



Making public schools great for every child

KANSAS NATIONAL EDUCATION ASSOCIATION / 715 SW 10TH AVENUE / TOPEKA, KANSAS 66612-1686

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House Committee on Commerce, Labor and Economic Development  
March 6, 2013  
**House Bill 2027**

Dear Mr. Chairman, members of the Committee, I appear before you today as a fellow Kansan and opponent to **House Bill 2027**.

Winston Churchill said "Democracy is the worst form of government, except for all those other forms that have been tried from time to time". The current Negotiations act is not perfect but it is significantly better than the proposal before you.

I am puzzled, I am ashamed, I am angry, I am surprised and I am in a state of disbelief. **House Bill 2027** is a blunted knife attacking the very heart of the collaborative relationships between school districts and their professional employees that has been built over the past 40 years.

To be specific **House Bill 2027** removes the following items(subject to being added back in) from the list of topics that the current PNA calls terms and conditions of employment:

- **Salaries and wages, including pay for duties under supplement contracts**
- **Hours and amounts of work**
- **Vacation allowance**
- **Holiday Leave**
- **Sick Leave**
- **Extended Leave**
- **Sabbatical Leave**
- **Other Leave**
- **Number of holidays**
- **Retirement**
- **Insurance benefits**

- **Wearing apparel**
- **Pay for overtime**
- **Jury Duty**
- **Grievance procedure, including binding arbitration of grievances**
- **Disciplinary procedure**
- **Resignations**
- **Termination and non-renewal of contracts**
- **Reemployment of professional employees**
- **Terms and form of the individual professional employee contract**
- **Probationary period**
- **Professional employee appraisal procedures**
- **Matters which relate to privileges to be granted the recognized professional employees organization including, but not limited to, voluntary payroll deductions.**
- **Use of school or college facilities for meetings**
- **Dissemination of information regarding the professional negotiation process and related matters to member of the bargaining unit on school or college premises through direct contract with members of the bargaining unit**
- **The use of the bulletin boards on or about the facility**
- **Use of the school or college mail system to the extent permitted by law**
- **Reasonable leaves of absence for members of the bargaining unit for organizational purposes such as engaging in professional negotiation and partaking of instructional programs properly related to the representation of the bargaining unit**
- **Any of the foregoing privileges which are granted the recognized professional employees' organization through the professional negotiation process shall not be granted to any other professional employees' organization.**
- **Such other matters as the parties mutually agree upon as properly related to professional service including, but not limited to, employment incentive or retention bonuses authorized under K.S.A. 72-8246 and amendments thereto**

**House Bill 2027** makes only 5 items a term and condition of employment that both parties must bargain:

- **Salaries and wages, including pay for duties under supplemental contracts**
- **Hours and amounts of work outside of teaching periods, but within a standard eight-hour work day as established by the board of education.**
- **Sick Leave**
- **Personal Leave**
- **Designation of holidays.**

It has been suggested that support for these changes comes from a KSSA survey (attached). The survey results are far from conclusive and are inconsistent. What response benchmarks were used to arrive at a conclusion? Fewer than 65% of superintendents participated in the survey. Is this Survey Monkey a legitimate basis for changing a tried and true bargaining statute? The clear answer is no.

In addition **House Bill 2027** authorizes boards of education to create an alternative compensation plan (merit pay plan) that has the potential to devastate the salary schedule that is bargained. (Pg. 13 lines 39-42.)

The current PNA has been in place since 1970. It has not only stood the test of time it has proven to be the basis for well over 11,000 contracts between school and their professional employees. During that same period of time the boards of education have issued fewer than 20 unilateral contracts. The current PNA gives the employer the ultimate flexibility when it says:

KSA 72-5428(f)...”if the board of education and the recognized employees’ organization do not resolve the impasse and reach an agreement, the board of education SHALL (emphasis added) take such action as it deems in the public interest, including the interest of the professional employees involved, and make such action public.”

There has been much talk about the need for boards of education to have more flexibility. The irony is that under the current law they have complete flexibility to take whatever action they deem to be in the public interest. There can be no more power and flexibility than that.

Even after gutting the list of important topics that boards of education must talk about the bill goes farther. It requires the employees’ organization to re-certify every two years. This has never been the practice in Kansas and there is no evidence anecdotal or otherwise to support this change. In fact the bill goes even farther and removes the prior restriction under the prohibited practice section that made it an unfair labor practice to discriminate in regard to hiring or any condition of employment to encourage or discourage membership in any professional

employee's organization. (P.12 lines 33-35). Not only must the organization now re-certify every two years but the employer may discriminate against employees that choose to join the organization. This change strikes at the heart of the 1<sup>st</sup> amendment of the US Constitution. The right to associate is an inviolate principle of the basic rights enjoyed by all citizens. This change will serve as the basis for substantial litigation in the future.

