March 4, 1970

MINUTES

Guests: Harold Stones
Larry Brenniger
William White
Rep. Spears

COMMITTEE ON STATE AND LOCAL AFFAIRS
Room 526 State Capitol Building
All members present except Sen. Herd

Chairman, Norman E. Gaar, called the committee to order.

House Bill No. 1827 Rep. Spears and Harold Stones explained the purpose of the bill to the Committee. On a motion by Senator Pomeroy, seconded by Senator Shultz, it was voted to recommend the bill for passage to the full Senate.

House Bill No. 1803 On a motion by Senator Shultz, seconded by Senator Pomeroy, it was voted to recommend the bill for passage to the full Senate.

House Bill No. 1672 On a motion by Senator Thomas, seconded by Senator Pomeroy, it was voted to recommend the bill for passage to the full Senate.

House Bill No. 1079 Senator Gaar explained an amendment suggested by Rep. Grant to the Committee. On a motion by Senator Hinchey, seconded by Senator Shultz, it was agreed to amend the bill as follows: On page 2, line 26, by inserting before the figures "19-1572a" the following: "19-1569 or"; On page 3, in line 7, by inserting before the figures "19-1572a" the following "19-1569 or" On a motion by Senator Hinchey, seconded by Senator Thomas, it was voted to recommend the bill for passage as amended to the full Senate.

House Bill No. 1628 On a motion by Senator Pomeroy, seconded by Senator Shultz, it was voted to recommend the bill for passage to the full Senate.

House Bill No. 1632 On a motion by Senator Shultz, seconded by Senator Hinchey, it was voted to recommend the bill for passage to the full Senate .

Adjournment.

Respectfully submitted,

Charlotte M. Olander
Recording Secretary

Norman E. Gaar
Chairman

SENATE COMMITTEE
ON
STATE AND LOCAL AFFAIRS

Friday, February 27, 1970, Room 526, State House, 9:00 A.M.

Attending:
Chairman, Senator Gaar
Members of the Committee: Senators Foster, Thomas, Pomeroy, West, Ball, Saar, and Hinchey

Guests included Mr. Ted Sharp and Mr. Henry Riojas, brought before the committee by Mr. Don Matlak from the Governor's office for confirmation of their appointments to the Civil Service Board.

Members of the committee discussed the duties of the members of the Civil Service Board and questioned the appointees as to their qualifications to serve.

MOTION by Senator Foster, seconded by Senator Ball, and carried, that the appointment of Mr. Henry Riojas be held in abeyance awaiting word from the Governor's office as to his position in that Mr. Riojas is holding an office as a member of the Wyandotte County School Board.

MOTION by Senator Foster, seconded by Senator Pomeroy, and carried, that the committee confirm the appointment of Mr. Ted Sharp.

adj

Madeline Gaar
Co

nf

January 27, 1970

Report of the League of Kansas Municipalities to the Senate State and Local Affairs Committee on Public Employee Negotiation Proposals.

It is unfortunate in one sense that so much material has been prepared by various groups within the last year or two dealing with the problem of public employee labor relations. The amount of material is almost overwhelming to digest. The League appreciates this opportunity to present to the committee for its consideration the League's position on public employee relations laws for Kansas. Attached to the end of this report is a five-page excerpt from the February, 1970, Kansas Government Journal which gives additional background on the matter. The first part of the Journal excerpt concerns statistical information on work stoppages of government employees. The second part deals with recommendations made by the Advisory Commission on Intergovernmental Relations. This material has previously been submitted to your committee and there may be copies available elsewhere. The third part is an attempt to capsulize the problems of public labor relations in Kansas as presently viewed by the League. At the present time there are pending before the legislature seven bills concerning public employees and labor relations. These bills are referred to in the attached material at the end of this statement except for HB 1647 which concerns labor negotiations in public schools and community junior colleges. This bill was just introduced by the committee on education on January 19.

In 1958 there were 14 work stoppages involving 1,690 local government employees resulting in 7,450 man-days lost to local units of government in the United States. In 1968 there were 235 work stoppages involving 190,900 local government employees and costing local government the loss of 2,400,800 man-days. The astronomical increase in these statistics over a 10-year period shows clearer than anything else that public employees are becoming militant and insisting upon some form of concerted communication with their employers.

Nationally, one cannot be sure that the most crucial of all services will not be cut off by

strikes or work stoppages. For years, the International Association of Firefighters had a "no-strike" pledge in their constitution. Within the last year or so this pledge has been removed and there have been situations, such as in Gary, Indiana, where the striking firemen stood by and watched police and out-of-town firefighters battle a $300,000 lumberyard blaze. One of the firemen was even arrested on a charge of attempting to interfere with efforts to bring the fire under control. It is true, at the present time, that police officers do not propose strikes to enforce their demands. However, throughout the United States there have been a number of incidents of "blue flu" or "no-show" situations engaged in by police departments to enforce their demands.

In case there is any doubt as to union activity in the state of Kansas, the League files indicate there are public employee unions including firemen's unions existing in Hoisington, Coffeyville, Arkansas City, Kansas City, Atchison, Emporia, Hutchinson, Lawrence, Newton, Salina, Topeka and Wichita. Strikes, threatened strikes or other "frictions" have occurred during the past two years in Manhattan, Great Bend and Parsons for firemen; in Kansas City for public utility employees, and in Arkansas City for hospital employees and garbage collectors. Topeka firemen held a slowdown about three years ago and there have been union "problems" with Coffeyville utility employees. This last year saw, of all things, the Pratt county employees walk off their jobs in thecourthouse for a day or so until their "demands" had been given consideration. All of the foregoing shows the uncertainty of labor relations in the field of public employment. There is always a temptation to take the position that these problems may be lessened by taking no action at all. Unfortunately, in the field of labor relations, both public and private, this has not been the case. Insofar as the League has been able to determine, every responsible group that has attempted to study the matter of public employee labor relations has concluded that some type of state law is necessary to bring state and/or local government out of the legal wilderness. It is interesting to note how often the first impression of such groups is to do nothing but as the problem is studied it becomes clear that legislative action must be

taken.

