

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Vice Chairperson Julia Lynn at 1:00 p.m. on April 28, 2011, in Room 152-S of the Capitol.

All members were present.

Senator Wagle – excused
Senator Emler - excused

Committee staff present:

Ms. Margaret Cianciarulo, Committee Assistant
Mr. Ken Wilke, Office of the Revisor of Statutes
Mr. Reed Holwegner, Kansas Legislative Research Department
Ms. Dorothy Noblitt, Kansas Legislative Research Department

Conferees appearing before the Committee:

Ms. Patricia Bossert, Owner and President of Premier Personnel, Inc.,
Kansas Personnel Services, Inc., and Key Personnel Services, Inc.
Mr. Wayne Maichel, Retired

Others attending:

Please see attached list.

Approval of Minutes

The Minutes of January 25 and 26, February 8, at the Rail, 10, and 17, and march 9 and 21 at the Rail of the senate Commerce Committee stand as approved as of April 1, 2011.

Confirmation hearings

Upon calling the meeting to order, Vice Chairperson Lynn let the Committee know that Chairperson Wagle was attending another meeting and that the Committee would be working through two confirmation hearings. She then called on Mr. Reed Holwegner, Kansas Legislative Research Department, to give an overview of the Employment Security Board of Review, what those functions are and how they operate.

Mr. Holwegner began by referring the Committee to his handout which was the state law, K.S.A. 44-709, with regards to the process for filing claims and subsection (f) deals with the Board of Review. This three-member board can be made the analogy of an administrative version of the State Supreme Court when it comes to employment security or unemployment insurance benefits and claims. He went on to say, if he were to be laid off and were to receive benefits, his claim/paperwork would be reviewed by an examiner, who would make a determination. That notice of determination would be given to him and his last employer. From there, depending on how that decision was made, there would be an appeals process to a referee, who will look at the record of the examiner and any additional information that either a previous employee, or the employer may provide. Depending on that decision, there can be another appeal and that goes to this three-member board of review, one person to represent employees, one to represent employers, and one to represent the general public. That Board will review the previous work of the record to date and will make its determination. If either party still feels the wrong decision was made, that decision can be appealed at the State courts system, but this is at the administrative level you are looking at.

Lastly, he stated, the specific powers of the board are outlined in this statute and there is a salary unlike many of the appointments which are minimal, of \$15K for these positions. A copy of his handout out is ([Attachment 1](#)) attached and incorporated into the Minutes as referenced.

The Vice-Chair asked for questions for Mr. Holwegner from the Committee, which came from Senator Faust-Gaudeau concerning the third member of the Board asking, who represents the general public, who might those individuals of the general public be? (The way that it is listed, referring her to Subsection(f) in the first large paragraph at the bottom of page 2 saying, the members that represent the employees and employers are supposed to agree as to who the third member is from the public. If they cannot agree, then the governor picks.) Senator Lynn asked if that third person has been selected yet? The way she

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 1:00 p.m. on April 28, 2011, in Room 152-S of the Capitol.

understands it, two members are confirmed and they would select three people each and forward those names to the Governor. Is that how it works? (Not quite. The Governor has a list of nominations, three provided by the AFL-CIO on the employee side and three from The Kansas Chamber for the employers.

The Governor selects one person from each list and these are the ones you have before you this afternoon. Those persons who are confirmed, then may nominate another person to be on their Board. Members serve until a replacement has been made and does not know if there is a vacancy for that third member.) Vice-Chair Lynn told they Committee they had asked Mr. Holwegner if this was the same Committee that Senator Brownlee had run some legislation on the floor that got tied up on the floor That is a separate committee and not this one.

She then called on Ms. Patricia Bossert, Owner, Premier Personnel, Inc., Kansas Personnel Services, Inc., and Key Personnel Services, Inc. who stated she has been in business in Topeka since 1989 and employees about 1400 temporary employees each year and a permanent staff of 26 that are full time. Senator Schodorf asked her why she wants to be on this board, what are her interests, things like that? (She currently serves on the Kansas Inc. Board which is going away and this opportunity came up. She does have a lot of experience in the unemployment area, dealing with claims, and testifying for legislation, and those sorts of things and has a strong interest in representing the employers viewpoint. Senator Lynn asked if she ever dealt with unemployment issues at the temporary level? (Yes we do because if employment ends and we do not have another assignment that starts the very next day for a temporary employee, then they are eligible for employment.) What is your experience with the DOL over the last several years? (For the most part, as long as we document everything and keep very good records we don't have a problem. She went on to say, her biggest frustration is the unemployed turn down work because they are receiving unemployment checks.) Senator Merrick asked, if she finds all of a sudden, as time and unemployment money runs out and a job is available, they end up being employed? (Definitely, as soon as their benefit money starts running out. When we were getting extensions all the time, they would come in and apply and an extension would be granted and they would say, I changed my mind, can't work now, going to stay on unemployment, especially if they have children and have to pay daycare. They figure it is better to stay on benefits than have a job. We have lots and lots of jobs every day that are not filled. She also wanted to address the third member issue it is her understanding that person's term is not up yet and not sure when it expires.)

The Vice Chair thanked Ms. Bossert for clearing up that question and for coming before the Committee and called on Mr. Wayne Maichel, who said he has been nominated as the employee representative on the Board. As far as his history, from 1980 to 2003 he was Executive Vice President of Kansas AFL-CIO and served on the Department of Human Resources Employment Security Advisory Council. One of the issues he had was unemployment compensation and has been involved in virtually every law change since 1980. In 2003, he was appointed Director of Unemployment for the KDOL until 2009.

