223 hours per year instead of the 2,080 by which most employees' wages are figured. 85.5 hours per 14 day work period multiplied by 26 such pay periods equals

2,223 hours per year. 40 hours per week multiplied by 52 weeks equals 2,080 hours per year. The Department of Administration asserts that C.O.s could have been required to work 171 all along. We were paid to work the maximum, and that isn't diminished by the fact that Wildlife and Parks chose not to require more than 160, they say.

Our annual salaries have been divided by 2,223 to come up with the new hourly rate and it is less than the wage set for other state employees at the same place on the pay scale. We earn what they do, but we have to work more hours to do it.

Another result of this is that 207k employees accrue some kinds of paid leave at the same rate as all other state employees, but must use it at a higher rate. If we take two weeks' vacation, we must use 66 hours instead of 80 hours. If we get sick, sick leave must be used in the same way. I know two C.O.s who have been diagnosed with cancer. It is incredible that they must use their sick leave in a way that discriminates against them because they are law enforcement employees.

It looks as if these recent changes also negatively affect an officer's retirement.

As December 17, 1995 drew closer, it appeared that state law enforcement officers would all be affected in the same way. It did not turn out that way. The Kansas State Troopers Association and the Kansas Highway Patrol developed a memorandum of agreement and it was carried to Governor Graves. The Troopers Association came away with an 80 hour, 14 day work period. Hourly wages were restored based on annual salary divided by 2,080 hours. The Troopers also got straight pay for all hours between 80 and 86 in a 14 day work period, and overtime compensation for anything over 86 hours.

We would like to ask for something at least comparable. We could ask for overtime for any hours over 80 in a two week period, but we recognize that we (like the Troopers) have been set apart by FLSA as a special class of employees.

On November 3, 1995, Wildlife and Parks Secretary Steve Williams wrote a long letter to Lieutenant Governor/Secretary of Administration Sheila Frahm. He asked that only 2,080 work hours per year be required of C.O.s to maintain equity among Department employees. He wrote that affected employees perceive the new pay plan as a reduction in hourly wages. We do see it that way.

Sheila Frahm responded in a letter dated November 20. She stated her intention that C.O.s work the extra hours up to the overtime threshold and that hourly pay would be based on that maximum, not 2,080

hours. According to her letter, she has taken that position for a number of reasons. One is the state budget shortfall that finds most state agencies having to reduce budgets. Please remember that Kansas Wildlife and Parks is only fractionally supported by the state general fund.

Ms. Frahm also wrote that "Any options that would include additional dollars for salaries are not realistic". Interestingly, Secretary Williams' letter to her minimized the financial impact of requiring only 80 hours per two week pay period for C.O.s. He wrote of close supervisory control of C.O. work hours to keep them close to 80. He even stated: "Further, if 80 hours is the standard, then the Department still has the financial benefit from an additional six hours within such fourteen day period available to deal with emergencies that occur, but at only a straight hourly rate (rather than at an overtime rate)".

Sheila Frahm also wrote that "It is the intent of the administration to be supportive of law enforcement employees as well as all employees of the State of Kansas" and "Their service to the State of Kansas is valued". We think that actions speak louder than words and we don't feel supported or valued.

Secretary Williams followed up the Department of Administration decision with a memo to his 207k employees dated December 1, 1995. He advised us that ~~the~~ decision was final. On January 25, 1996, a Kansas Wildlife and Parks Commission Meeting was held here in Topeka. Secretary Williams explained the situation in that public forum. He spoke about issues of fairness and let the Commission know that the affected employees were unhappy. He also described how the Department's hands are tied. Members of the public and sportsman group representatives attending the meeting expressed support for changing this unfair situation.

C.O. morale has taken a nosedive as a result of all this. Just because the State can do this to us, doesn't mean it has to. Please bring back basic fairness by enacting legislation. We request that the following provisions be written in as minimum, not absolute, standards. We ask that annual salaries for all 207k employees (including those presently classified as C.O. I's and C.O. II's) of Kansas Wildlife and Parks be divided by 2,080 hours to establish each individual's hourly wage. We ask to be paid at that rate for all hours of work and paid leave up to 86 per 14 day work period. Hours worked in excess of 86 per 14 day work period would be compensated as overtime at the time and one-half rate. This would be pay or time off at the officer's op-

tion each time he or she exceeded the overtime threshold.

When hours worked added to paid leave hours used total more than 86 in a 14 day work period, we ask that leave hours exceeding 86 be compensated with pay at the straight hourly rate. Please ensure that we accrue and use all paid leave at the same rate as all other state employees.

Thank you for allowing us to be here, and thank you for any help you have given us or will give to us.