Employees are a practical group. This is so whether they are in public or private employment. They want whatever any other group has that seems worthwhile. Public employees now say we want nothing more than the right to bargain collectively in the same manner as employees in private industry. If certain groups of public employees are given the right to bargain collectively or to meet and confer or to negotiate collectively other public employees want the same right. For example, if such rights are given to teachers under the euphemism of an "Educational Professional Negotiation Act" the result will not be lost upon school janitors, bus drivers and food service handlers who see a method whereby teachers are improving their lot by concerted action. Obviously, these school employees will want the same consideration. This same concept of parity of treatment runs through all matters of public employment such as the right to strike and the right to join unions or organizations. Any group that is prohibited or restricted will be unhappy so long as another group has such rights or privileges. This demand for parity of treatment is an understandable matter. One difficulty public employers have today is justifying a distinction in treatment for public employees as opposed to private employees. The justification does exist for a distinction but the difficulty in convincing public employees points up how strong can be the demand for parity of treatment. Any state legislation should make it clear by a statement of purpose that public employment is not identical to private employment. Government, especially local government, cannot raise its prices to accommodate employee demands at any time they are made as may be the case in private industry. In Kansas, for example, the present budget law and cash basis restrictions make this clear to anyone who will seriously study the problem. The only solution to these restrictions will be to make local government able to raise its "prices" at any time it so desires to cover the demands of the government employees. Obviously, this would require repeal or amendment of existing laws and put at rest any attempt to impose a "lid" upon expenditures of local government. This is not to say that employees' demands cannot be reasonably met through a negotiation or meet and

confer procedure; however, the demands must be tailored to meet the requirements of financing imposed upon government.

In June of 1967, the League appointed a special committee on employer-employee relations to study problems and consider proposing a law establishing clear guidelines for employer-employee relations. After numerous drafts and redrafts, the proposal was submitted to your committee and it has been introduced as Senate Bill 383. The bill contains the following basic ideas which are felt to be important in any bill affecting local government. Senate Bill 383 contains a statement of policy which points out there are basic and essential differences between public and private employment.

The use of existing state machinery to determine local matters in connection with public employees is limited as much as possible consistent with minimum requirements that there may need to be a final arbitor to settle impasses on union or organization recognition. The concern of Kansas local governments is that a state agency, specifically the existing state labor office, while it has a significant background in labor relations, has experience in only the private sector and none in the public sector. Any legislation which would mandate many duties to such an office in connection with a public employees negotiation law would result, in our opinion, in rules and decisions based upon private labor relations.

Senate Bill 383 has a procedure whereby locally appointed factfinding commissions are available to resolve many of the impasses of the local government and its employees. Another matter quite important is the definition section, which attempts to make the bill as free from uncertainty in language as it is technically possible to do. Regardless of what the results of legislation are to be or which theories are to be adopted, it is important they be set forth clear and specifically. Wherever possible, nothing should be left to chance or guess. There is a danger uncertainty will be decided by drawing upon analogies, from private labor collective bargaining law and as stated earlier, laws governing public bodies and laws for private industry are not the same. In Senate Bill 383, in addition to other definitions there is a de-

finition of "exempt employees." This establishes that certain employees are in fact management personnel or such that they cannot possibly be treated as members of the union. Another matter that must be defined clearly and concisely is the one which determines what matters are negotiable or can be considered in any conferences between public employees and the employers. References to "other conditions of employment" without a definition as to what these other conditions are, is asking for trouble. In Wisconsin, a state court in affirming an order of the Wisconsin employment relations board, held such a term meant bargaining on the school calendars since the calendar has the direct and eminent relationship to teachers' salaries and working conditions. It is the League's position that those items to be negotiated or considered should be expressly set forth in the law. It is understandable that they may not be complete or that the passage of time will require some additions or deletions. This is proper that the state legislature examine these changes and make the determinations. Not only will the employer know what is subject to negotiations but the employee will clearly know as well what is not.

It is important that the term "strike" be defined if there is to be any attempt at regulating such strikes. Strikes should not only be defined in terms of failure to report for work but also in terms of a willful slowdown. The League, after examining several state laws as well as the history of public labor disputes, has prepared a strike definition which it submits is clear although it, admittedly, is lengthy.

There must be a method of determining the representation of the organization for the local government employees. Senate Bill 383 in the beginning leaves this determination up to a majority of the employees and the employer but in the event they are unable to agree there is a method to require the state labor commissioner to step in and take a hand upon request. One of the problems that can occur is a proliferation of employee organizations or unions. It is impossible to compare local government in the state of Kansas to the city of New York;

however, it is interesting to note that the city of New York has over 1,000 labor unions with which it must deal. Any state law enacted should attempt to put limitations upon the number of unions with which a local government is compelled to confer or negotiate.

Part of the complexity of SB 383 is its attempt to comply with the state laws on the making of budgets. Local government budgets are prepared in advance of the budget year and apply for only one year. SB 383 requires employee demands to be made upon the local governments in point of time early enough to insure that the demands will be considered at any budget hearings and the demands may be considered annually although they need not be if the parties are satisfied with the existing situation. Most students of public employee labor relations laws conclude that written contracts setting forth the agreements between the employees and the employer should be permitted for up to three years to avoid the annual danger of strife and impasses. Unfortunately the existing budget law of the state would prohibit contracts extending past the existing budget year and the only way in which contracts for longer periods of time could be entered into would be if the budget and cash basis laws had exceptions made in them for this situation.

