

Approved April 26, 1991
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley at
Chairperson

9:11 a.m./~~p.m.~~ on March 21, 1991 in room 526-S of the Capitol

All members were present except:

Rep. Douville - excused
Rep. Hayzlett - excused

Committee staff present:

Jim Wilson, Revisor
Jerry Donaldson, Research Assistant
Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Ted McBride
Wayne Wianecki, AFSLME, AFL-CIO
Charles Dodson, Kansas Assn. of Public Employees (KAPE)
Brad Avery, Legal Counsel, KAPE

The meeting was called to order at 9:11 a.m. by the chairman, Rep. Anthony Hensley.

Chairman Hensley referred members to copies of two letters handed out in support of House Bill No. 2576, one from the Kansas Restaurant and Hospitality Association (attachment #1) and the other from John Grace, President, Kansas Association of Homes for the Aging (attachment #2).

The chairman opened the hearing on House Bill No. 2226, establishing and implementing a drug screening program for employees in certain state institutions.

Ted McBride, legislative intern for Rep. Joan Wagnon, appeared as a proponent of House Bill No. 2226. He explained that Rep. Wagnon had been contacted by Robert Day, Superintendent, Kansas Neurological Institute (KNI), and urged to introduce a bill to establish and implement a drug screening program for employees at KNI and state mental health institutions similar to the existing program for correctional officers, highway patrol troopers, and members of the Governor's staff. He said that the House Committee on Public Health and Welfare had passed House Bill No. 2226 previously and amended the bill to include state hospital employees in "safety sensitive" positions as defined in K.S.A. 75-4362. He said the bill was later referred to the Labor and Industry Committee.

Wayne Wianecki, representing the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, said that the state drug screening program for "safety sensitive" positions was working very successfully, and had adopted rules and regulations which protected the rights of employees in those positions. He said he had no problem expanding the drug screening program to other employees who worked at KNI and other state institutions. Mr. Wianecki answered questions from several committee members.

The chairman then opened the hearing on House Bill No. 2554, relating to dismissals, demotions and suspensions of employees in the classified civil service system. He introduced proponents of the bill:

Charles Dodson, Executive Director, Kansas Association of Public Employees (KAPE), said the purpose of House Bill No. 2554 is to diminish the risk to state employees of being dismissed, demoted or suspended for illegitimate reasons. He stated that in 1977 the Kansas Court of Appeals, in the case of Swezey v. SRS, set the standard for "good of the service" in employee termination cases to mean that the employee's conduct substantially and directly impaired the operation of the state agency for whom the employee worked. He said that in many past instances state employees have been harmed by political and personal favoritism. He said that disciplinary action taken by agency to agency is very inconsistent. He explained that the bill would require that an employer show the Swezey standard before terminating an employee (attachment #3). Mr. Dodson introduced Brad Avery, chief attorney for KAPE, who answered questions from several committee members.

Wayne Wianecki, representing AFSCME, appeared as a proponent of House Bill No. 2554 and

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,
room 526-S, Statehouse, at 9:11 a.m./~~pm~~ on March 21, 1991.

answered questions from members.

The chairman announced that the hearing on House Bill No. 2554 would be continued tomorrow, March 22, 1991.

The meeting was adjourned at 9:55 a.m. The next committee meeting is schedule for March 22, 1991 at 9:00 a.m. in room 526-S.



KANSAS RESTAURANT AND HOSPITALITY ASSOCIATION

359 SOUTH HYDRAULIC • P.O. BOX 235 • WICHITA, KANSAS 67201 • (316) 267-8383
FAX (316) 267-8400

March 19, 1991

Honorable Anthony Hensley
State Representative
State House - Room 278-W
Topeka, KS 66612

RE: HB 2576

Dear Representative Hensley,

The Kansas Restaurant and Hospitality Association supports HB 2576, which proposes to increase the taxable wage base from \$8,000 to \$12,000. This amendment is more in line with today's salary structure within the labor force and would be beneficial to restaurant operators.

We urge your support of HB 2576. Thank you for your consideration in this matter. Please contact me if I may answer any questions.