TESTIMONY
RICHARD R. VICK, SPECIAL AGENT
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE WAYS AND MEANS COMMITTEE
IN SUPPORT OF SENATE BILL 373
FEBRUARY 8, 1996

Mr. Chairman, members of the Committee, I thank you for the opportunity to be here today. I speak to you as a Special Agent of the Kansas Bureau of Investigation and as President of the Agent's Association.

The Bureau knows of no agent who worked 171 hours every pay period until it was required by the implementation of SHaRPs. Requiring agents to work 171 hours to earn full pay effectively is a cut in pay for every agent. This is bad for the State, the Agency, the Agents and those who ask for our assistance.

Before the implementation of the 171/85.5 (28-day/14-day) hour work period, the Department of Administration was asked to exclude the KBI and keep its base work period at 160 hours. The request was denied and we were told it would not be fair to change the KBI work period and not make the change for other agencies. Yet, days later, the Highway Patrol's work period was reduced from 171 hours to 160 hours.

Prior to SHaRP, a trooper worked between a 8 to 9 hour shift, including a paid one hour lunch, 19 work days a month. (Troop Captains, Lieutenants and Sergeants set the shifts. Some required troopers to work 171 hours, some 160). When the Patrol went to their 160/80 hour work period, they forfeited the paid lunch break. KBI Agents have never had a paid lunch break of any length. If they had, they would have been working between 180 and 191 hours in a 28 day period.

Historically, KBI agent compensation has been about 10% above Troopers. This was due to agents being required to have either a two or four year college degree and at least three years of qualifying criminal investigative experience. Troopers were required to have a GED and no experience. Further, the tasks accomplished by the Agents are more complex than the Troopers.

Before SHaRP, the pay difference between a KBI Agent I and a Trooper I was \$1.26 per hour. With the trooper now working 160 hours and the agent working 171, the difference is \$0.40 per hour.

In a two week pay period, an Agent must work 9-8.5 hour days and 1-9 hour day to total 85.5 hours. Fewer hours and his pay is reduced. All other state employees work 8 hour days for a two week total of 80 hours.

Requiring Agents to work longer days in turn requires additional hours of vacation and sick leave to be used. For a two week vacation, a Trooper or any other state employee will use 80

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vacation hours. An Agent must use 85.5 hours but he still earns the benefits at the rate of every other state employee. On State holidays, all employees are given 8 hours of holiday leave. An agent must make up the "missing" 1/2 hour for his 8.5 hour day or have his pay docked.

The 171 hour work period reaches even into an Agents retirement. When he retires a portion of his unused leave time is paid and counted as part of his final average salary which is used to determine the retirement benefit. This leave time is paid on an hourly rate which is significantly less than any other state employee on the same range and step. The reduced payment lowers his monthly retirement pay for the rest of his life.

The Highway Patrol has always been an excellent applicant pool from which to recruit. However, if the KBI was to hire a master trooper who is at range 25 and working 160 hours, he would be promoted and moved to KBI Agent II on range 26. He would then be required to work 171 hours resulting in a pay reduction of \$0.31 per hour or almost \$700 annually. This alone will cause recruitment from the Patrol to almost stop completely.

Recruiting qualified applicants which include women and minorities will become much more difficult. Our largest recruiting pool for minorities and women exists in urban law enforcement agencies. The State does not currently offer competitive salaries and benefits sufficient to attract those from urban agencies. Now requiring Agents to work more hours, receive less pay, and have reduced benefits and retirement, successful recruiting from these agencies will no longer exist.

Every person needs to feel his work and accomplishments are important and are valued by those he works for. The 171 hour work period sends just the opposite message by increasing the hours, reducing compensation, benefits and retirement. The message is law enforcement is secondary to all other state employee tasks. The message is those who do the criminal investigations in the KBI, the arson investigations by the Fire Marshals, enforcement of the alcohol beverage industry by ABC and the conservation laws and safety in our state parks by Wildlife and Parks have been moved to second class status.

We do not understand why the requests of the agency heads to correct this unequal treatment of a few law enforcement officers has fallen on deaf ears. It is now in your hands.

Testimony

By Richard J. Blevins

Before Senate Ways and means committee

Mr. Chairman, Members of the Senate Ways & Means Committee,

My name is Richard Blevins and I represent the nine State Fire Marshal Investigators for the State of Kansas. We appear today not asking the State of Kansas for more money or additional benefits. We are here asking for parity with other state employees on our respective pay ranges. It is for this reason we support SB 373.

Prior to August 1993, we were paid based on a 160-hour scale. After August 1993, we were mandated to work a minimum of 171 hours every 28-day work period. Failure to work these required 171 hours would result in our sick days, vacation or compensation time being used to make up the difference between hours actually worked and the 171 hours required. The state continued to pay us for 160 hours so the hourly rate remained the same. We were just being required to work eleven hours more for the same pay. Then in December 1995 with the start up of the SHARP program our hourly wage was reduced from the 160 hour scale to the 171 hour scale. This change was equal to 7 to 10 percent decrease in hourly wages.