One of the criticisms that has been made of existing public employee labor relations laws is that the general public or taxpayers were left out of developments. There was a feeling that the officers of the local government and the local government employees hammered out their agreements without any consideration of the general public or the taxpayer. SB 383 attempts to resolve not only this problem but attempts also to provide an alternative to the strike provision for local government employees. This is the appointment of a factfinding commission. In the event the public employee organization and the employer are unable to agree upon an employment contract for the subsequent budget year, this factfinding commission makes a study of the demands and causes a report to be published to the public with the recommendations of the factfinding commission so that the members of the public within the jurisdiction of the local government will have knowledge of the issues. Presumably if one side or the other is

making unreasonable demands the general public is made aware of it and public pressure can be brought to bear to force the parties into a reasonable settlement. There is no guarantee that this will happen, but the members of the public cannot complain they are not fully informed of the issues. Senate Bill 383 defines strikes, absolutely prohibits them and prescribes certain penalties for violating the strike prohibition. It is true that no law that every prohibited strikes kept strikes from occurring. It is also true that no law which was silent about strikes or authorized them ever prevented them from occurring. If public employees become sufficiently concerned or displeased they will strike. It is the League's position that strike penalties should be directed against the union or organization's treasury, rather than towards the individual members. Experience to date where laws require employees to be fired or terminated upon striking, such as the provision found in House Bill 1573, shows such a penalty is not workable. New York state at one time had such a provision in its public employee-employer relations act and when all of the various courts had upheld the mass dismissal of certain public employees the state legislature succumbed to pressure and passed legislation granting amnesty to the workers who violated the state law. It is inconsistent to prohibit workers from striking and provide that if they do strike they are fired. Local governments look ridiculous in contending that their striking employees are fired en masse and at the same time are in court seeking an injunction to force the workers to return to work. No one should be jailed except for contempt of court and that is what SB 383 provides. To require striking workers to be jailed for any other reason is to make martyrs of those imprisoned and insure these persons lifetime tenure in the union or organization's hierarchy.

SB 383 provides for binding arbitration as to what the parties agreed to in their contract. There is no purpose in having advisory arbitration because this merely substitutes someone else's judgment for what should be the result without any power to enforce this judgment. SB 383 does not require binding arbitration and in fact does not permit binding arbitration on the local government employer and its employees in negotiating an agreement. The agreement must be freely entered into. Once the agreement has been executed, binding arbitration is required to settle

any disputes over what the parties agreed to.

SB 383 also provides a procedure for any person upon agreement of the employers and employees to mediate disputes. The provisions of SB 383 on mediation have been written as broad and flexible as possible to permit any kind of mediation that works. SB 383 has a provision in regard to strikes by employees which subjects officers who willfully fail to take action against public employees violating the no-strike provision. As a practical matter the pressures upon a local official in charge of public employees when such employees strike is great. The League committee which studied this problem was made up of city managers, mayors, county commissioners, city attorneys and other officials who recognized that in the absence of a specific mandate to the "executive officer" to take action, striking employees might violate the law with impunity by the enaction of such officer. It was felt that such official's conduct should be prevented even though it would place a tremendous responsibility upon the representatives of local government.

It is important in Kansas that injunction actions be clearly and specifically authorized to stop government employee strikes. There has never been a decision before the Kansas supreme court which clearly sets forth the procedure for enjoining such strikes. There is language found in K. S. A. 60-904 dealing with private employer-employee disputes which at first blush, would seem to prohibit a local government obtaining an injunction action against its public employees for striking. Obviously, this is not the intent of this act which has in mind private labor negotiations but it does not say so. Although the attorney general has been successful in the preliminary stages in enjoining or restraining certain public employee strikes, the proper procedure is not free from doubt and should be clarified in any law dealing with this subject.

SB 383 recognizes that even local government may attempt to circumvent a requirement that there be meet and confer laws or negotiation. Any bill which mandates such negotiations should provide sanctions against employers which refuse to comply with the law. SB 383 has such sanctions in that after examining a charge that the public employer has willfully failed to

collectively negotiate in conformity with the act, the factfinding commission can, if satisfied, submit the matter to the county attorney for appropriate proceedings charging willful misconduct in office or willful neglect to perform a duty enjoined by law.

Any effective law in this area, must contain reservations of functions to local government which are not the subject of conference or negotiation. These involve such functions as the power to carry out the constitutional and legislative mandate and goals assigned to local government. It is obvious to all that public employees should not be able to negotiate on what policy will be in the coming year on combining the police or fire department or expanding the park and recreation program. In addition to these public policy functions that should be reserved to local government separate and apart from its employees there are such matters as determining the work rules and work loads and suspension, discharge or promotion of the employees which must remain the function of local government if it is to exist as local government. One element of an effective public employee labor relations act which SB 383 does not contain is a requirement for the internal democracy and fiscal integrity of public employee unions or organizations. This is one of the recommendations made by the ACIR which the League committee had earlier considered and rejected because it was felt that union opposition to this might kill any reasonable proposals the League would offer.

It should be pointed out that SB 383 had to make some accommodations for the representatives of local government that considered the proposal. One of these is the local option feature which makes the law applicable only to those local governments whose governing bodies elect to come under the act. This is an appropriate method of permitting local determination of the matter.

SB 383 was prepared for local government and did not include state employees. Although it would be advantageous to have all groups of employees under one act, it is recognized that state employees and state government relations are significantly different in regard to present procedures than local employees and government and it was also felt that it would be presumptive

for local government officials to attempt to determine how the state should handle its affairs with its employees. SB 383 does cover school employees such as janitors and food service handlers but it does not cover those employees of school districts who are certificated. The teachers were left out of the proposal forming SB 383 because it was felt that there would be considerable dissatisfaction with any attempt to place the teachers in any other category than some type of professional practices act.

The recommendations embodied in SB 383 are the best that a committee of Kansas local government officials have been able to develop. There are no delusions the proposals are perfect, or enactment of them into law will bring harmony in Kansas public employment. There is no bill or law in existence today known to the League that will do that. They are a step in the direction of giving the local government employee some of the opportunities received by employees in private industry while recognizing the essential distinctions between public and private employment.

Sec. 8. (a) A public employer shall extend to an employee organization certified or recognized formally, pursuant to this act, the right to represent the employees of the appropriate unit involved in meet and confer proceedings and in the settlement of grievances and the right to unchallenged representation status, consistent with section 7 (d), during the twelve (12) months following the date of certification or formal recognition.