Sincerely,

George Puckett
Executive Vice President

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cc: Brad Streeter (Vista Restaurants), KRHA President
Mark Martin (Brookville Hotel), KRHA Legislative Chairman
House of Representatives Labor & Industry Committee

*Labor & Industry
attachment #1
3-21-91*

Enhancing the
quality of life
of those we serve
since 1953.

Memorandum

Date: March 19, 1991

To: House Labor and Industry Committee

Re: House Bill 2576

Submitted by: John Grace, President/CEO

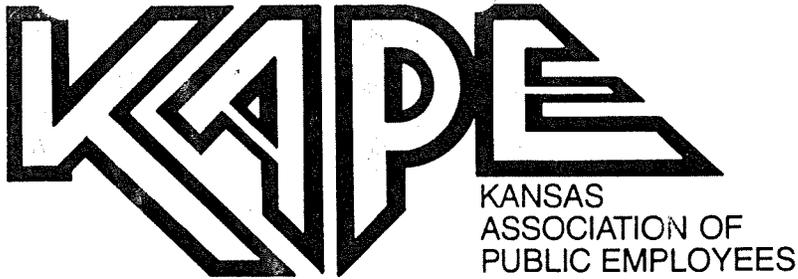
Our association represents over 130 not-for-profit retirement and nursing homes across Kansas.

We are in support of House Bill 2576.

A significant percentage of our employees are employed at wages that are near minimum wage. Perhaps as many as 50% of the persons that we employ fall into this category working in various job responsibilities in dining, housekeeping, laundry and other front line positions. Because of the tremendous competition that we face in the recruitment and retention of front line employees, we experience a high degree of turnover in these positions. Therefore, we believe that the proposed change in House Bill 2576 regarding raising the base from 8,000 to 12,000 would have a beneficial impact upon the expenditures of our facilities in helping to lower the costs.

During the past several years, we have heard many legislators indicate that they are very concerned about the rising health care costs in our state. Because of the positive impact of this legislation that would help to reduce the operating costs for our facilities, we offer our support of this legislation and hope that this would be another component on the part of our policy makers to address the increasing costs of health care expenditures in long term care.

Thank you for the opportunity to present our comments.



Presentation to
House Committee on Labor and Industry
by
Charles Dodson
Kansas Association of Public Employees
March 21, 1991

Mr. Chairman, members of the Committee, thank you for allowing me the opportunity to speak in support of HB 2554.

In 1977, the Kansas Court of Appeals, in the case Swezey vs. SRS, set the standard for "good of the service" in employee termination cases to mean "the facts disclose the employee's conduct is of a substantial nature and directly impairs the efficiency of the public service . . ."

Since 1977 the law that allowed the court to make that interpretation has been changed by listing infractions for which an employee may be terminated. Finally, in 1991, the court found it must ignore the Swezey precedent and determine that an employee may be terminated without consideration of the seriousness of the offense or its impairment upon the agency.

Any offense listed under KSA 75-2949(f) is now a per se cause for termination the Court said.

We are now faced with a situation where there are numerous causes for discipline that invite the abuse of an agency's discretion in this matter.

What we have is a list. Some are clear and make sense and leave little or no room for interpretation of abuse. For example, an employee may be terminated, demoted or suspended for "possession of unauthorized . . . lethal weapons while on the job."

But, an employee may also face the same penalties for "conviction of a criminal act". As I understand it, a "criminal act" could be anything from jaywalking to first-degree murder.

The same holds for "immoral conduct". The definition is left up to the various agencies.

Labor & Industry
3-21-91
attachment #3

The same holds for "immoral conduct". The definition is left up to the various agencies.

Without the proviso that this bill provides that "the facts disclose the employee's conduct is of a substantial nature and directly impairs the efficiency of public service", the employees in many instances could be victims to political or personal favoritism when their offense does not warrant termination.

The current law also provides for choices in termination, suspension or demotion. So, not only may the facts be interpreted differently, but various disciplines may be administered for the same offense within the same agency. One employee may be suspended for one day without pay and another for the same offense on the same day may be terminated.

HB2554 would simply require that an employer show the Swezey standards apply before termination could occur. While this bill does not guarantee a level playing field, it would take some of the bumps out.

All we really seek with this bill is a diminished risk to state employees of having their jobs threatened for illegitimate and nonmeritorious reasons.