This hourly cut has far more reaching effect than just drawing less per hour on a monthly basis, since our retirement system is set up to be figured on a hourly rate. This same pay cut will transfer to this benefit also effecting us for the rest of our lives.

Since the Fire Marshal Investigators earn sick leave time, vacation leave time just like any other state employee, we are in effect being penalized any time we take vacation or sick leave time.

For example, an employee on Range 26 who is a non-law enforcement employee can take two weeks of vacation and receive two weeks' pay. Whereas, State Fire Marshal

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Investigators who take the same two-week vacation, must use 85.5 hours for this same pay period to receive the same two weeks' pay. Yet, the state only allows us to earn eight hours per 160 hours worked for vacation and sick leave. This results in State Fire Marshal Investigators losing approximately 5.5 hours every two weeks that the 160-hour state employee does not have to use.

The state of Kansas has seen fit to correct this wrong with the Kansas Highway Patrol, putting them back on a 40- hour work week. Yet the Department of Administration has refused to honor a request from the Fire State Fire Marshal Gale Haag to put his investigators on a 40-hour work week. The Department of Administration has replied that **"The modification of current work schedule would result in employees working fewer hours for the same amount of compensation"**. This request was the same request they had just been approved for the highway patrol. We can only perceive from this, that the State Fire Marshal Investigators, Kansas Bureau of Investigation Agents, Alcohol Beverage Control Agents, and the Kansas Fish and Game officers have been singled out for some unknown reason known only to the Department of Administration since putting our fellow officers of the Kansas Highway Patrol back on the forty hour week has not caused additional burden on the State of Kansas.

I think it is also important to note that no where in our research can we find where it is mandated by any Federal Wage and Hour laws or regulations that law enforcement officers must work 171 hours. It only states that agency may work those officer that many hours before it has to pay them over time or compensate them with time off at the rate of one and half there normal salary..

In Closing I would like to assure this committee that the Kansas State Fire Marshal Investigators are proud to be law enforcement officers of the State of Kansas, and we work hard, and when it's -45 degrees below zero and snowing and we're black with fire debris looking for a body or explosive evidence in some burnt building, that we know we're appreciated and that the State of Kansas will take care of us. So it's with sincere hope that this committee can assist us in gaining the parity that we seek. Thank You.

Mike Auchard
University of Kansas
Dept. of Student Housing
Lawrence, Kansas 66045
913-864-3097

February 8, 1996

Testimony for the Senate Ways and Means Committee
on the Effects of SB 824
of the 1994 Legislative Session

Senator Kerr and members of this committee:

My name is Mike Auchard and I am a classified employee. I work for the KU Department of Student Housing as a maintenance mason. My job consists of new construction and repair of plaster, tile, bricks, blocks, sheetrock and concrete. I also served for two years as president of KU Classified Senate, an organization that represents the concerns of the classified employees to the university administration and to the legislature. In these roles I have gotten to know many workers and administrators, not only in the maintenance field but from all areas of the university.

During the last six years, since I have been involved with KU Classified Senate, I have paid particular attention to legislation that affects classified employees and I don't believe that I have ever seen a bill passed and signed into law that has had as negative an impact on employee morale as SB 824 of the 1994 legislative session; although the Governor's recommendation for the longevity bonus might wind up being a strong contender this year.

Prior to the passage of SB 824 employees' overtime pay was based upon hours in pay status. "Pay status" included not only hours actually worked but hours of accrued leave as well as holiday leave that were used in a pay period. This was a broader and more generous interpretation of the FLSA guidelines. After SB 824 went into effect overtime has been paid only on hours actually worked during the pay period.

A typical example might go like this: There is a holiday on Monday and the employee takes it off. The employee works the other four days. On Saturday there is an emergency in the workplace and the employee is called back in. Because of SB 824 the employee does not get overtime pay for Saturday. Before last year he/she would have gotten overtime pay because overtime was based upon time in "pay status", and the holiday would have been in pay status. This is a much narrower interpretation of FLSA regulations. No one is questioning its legitimacy. Many question its fairness.

Rightly or wrongly, employees hired prior to the passage of SB 824 feel that someone changed the rules on them after the game had already begun. They were hired, and in many cases worked for years, with the old method of

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computing overtime. It was a condition of their employment and in their understanding of the way things work, or at least how things should work, not subject to being tampered with. When the realization of the full implications of this bill sunk in employees were not happy. But this bill causes more problems than just low morale and somewhat smaller paychecks for a few employees.

It is also affecting the ability of work units to efficiently respond to emergency and other overtime situations and it has fostered resentment among employees and rancor among supervisors and administrators. I have attached a letter to this testimony that was written by Philip Garito, the associate director in charge of maintenance at the Student Housing Department , to Marc Adin the Director of Human Resources at KU. I think it amply illustrates the problems this bill has created for both workers and administrators and the lengths that they have been forced to go to try to find a creative solution to these problems.