(b) A public employer may extend to such an organization the right to membership dues deduction, upon presentation of dues deduction authorization cards signed by individual employees, provided that no ~~all~~ employee organizations shall have the right to membership dues deductions until the formally recognized employee organization ~~representative has~~ been determined. Before any authorized payroll deduction plan shall become effective for any agency of the state, it shall be approved by the state controller who, by regulation may control the number of organizations for whom payments may be withheld on behalf of the employees of any state agency; and who may by regulation govern the terms and conditions under which such withholding may be authorized by the public employee or supervisory employee and the dates of the pay period beyond which such authorization may not be revoked by such public employee or supervisory employee. The state controller shall make such deductions as are authorized by the employee and shall at periodic intervals to the extent of the amount collected, issue a warrant or warrants in favor of the recognized employee organization.

(c) Representatives of formally recognized employee organizations shall be given time off without loss of compensation during normal working hours to meet and confer with public employees on matters falling within the scope of discussions.

ciple of free private enterprise, but from the constitution, statutes, civil service rules, regulations and resolutions; and

(5) this difference between public and private employment is further reflected in the constraints that bar any abdication or bargaining away by public employers of their continuing legislative discretion and in the fact that constitutional provisions as to contract, property, and due process do not apply to the public employer and employee relationship.

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 wages, hours, and other terms and conditions of employment, acting within the framework of laws and the constitution. 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.

Sec. 2. As used in this act:

(1) "Public employee" means any person employed by any public agency excepting those persons classed as supervisory public employees and certificated employees of school districts; elected and top management appointive officials; and ~~certain categories of confidential employees including those who have responsibility for administering the public labor relations law as a part of their official duties.~~

all employees whose employment gives them access to confidential files of the chief executive of a public agency or his immediate subordinate.

(2) "Supervisory employee" means any individual who normally performs different work from his subordinates having authority, in the interest of the employer, to hire, transfer, suspend, lay off, re-

Sec. 3. (a) There is hereby created a state board, to be known as the public employee relations board, which shall consist of five members appointed by the governor, by and with the advice and consent of the senate ~~from persons representative of the public~~. One member shall be representative of public employers, one member shall be representative of public employees and three members shall be representative of the public at large and hold no other public office or public employment in the state or its political subdivisions. Not more than three members of the board shall be members of the same political party. Each member shall be appointed for a term of four years, except that two members shall be appointed for a term to expire two years following the effective date of this act, two members for a term that shall expire three years following the effective date of this act, and one member for a term that shall expire four years following the effective date of this act. A member appointed to fill a vacancy shall be appointed for the unexpired term of the member whom he is to succeed.

~~(b) Members shall hold no other public office or public employment in the state or its political subdivisions during their terms of office.~~

~~(c)~~ (b) Members of the board other than the chairman, when performing the duties of the board, shall be compensated at the rate of twenty-five dollars ($25) a day, together with an allowance of actual and necessary expenses incurred in the discharge of their responsibilities hereunder. The chairman shall receive an annual salary to be fixed by the governor, with the approval of the state finance council within the amount available therefor by appropriation, in addition to an allowance for expenses actually and necessarily incurred by him in the performance of his duties.

~~(d)~~ (c) The board may appoint an executive director and such other persons, including but not limited to mediators, members of fact-finding boards and representatives of employee organizations and public employers to serve as technical advisors to such fact-finding boards, as it may from time to time deem necessary for the performance of its functions. The board shall prescribe their duties,

fix their compensation and provide for reimbursement of their expenses within the amounts made available therefor by appropriation.

~~(c)~~ (d) In addition to the authority provided in other sections, the board may:

(1) Make studies and analyses of, and act as a clearinghouse of information relating to, conditions of employment of public employees throughout the state.

(2) Request from any public agency such assistance, services, and data as will enable the board properly to carry out its functions and powers.

(3) Establish procedures for the prevention of improper public employer and employee organization practices as provided in section 13 of this act: *Provided*, That in the case of a claimed violation of paragraph (5) of subdivision (*b*) or paragraph (4) of subdivision (*c*) of such section, procedures shall provide only for an entering of an order directing the public agency or employee organization to meet and confer in good faith. The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to section 7 of this act or with meeting and conferring.

(4) Establish, after consulting with representatives of employee organizations and of public agencies, panels of qualified persons, broadly representative of the public, to be available to serve as mediators, arbitrators, or members of fact-finding boards.

(5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers.

(6) For the purpose of such hearings and inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the issuance of subpoenas, and

request of any of the parties, shall investigate such questions and certify to the parties in writing, the names of the representatives that have been designated. The filing of a petition for the investigation or certification or a representative of employees by any of the parties shall constitute a question within the meaning of this section. In any such investigation, the board may provide for an appropriate hearing, shall determine voting eligibility and shall take a secret ballot of employees in the appropriate unit involved to ascertain such representatives for the purpose of formal recognition. If the board has certified a formally recognized representative in an appropriate unit, as provided in this section, it shall not be required to consider the matter again for a period of one year, unless it appears that sufficient reason exists. The board may promulgate such rules and regulations as may be appropriate to carry out the provision of subsections (*c*) and (*d*) of this section.

Sec. 8. (*a*) A public employer shall extend to an employee organization certified or recognized formally, pursuant to this act, the right to represent the employees of the appropriate unit involved in meet and confer proceedings and in the settlement of grievances and the right to unchallenged representation status, consistent with section 7 (*d*), during the twelve (12) months following the date of certification or formal recognition.

(*b*) A public employer may extend to such an organization the right to membership dues deduction, upon presentation of dues deduction authorization cards signed by individual employees, provided that all employee organizations shall have the right to membership dues deductions until the formally recognized representative has been determined.

(*c*) Representatives of formally recognized employee organizations ~~shall~~ may be given time off without loss of compensation during

normal working hours to meet and confer with public employees on matters ~~falling within the scope of discussions~~ as determined by the memorandum of agreement.

Sec. 9. Procedures for determining the recognition status of local employee organizations.

(*a*) Every public agency, other than the state and its authorities acting through its legislative body, may establish procedures, not inconsistent with the provisions of sections 7 and 8 of this act and after consultation with interested employee organizations and employer representatives, to resolve disputes concerning the recognition status of employee organizations composed of employees of such agency.