**["It is not disputed that to compel a teacher to disclose his every associational tie is to impair that teacher's right of free association, a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." *Shelton v. Tucker*, 364 U.S. 479, 486, 81 S.Ct. 247 (1960)]**

**House Bill 2027** also claims to void any existing contract to the extent that it contains any provision that is not a mandatory topic or relates to a retirement provision. The bill, if passed, is set to become effective upon publication in the register and could attempt to void hundreds of contract currently in effect. This will lead to immediate court challenge as a violation of the Contract clause of the Constitution.

**[ "[P]laintiff has alleged that the pertinent contract was in existence for six years prior to the time of the passage of the statute. Certainly, the legislature had no constitutional power to abrogate a binding six year old contract by simply passing a statute." *Schiffelbein v. Sisters of Charity of Leavenworth*, 190 Kan. 278, 283, 374 P.2d 42 (1962)]**

The immediate effective date also calls into question the status of current negotiations taking place across the state under the old law. It is unclear what effect it will have and if legal challenge will be needed to clarify the impact of **House Bill 2027**.

This bill is not only anti union it is anti teacher. It removes from teachers any legitimate voice in their working world and substitutes the power of a few individuals. This bill creates confusion, creates certain litigation, will cost tens of thousands of dollars of litigation expense and damages the collaborative relationships built up over 40 years in school districts across the entire State.

Under the guise of providing more flexibility to school districts it will detract from the basic mission of Kansas boards of education and cause all stakeholders to focus on issues and concerns that have under the current been long settled. I must ask why this draconian bill is being given serious consideration when there is neither hard evidence to support it and only confusion and hard feelings to take the place of collaboration.

I strongly urge the Committee to reject this proposal and give the interested parties a reasonable time to explore the complicated issues facing Kansas boards of education and their professional employees.

**1. COMPENSATION: Should the following items be mandatorily negotiable?**

	Yes	No	No opinion	RatingCount
Salary	79.5% (147)	18.9% (35)	1.6% (3)	185
Pay for Supplemental Duties	61.8% (115)	36.0% (67)	2.2% (4)	186
Pay for Extended Duties	53.5% (99)	43.8% (81)	2.7% (5)	185
Early Retirement Benefits	34.9% (65)	61.3% (114)	3.8% (7)	186
Insurance Benefits	47.8% (89)	50.5% (94)	1.6% (3)	186
Other Pay	25.5% (36)	51.1% (72)	23.4% (33)	141
			Other (please specify)	3
			<b>AnsweredQuestion</b>	<b>186</b>
			<b>SkippedQuestion</b>	<b>0</b>

**2. LEAVE: Should the following items be mandatorily negotiable?**

	Yes	No	No opinion	RatingCount
Sick	58.4% (108)	38.4% (71)	3.2% (6)	185
Personal	51.4% (95)	45.9% (85)	2.7% (5)	185
Holidays	23.0% (42)	72.7% (133)	4.4% (8)	183
Leave of Absence	34.6% (64)	60.0% (111)	5.4% (10)	185
Sabbatical	31.4% (58)	61.6% (114)	7.0% (13)	185
Sick Leave Bank	38.6% (71)	55.4% (102)	6.0% (11)	184

Other (please specify) 3

**AnsweredQuestion 186**

**SkippedQuestion 0**

### 3. MISCELLANEOUS: Should the following items be mandatorily negotiable?

	Yes	No	No opinion	RatingCount
Reduction in Force	21.0% (39)	78.5% (146)	0.5% (1)	186
Grievance Procedure	50.0% (93)	46.2% (86)	3.8% (7)	186
Form of Contract	16.8% (31)	79.9% (147)	3.3% (6)	184
Evaluation Procedure	14.6% (27)	83.8% (155)	1.6% (3)	185
Hours of Work	42.2% (78)	57.3% (106)	0.5% (1)	185
Amounts of work	20.0% (37)	77.3% (143)	2.7% (5)	185
Wearing Apparel	7.5% (14)	88.7% (165)	3.8% (7)	186
Re-employment	8.6% (16)	88.7% (165)	2.7% (5)	186
Resignation	10.8% (20)	86.6% (161)	2.7% (5)	186
Evaluation	8.1% (15)	90.3% (167)	1.6% (3)	185

Other (please specify) 5

AnsweredQuestion 186

SkippedQuestion 0

#### 4. ASSOCIATION RIGHTS: Should the following items be mandatorily negotiable

	Yes	No	No opinion	RatingCount
Voluntary Payroll Deductions	40.8% (75)	49.5% (91)	9.8% (18)	184
Use of Buildings for Meetings	23.8% (44)	63.8% (118)	12.4% (23)	185
Use of Bulletin Boards	19.5% (36)	68.1% (126)	12.4% (23)	185
Use of School Mail System	18.9% (35)	70.8% (131)	10.3% (19)	185
Association Leave	31.4% (58)	58.4% (108)	10.3% (19)	185
Dissemination of Negotiation Information	27.3% (50)	59.6% (109)	13.1% (24)	183

Other (please specify) 5

**AnsweredQuestion 185**

**SkippedQuestion 1**

#### 5. Other feedback/comments:

**ResponseCount**

23

**AnsweredQuestion 23**

**SkippedQuestion 163**