I am only familiar with the situation at KU. I assume though, that if we are experiencing these types of problems there, then there is a good chance they are surfacing in other parts of the state system. Once again, I will repeat that no one is questioning the legality of this act, but many people who are affected by it and were hired before its implementation, don't think it's fair.

Thank you.

Attachment

December 10, 1995

Marc Adin
Director of Human Resources
109 Carruth-O'Leary
The University of Kansas
Lawrence, Kansas 66045

RE: Current Overtime Compensation Rules

Dear Marc:

The current method of accounting and paying for "Call-backs" is creating problems. Prior to June 18, 1995, the Department of Student Housing (DSH) was paying an employee who was called back to work to address an emergency, a minimum of 2 hours at their overtime rate. Since then, "Call-backs" have been paid at the overtime rate for actual time worked (on the clock) if total weekly hours exceed 40 hours, and at the regular time rate for the balance of the two hours.

The implementation of the new overtime regulations, coupled with the inclusion of "Call-backs" as part of the 40-hour work week, and the resulting loss of additional income for employees, have caused resentment and morale problems among the workforce. Prior to the implementation of these two changes, it was not difficult to contact a worker to respond to an emergency "Call-back". Workers are now screening their calls and deciding whether to respond or not. This is particularly prevalent during a week in which there is a holiday or when an employee has taken or anticipates taking leave. Fortunately, DSH has not had an emergency that has caused major damage. When DSH has not been able to contact a worker to respond, the phone carrier or another supervisor has been able to at least minimize the problem; however, they generally do not have the expertise to solve it.

At least part of our problem stems from the fact that there is nothing in the negotiated memorandum of agreement that requires an employee to return to work if called.

DSH has supervisors who carry a cellular phone, on a rotational basis, during non-working hours. For carrying the phone the supervisor is compensated \$1.00 per hour outside the regular work week. The primary functions of the phone carrier are to receive emergency calls, evaluate the problem, and dispatch a tradesperson to do the repair.

An analysis of the number of "Call-backs", overtime worked, and actual worker pay for the overtime, for the period September 10 - November 11, 1995, was conducted. It showed that there were 26.92 hours of time worked on the clock. For this time and the balance of the two hours, the workers received \$397.93 in pay. The projected annual cost using the current system would be \$2387.58. Many of those who responded to emergencies, took compensatory

time or had some type of leave during this period. The log maintained at the maintenance shop, shows that there were 104 hours of "Call-back" time. Under the old system of compensation, this would have equalled \$1745.84, a difference of \$1458.62. Employees view this as money "lost" to them. For example, the analysis showed two workers would have earned \$127.01 and \$200.61 more (under the old system) for their "Call-backs" during the two month period. Assuming that the two months evaluated are typical of the year, the total additional cost of paying staff as we did before the regulation change would be \$8087.46 annually or a total of \$10,475.04 annually.

One option to ensure adequate coverage would be to regularly schedule employees on standby, similar to the phone carrier. This would require paying them an additional \$1.00 per hour. Of the last 84 emergency calls (since the beginning of first semester), 33% have been plumbing-related, 36% lock-related, 25% electrically-related and, 6% refrigeration-related. Insuring coverage of the majority of our emergency calls would require a minimum of three workers, a plumber, an electrician and a locksmith. The cost would be \$348.00 per week, including weekends, or \$19,968.00 per year.

A second option would be to hire a full time, multi-skilled worker that would work an alternate shift. In addition to responding to emergencies, the individual would do preventive maintenance or complete work requests that could not be addressed during the day. The skill level of this employee would have to be at least Range -19, starting salary \$21,696.00 annually. A disadvantage to this option is that there still would be no coverage from the end of this alternative shift until the start of the next work day.

A third option would be to pay for the "Call-back" using the current policy. The overtime worked and the balance of the two hour "Call-back" would be accounted for separately and not included against the forty-hour work week. Any time worked beyond two hours would revert to the normal pay rate. The cost of this option would be difficult to calculate.

Another option would be to return to the old system. The employee responding to the "Call-back", would be paid for two hours at the premium rate. These two hours would be considered separately and not relate to the forty-hour work week. Any time worked beyond two hours would revert to the appropriate pay rate. Initial indications are that the old system cost the state about half of the first option. I think you would agree that the inconvenience of responding from home after working a full day or on a weekend, is worth the two hour "Call-back" at the premium rate.

Request assistance in gaining some relief from the current overtime, "Call-back" policies . We would also request the new policy be put in writing by memo or letter.

Sincerely,

Philip N. Garito
Assoc. Director, Student Housing

cc Kip Grosshans