(*b*) In the absence of such procedures, disputes shall be submitted to the public employee relations board in accordance with section 7 of this act.

Sec. 10. The scope of a memorandum of agreement may extend to all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment except, however, that the scope of a memorandum of agreement shall not include proposals relating to (*i*) any subject preempted by federal or state law or by a municipal ordinance passed under the provisions of article 12, section 5 of the Kansas constitution, (*ii*) public employee rights defined in section 4 of this act, (*iii*) public employer rights defined in section 6 of this act, or (*iv*) the authority and power of any civil service commission, personnel board, personnel agency or its agents established by constitutional provision, statute, ordinance or special act to conduct and grade merit examinations and to rate candidates in the order of their relative excellence from which appointments or promotions may be made to positions in the competitive division of the classified service of the public employer served by such civil service commission or personnel board. Any memorandum of agree-

ment relating to wages, hours and terms of employment entered into shall be executed for a maximum period of three (3) years, and the provisions of the cash basis law (K. S. A. 10-1102 *et seq.*) and the budget law (K. S. A. 79-2925 *et seq.*) shall not apply to such agreements.

Sec. 11. If agreement is reached by the representatives of the public agency and the recognized employee organization, they shall jointly prepare a memorandum of understanding and, within fourteen (14) days, present it to the appropriate governing authority for determination. The authority, as soon as practicable, after receiving a report from the chief financial officer for the agency of the fiscal effect the terms of such memorandum will have upon the agency, shall consider the memorandum and take appropriate action. If a settlement is reached with an employee organization and the governing authority, the authority shall implement the settlement in the form of a law, ordinance, resolution, executive order, rule, or regulation. If the governing authority rejects a proposed memorandum, the matter shall be returned to the parties for further deliberation.

Sec. 12. (*a*) Public employers may include in memoranda of agreement concluded with formally recognized or certified employee organizations a provision setting forth the procedures to be invoked in the event of disputes which reach an impasse in the course of meet and confer proceedings. Such a provision may stipulate the submission of unresolved issues to impartial arbitration. In the absence or upon the failure of such procedures resulting in a deadlock, either party may request the assistance of the public employee relations board or the board may render such assistance on its own motion, as provided in subdivision (*b*) of this section.

(*b*) On the request of either party or upon the board's own motion, and if it determines an impasse exists in meet and confer proceedings between a public employer and formally recognized or certified employee organizations, the board shall aid the parties in effecting a voluntary resolution of the dispute, and appoint a

mediator or mediators, representative of the public, from a list of qualified persons maintained by the board.

(*c*) If the deadlock persists seven (7) days after the mediators have been appointed, the board shall appoint a fact-finding board of not more than three (3) members, each representative of the public, from a list of qualified persons maintained by the agency. The fact-finding board shall conduct a hearing, may administer oaths, and may request the board to issue subpoenas.

It shall make written findings of facts and recommendations for resolution of the dispute and, not later than twenty-one (21) days from the day of appointment, shall serve such findings on the public employer and the recognized employee organization. The board may make this report public seven (7) days after it is submitted to the parties. If the dispute continues fourteen (14) days after the report is submitted to the parties, the report shall be made public.

(*d*) If the parties have not resolved their deadlock by the end of a forty-nine (49) day period commencing with the date of appointment of the fact-finding board, they may jointly agree to an arbitration procedure which will result in a binding determination of their controversy. ~~Such determinations will be subject to review by the board. If the parties do not jointly agree to such an arbitration procedure within seven (7) days after the end of the forty-nine (49) day period, then the public employer, by written notice to the recognized employee organization and to the board, may request that the remaining differences be submitted to a board of three (3) arbitrators. The recognized employee organization and the public agency shall within five (5) days of such request each select and name one (1) arbitrator and shall immediately thereafter notify each other and the board in writing of the name and address of the person so selected. The two (2) arbitrators so selected and~~

~~named, within seven (7) days from such request, shall agree upon and select and name a neutral arbitrator. If either party does not select its arbitrator or if the two arbitrators fail to agree upon, select, and name a neutral arbitrator within seven (7) days, either party may request the board to utilize its procedures for the selection of the neutral arbitrator. Within a reasonable period following receipt of the request, the neutral arbitrator shall be selected in accordance with rules and procedures prescribed by the board for making such selection. As soon as possible after the selection of the neutral arbitrator, the three (3) arbitrators or if either party shall not have selected its arbitrator, the two (2) arbitrators, as the case may be, shall meet with the parties or their representatives, or both, either jointly or separately, make inquiries and investigations, hold hearings, or take such other steps as they deem appropriate. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative or pertinent to the issues represented to them for determination.~~

~~If the controversy is not resolved by the parties themselves, the arbitrators shall proceed as follows: (*i*) With respect to a controversy over salaries, pensions and insurance, the arbitrators shall recommend terms of settlement and may make findings of fact; such recommendations and findings will be advisory only and will be made, if reasonably possible, within twenty-eight (28) days after the selection of the neutral arbitrator; the arbitrators may, make such recommendations and findings public, and either party may make such recommendations and findings public if agreement~~

~~is not reached with respect to such findings and recommendations within seven (7) days after their receipt from the arbitrators; (*ii*) with respect to a controversy over subjects other than salaries, pensions, and insurance, the arbitrators shall make determinations with respect thereto if reasonably possible within twenty eight (28) days after the selection of the neutral arbitrator; such determinations may be made public by the arbitrators or either party; and if made by a majority of the arbitrators, such determinations will be binding on both parties and the parties will enter an agreement or take whatever other action that may be appropriate to carry out and effectuate such binding determinations; then determinations will be subject to review by the board.~~

(*c*) The cost for the mediation and fact-finding services provided by the board shall be borne by the board. All other costs, ~~including that of a neutral arbitrator,~~ shall be borne equally by the parties to a dispute.

Sec. 13. (*a*) Commission of prohibited practice, as defined in this section, among other actions, shall constitute evidence of bad faith in meet and confer proceedings.

(*b*) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

(1) Interfere, restrain or coerce public employees in the exercise of rights granted in section 4 of this act;

(2) Dominate, interfere or assist in the formation, existence, or administration of any employee organization;

(3) Encourage or discourage membership in any labor organization, employee agency, committee, association, or representation plan by discrimination in hiring, tenure, or other terms or conditions of employment;

(4) Discharge or discriminate against an employee because he has filed any affidavit, petition, or complaint or given any informa-

Feb. 24, 1970

Outline of
Senate Substitute for HB1573

Section 1. Legislative finding and statement of purpose which points out there are basic distinctions between public and private employment.

Sec. 2 Defines terms.

Sec. 3 Creates a state public employee relations board and specifies its powers, responsibilities and membership. The 5-member board is appointed by the governor subject to confirmation by the senate.

Sec. 4 Authorizes public employees to join or refrain from joining an employee organization.

Sec. 5 Permits supervisory employees to form own organization but prohibits its formal recognition by employer.

Sec. 6 Declares employer's rights that cannot be negotiated.

Sec. 7 Provides procedures for formal recognition of an employee organization, for determination of the appropriate unit, and for certification of the designated representative of such unit.

Sec. 8 Specifies the rights accompanying formal recognition of an employee organization, including authorization for a permissive dues deduction and to give employees representatives time off during normal working hours to meet and confer without loss of compensation.

Sec. 9 Authorizes local units to establish procedures to determine recognition of employee organizations not inconsistent with sections 7 and 8.

Sec. 10 Specifies the scope of the memorandum of agreement on wages, hours and working conditions and makes such agreements subject to certain existing laws and regulations.

Sec. 11 Prescribes procedures for implementing a memorandum of agreement.

Sec. 12 Provides machinery for resolving disputes, including mediation, fact finding, advisory arbitration, binding arbitration upon agreement of the parties and specifies cost sharing arrangements for such services.

Sec. 13 Lists prohibited practices for public employers and employees and states that no federal or state law applicable to private employment shall be regarded as binding or controlling precedent.

Sec. 14 Provides for the handling of violations of prohibited practices before the public employee relations board and, if necessary, the district courts.

Sec. 15 Authorizes local government to provide some local procedures in lieu of those set forth in the act if the state board determines the local options are "substantially equivalent." Sections amenable to local procedures are 9, 10, 11 and 12.

Sec. 16 Effective date of act is January 1, 1971.

Senate Substitute for HB1573

Sec. 12.

Resolution of Impasse

First Phase - Mediation From 1st to 7th Day

State board
Public employer
Employee organization
(request) (by any 1) → state board (appoints) → mediator(s)

Second Phase - Fact Finding Board From 7th to 49th Day

State board (appoints) → fact finding board, (not more than 3) → hearing

written findings and recommendations (served within) (21 days of appointment) → public employer and employee organization

(may be submitted 7 days after) → public
(submission to parties, shall be submitted 14 days after)

Third Phase - Agreed Binding Arbitration, 49th Day to 56th Day

Public employer
Employee organization
(joint agreement) → binding arbitration → review → state board

Fourth Phase - Employer's Request for Arbitration, 56th Day on

Public employer (written notice) → employee organization and state board.

Public employer (5 days) → arbitrator*
Employee organization (5 days) → arbitrator*
arbitrator* + arbitrator* → (7 days) → arbitrator*

Board of arbitrators → meetings, hearings
(advisory findings) (recommendations) salaries, pensions, insurance
binding determinations on other matters

(*arbitrators may be appointed by state board on failure of appointing authority to act)

Comments on S. B. 385

By The Kansas Association of School Boards

KASB believes that all employees of school districts, both certificated and non certificated, should have the same rights in the area of negotiating or bargaining with boards of education. We feel all employees of school districts should be governed by the same law. We do not think that certificated employees have a position or situation so unique or different that they need a special law.

It is also KASB's position that school district employees do not need a special act-that one law governing all public employees is the soundest approach to solving the need for a method by which public employers and public employees may negotiate or bargain concerning salaries and other working conditions.

KASB would, therefore, support S. B. 385 if it were amended to (1) include all school district employees; (2) more specifically limit what is negotiable; (3) more clearly indicate whether this is a "meet and confer" bill or a negotiations bill, and if it is the latter then we would want the bill amended to contain all of our policy provisions (a copy of which is attached); (4) provide a more meaningful and enforceable anti-strike provision; (5) indicate with some specificity that different classes of employees would be in different bargaining units, or "discussion" units if this is strictly a meet and confer type bill, i.e. administrators, principals and department heads should not be in the same group with teachers; custodians should not in the same group with the administrators, etc; and (6) we would prefer that local units of government administer the act as it applies to them; that there is no need for creating a new state agency or an existing state agency to administer the act.

Comments on S. B. 383

By The Kansas Association of School Boards

KASB believe that all employees of school districts, both certificated and non certificated, should have the same rights in the in the area of negotiating or bargaining with boards of education. We feel all employees of school districts should be governed by the same law. We do not think that certificated employees have a position or situation so unique or different that they need a special law.

It is also KASB's position that school district employees do not need a special act-that one law governing all public employees is the soundest approach to solving the need for a method by which public employers and public employees may negotiate or bargain concerning salaries and other working conditions.

However if the legislature wishes to place all state employees under one law and all local government employees under a different law, we would have no objection to this.

KASB could enthusiastically support S. B. 383, particularly if it is amended to (1) include all school district employees; (2) provide for appropriate bargaining units for certain classes of employees; (3) provide for loss of certification for certificated employees who violate the no-strike provision or who violate any court order issued pursuant to the act; (4) We would prefer that local units of government administer the act as it applies to them - that there is no meed for creating a new state agency or assigning an existing state agency to administer the act.

Our general position on negotiations is set forth in the attached sheet.

Recommended KASB Policy on Negotiations

The Kansas Association of School Boards recommends that legislation be enacted in regard to collective negotiations between public employers and public employees:

(A) That public school districts be authorized, at their discretion, to engage in collective negotiations with representatives of all of the employees of the school district, both certificated and noncertificated.

(B) That any law authorizing such collective negotiations shall:

(1) Limit negotiable items to wages, hours and ~~other economic conditions of employment~~ fringe benefits and that policy matters be specifically made non-negotiable.

(2) Provide for separate bargaining units for (a) teachers, (b) administrators (including prinicpals and assistant principals) supervisors and department heads, but excluding superintendents and associate and assistant superintendents, and (c) non-certificated employees as their special interests might require.

(3) Provide specific dates for negotiation to begin and end.

(4) Delay the effective date of the law so that the first negotiations would involve the 1971-72 school year in school districts having a July 1-June 30 fiscal year, and the 1972-73 school year for school districts whose fiscal years are January 1-December 31.

(5) Contain a meaningful and enforceable anti-strike provision.

(6) Define impasse and provide for the resolution thereof by voluntary and non-binding mediation, fact finding and arbitration.

(7) Empower local school boards to administer the act and ~~to call upon the county election officer~~ to hold elections to determine bargaining units.

(8) Define unfair labor practices applicable to both boards of education and school district employees.

(9) Permit one, two or three year contracts.

(10) Establish reasonable limits on the use of picketing to enforce employee demands.

STATE OF KANSAS

Department of Administration

Accounts and Reports Division
STATEHOUSE—TOPEKA 66612

February 19, 1970

Honorable Norman E. Gaar
Chairman, Senate Committee
on State and Local Affairs
3rd Floor, Statehouse

Dear Senator Gaar:

This office has reviewed the Senate substitute for House Bill 1573 and notes potential administrative problems relating to current provisions of Sec. 8(b) which provides for the right to membership dues deductions for "all employee organizations." The problems poised by this section are as follows:

1. The public employer as the bill is drawn has the right to allow membership dues deductions from dues deduction authorization cards to all employee organizations. In regard to the state agencies it is not clear as to just who has the right to authorize this procedure.

2. Also, the bill would allow all employee organizations without regard to size or number to participate in the membership dues deduction until "the formally recognized representative" has been determined. The costly administrative problem involved here would relate to such practical problems as that involved in the State Printing Plant in which four or more trade unions are represented and where under this bill deductions would probably be required for all four trade unions plus separate deductions for supervisory employees.

3. While the bill does not anticipate the continuation of membership dues deductions after the formally recognized representative has been determined, it is not logical to anticipate that such deductions will cease on recognition of an employee organization.

4. While the bill provides for membership dues deductions it does not provide or authorize a public officer to disburse the aggregate amount collected to any employee organization, or otherwise provide for the disposition of the monies so collected.

The attached amendment to Section 8 of the Senate substitute to House Bill 1573 has been prepared to provide for a reasonably and orderly manner to handle the problems raised.

In our opinion, it does not appear reasonable to expend public funds for withholding and accounting for uncontrolled payroll deductions to organizations which are unlicensed and unregulated, i.e., in a variety of amounts and payees. For this reason we are submitting a suggested amendment to Section 8(b) which we feel will enable us to administer the manner in which payroll deductions are handled.

Very truly yours,

James R. Cobler

James R. Cobler, Controller
Accounts and Reports Division

JRC:HG:jw

MEMORANDUM IN REGARD TO
SENATE SUBSTITUTE FOR HOUSE BILL NO. 1573
By The Kansas Association of School Boards

The Kansas Association of School Boards, representing approximately 90% of the school boards and 99% of the public school pupils in the state of Kansas, strongly recommends that H.B. 1573 be amended to include all employees of school districts including certificated employees.

As the bill is presently written it provides for boards of education to negotiate with all of its employees except certificated employees. We believe that all public employees should have the same right to negotiate with their public employers-that there should be no discrimination or favoritism.

It is our contention that the position of certificated employees is not so unique or different that they should be under a special law. In a recent conversation I had with the chairmen of the public employee relations commissions of New York, Michigan and Wisconsin, they were unanimous in advising and recommending that all public employees be under the same law. They pointed out such laws are much easier to administer and they treat all public employees alike. No special group gets special considerations.

Many school districts in Kansas operate area vocational technical schools, the instructors at which are mainly non certificated. We think it would be bad policy for school boards to have to negotiate with one group of instructors under one law and another group of instructors under a separate law. We can see no valid reason why all employees of a school district should not be under the same law.

The teacher's say they want a special law for their profession because they are now professionals by statute. Engineers, doctors and lawyers are also professionals and they are presently covered by H.B. 1573. The teachers for some reason don't want to be associated with garbage collectors, policemen, firemen, clerks, stenographers, street and highway construction and maintenance workers in the same law. It is our position that firemen and garbage collectors are just as knowledgeable in their fields as teachers are in theirs. Each profession or occupation would have its own separate bargaining unit, i.e., the teachers would not have any of the aforementioned people in their bargaining unit nor would those people's bargaining units contain any teachers. Thus the expertise the teachers are clamoring to bring to the attention of school boards could be given to school boards under H.B. 1573 if the bill were amended to include certificated employees.

In addition to amending the bill to include all school district employees we also recommend that supervisory employees (such as principals, administrators, department heads, etc.) be recognized and permitted to bargain as a group with boards of education.

We would also like to have the scope of negotiations tightened so that the law clearly provides that policy matters are non negotiable. The bill presently contains no penalties for violating the anti-strike provision. Experience in other states (particularly New York in the area of public schools) is proving that a strong anti-strike provision with meaningful penalties definitely discourages strikes by public employees.

Our proposed amendments concerning the foregoing comments are attached hereto. We hope the committees will give them serious consideration.

Respectfully submitted,

FRED W. RAUSCH, JR.
Legal Counsel
Kansas Association of School Boards

PROPOSED AMENDMENTS TO SENATE
SUBSTITUTE FOR HOUSE BILL NO. 1573
By The Kansas Association of School Boards

Specific Amendments:

Amend Section 2 on page 2, line 24 by striking "and certificated employees of school districts"

Amend Section 2 on page 3, line 16 by adding the following: "Provided, however, that policy matters shall not be negotiable nor become a part of any agreement made pursuant to this act. Public employers shall have the sole authority and responsibility for establishing policy for their respective governmental sub-divisions."

Amend Section 5, on page 7, line 19 by striking the word "not."

General Amendments:

Add a new Section 14 to provide for penalties for violating the anti-strike provision in Section 13. The penalty provisions in S.B. 383, Sec's. 12 and 13, are recommended.

STATE OF KANSAS

TOM WEST
SENATOR THIRTEENTH DISTRICT
SHAWNEE-WABAUNSEE COUNTIES
2801 MARYLAND
TOPEKA, KANSAS 66605

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN: PUBLIC HEALTH AND WELFARE
MEMBER: EDUCATION
FEDERAL AND STATE AFFAIRS
STATE AND LOCAL AFFAIRS

TOPEKA

SENATE CHAMBER

February 16, 1970

Mr. Chairman:

Your subcommittee on collective Negotiations for Public Employees respectfully submits the following report and recommendations:

I. Enactment of Legislation Establishing Basic Employer-Employee Relationship.

The committee recommends legislation be enacted establishing the basic relationship between public employers and employees and their organizations in arriving at terms and conditions of employment; absence of such legislation tends to encourage chaotic labor-management relations, especially in local government where the evolution of these relationships is left to chance and the ebb and flow of political power and influence of employees and their organizations and to widely varying administrative and judicial interpretations.

The committee tends to view the meet and confer in good faith approach as being most appropriate in a majority of situations in the light of present and evolving conditions in state and local employment.

II. The Problem of Supervisory Personnel.

The committee recommends that in order to protect the position of public employers, employee rights and privileges conferred by state public labor relations laws should be denied to: (a) managerial and supervisory personnel who have authority to act or recommend action in the interest of the employer in such matters as hiring, transferring, suspending, laying-off, recalling, promoting, discharging, assigning, rewarding, or disciplining other employees; who have authority to assign; and/or who direct work or who adjust grievances; (b) elected and top management appointive officials; and (c) certain categories of "confidential" employees including those who have responsibility for administering the Public Labor Relations Law as a part of their official duties.

III. Administrative Machinery.

The committee believes that state policy relating to management-employee relations in the public sector will have little significance unless there is appropriate machinery to resolve recognition and

representation disputes, ensure adherence by all parties to the law, and provide the means of facilitating the resolution of controversies arising out of employer-employee impasses. The creation of a Public Employee Relations Board appears to be the most suitable type of administrative machinery to which the public labor-management relations function might be assigned.

IV. Membership Representation, and Recognition.

The committee believes that preservation of public interest and rights of public employees requires local governments and agencies of the state to recognize the right of their employees to freely join or not to join and be represented by an employee organization. Such recognition should include permission for public employers, on written authorization of the employee, to regularly withhold organizational dues from the employee's wages and to transmit such funds to the designated union or association when such organization has been recognized as representing a majority of the employees in an appropriate bargaining unit. Where majority support of an employee organization exists, public employers should grant full meet and confer rights by formal recognition of that organization.

The committee further believes that the public interest and the preservation of public employee rights dictate adherence to certain basic rules and practices to assure internal union and associational democracy on the part of representative organizations. Recognition should be extended only to those public employee organizations whose governing requirements provide a "Bill of Rights" to protect members in their relations with the organization, standards and safeguards for periodic elections, regulation of trusteeships and fiduciary responsibilities of organizational officers and maintenance of accounting and fiscal controls and regular financial reports filed with the state for public scrutiny.

V. Diversity of Coverage by Levels of Government.

The committee recognizes the existence of considerable diversity between state and local government in conditions of public employment, provisions of merit systems, and constitutional and statutory provisions relating to the structure of local government. Thus it is desirable to establish within this diverse framework a system of public labor-management standards on a statewide basis, which extends the same rights and imposes the same responsibilities on both state and local employees.

Therefore, under state labor relations legislation, the treatment accorded to State Government and Local Government Employment should be generally uniform as between the two and compatible with constitutionally established merit system procedures.

VI. Resolution of Public Employer-Employee Disputes.

The committee recognizes the necessity to incorporate in the labor relations statutes provisions authorizing mediation at the request of either party. To assist in the resolution of impasses after unsuccessful efforts to reach agreement, the legislation should mandate additional procedures such as fact finding, conciliation and arbitration. Prohibited practices such as lockouts, strikes, interference with, restraint or coercion of employees or employers, refusal to meet and confer in good faith and avoidance of good faith mediation should be submitted to the public employee relations board for findings of fact and filing of proceedings. Petition by the aggrieved party for judicial remedy, injunctive relief and allied remedies should be included in the provisions of the act.

VII. Implementation of the Public Employee Labor Relations Act.

The committee is cognizant of the need for an extension of the effective date for implementation of the Public Employee-Labor Relations Act. While most statutes become effective upon publication in the statute book, we recommend a delay in the effective date until January 1, 1971. Such effective date will permit organization, detailed study of the provisions, establishment of procedures, methods of conferring, and selection of potential members for the board created by the act.

Mr. Chairman, in accordance with the guidelines set forth in the report, your committee commends the proposal embodied in Senate Substitute For House Bill 1573 to the State and Local Affairs Committee for study and recommendations.

Respectfully submitted to the Committee on State and Local Affairs.

Senator Tom West
Subcommittee Chairman

Gene C MARTIN Mayor Topeka, Ks
Willingham Vaughan - City Clerk
Tom Foster Topeka
Jim Young - Kansas R.T.-C.I.O - Topeka
James L. Rose - Kan. State. Fed of Labor - Topeka
Frederick J Heos - Washburn School of Law.
Lloyd F. Fielder - Water Dist. #1 of Johnson Co.
C D Wheeler - Commissioner of Ed.
Frank Gentry Topeka
James R. Cobler State Controller
Wright Cummins League of Kansas Municipalities
CHARLES W MOSS CITY MANAGER ARKANSAS CITY
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Gene C MARTIN — MAYOR of Topeka
James L. Rose — Kan. State Fed. of Labor

Phil Bowman — KAPE