Senator Lynn asked the staff, with this salary, are the members of this board eligible for KPERs benefits and can they join the employee health care plan? (Not sure.) She asked them to look into that and report back to the Committee at some point.

Questions for Mr. Maichel came from Senator Merrick, if he was going to be able to work the changes that have gone on since Secretary Brownlee took over since he was there before that framework? (He would not have been involved because the Board of Reviews is a separate entity working under the Legal Department, not on the program part.) Senator Masterson asked if Mr. Maichel saw himself as an advocate for one side or the other or an unbiased review person looking to make a decision that is unbiased from our perspective? (His advocate days are over with. In his opinion, it is our position to look at existing law, to look at federal policies and procedures and make sure the UI judge follows those procedures.) Senator Schodorf asked Ms. Bossart the same questions Senator Masterson asked Mr. Maichel as she represents the employer. (She totally agrees with Mr. Maichel.)

The Vice Chair then asked what the will of the Committee was? Senator Masterson made the motion to move both confirmations out favorably. It was seconded by Senator Olsen and the motion carried by a voice vote.

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 1:00 p.m. on April 28, 2011, in Room 152-S of the Capitol.

Adjournment

As there was no further business, the meeting was adjourned. The time was 1:35 p.m.

The next meeting is scheduled for April 28, 2011.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: THURSDAY, APRIL 28, 2011

[illegible]

C

West's Kansas Statutes Annotated Currentness

Chapter 44. Labor and Industries

Article 7. Employment Security Law

→ 44-709. Claims for benefits; filing; determination of; appointment of referees; appeals, time; procedures; board of review, membership, compensation and duties; witness fees; judicial review of order of board; findings, judgments, determinations and orders hereunder not admissible or binding in separate or subsequent action or proceeding

(a) *Filing.* Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. The secretary shall furnish a copy of such rules and regulations to any individual requesting them. Each employer shall post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer.

(b) *Determination.* (1) Except as otherwise provided in this subsection (b)(1), a representative designated by the secretary, and hereinafter referred to as an examiner, shall promptly examine the claim and, on the basis of the facts found by the examiner, shall determine whether or not the claim is valid. If the examiner determines that the claim is valid, the examiner shall determine the first day of the benefit year, the weekly benefit amount and the total amount of benefits payable with respect to the benefit year. If the claim is determined to be valid, the examiner shall send a notice to the last employing unit who shall respond within 10 days by providing the examiner all requested information including all information required for a decision under K.S.A. 44-706 and amendments thereto. The information may be submitted by the employing unit in person at an employment office of the secretary or by mail, by telefacsimile machine or by electronic mail. If the required information is not submitted or postmarked within a response time limit of 10 days after the examiner's notice was sent, the employing unit shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the board of review or any court, except that the employing unit's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. In any case in which the payment or denial of benefits will be determined by the provisions of subsection (d) of K.S.A. 44-706, and amendments thereto, the examiner shall promptly transmit the claim to a special examiner designated by the secretary to make a determination on the claim after the investigation as the special examiner deems necessary. The parties shall be promptly notified of the special examiner's decision and any party aggrieved by the decision may appeal to the referee as provided in subsection (c). The claimant and the claimant's most recent employing unit shall be promptly notified of the examiner's or special examiner's decision.

(2) The examiner may for good cause reconsider the examiner's decision and shall promptly notify the claimant and the most recent employing unit of the claimant, that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

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Attachment 1

(3) Notwithstanding the provisions of any other statute, a decision of an examiner or special examiner shall be final unless the claimant or the most recent employing unit of the claimant files an appeal from the decision as provided in subsection (c). The appeal must be filed within 16 calendar days after the mailing of notice to the last known addresses of the claimant and employing unit or, if notice is not by mail, within 16 calendar days after the delivery of the notice to the parties.

(c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the examiner or special examiner. The parties shall be duly notified of the referee's decision, together with the reasons for the decision. The decision shall be final, notwithstanding the provisions of any other statute, unless a further appeal to the board of review is filed within 16 calendar days after the mailing of the decision to the parties' last known addresses or, if notice is not by mail, within 16 calendar days after the delivery of the decision.

(d) *Referees.* The secretary shall appoint, in accordance with subsection (c) of K.S.A. 44-714, and amendments thereto, one or more referees to hear and decide disputed claims.

(e) *Time, computation and extension.* In computing the period of time for an employing unit response or for appeals under this section from the examiner's or the special examiner's determination or from the referee's decision, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(f) *Board of review.* (1) There is hereby created a board of review, hereinafter referred to as the board, consisting of three members. Except as provided by paragraph (2) of this subsection, each member of the board shall be appointed for a term of four years as provided in this subsection. Two members shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the board, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate. One member shall be representative of employees, one member shall be representative of employers, and one member shall be representative of the public in general. The appointment of the employee representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas A.F.L.-C.I.O. The appointment of the employer representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas chamber of commerce and industry. The appointment of the public representative member of the board, who, because of vocation, occupation or affiliation may be deemed not to be representative of either management or labor, shall be made by the members appointed by the governor as employee representative and employer representative. If the two members do not agree and fail to make the appointment of the public member within 30 days after the expiration of the public member's term of office, the governor shall appoint the representative of the public. Not more than two members of the board shall belong to the same political party.

(2) The terms of members who are serving on the board on the effective date of this act shall expire on March 15, of the year in which such member's term would have expired under the provisions of this section prior to

amendment by this act. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed.

(3) Each member of the board shall serve until a successor has been appointed and confirmed. Any vacancy in the membership of the board occurring prior to expiration of a term shall be filled by appointment for the unexpired term in the same manner as provided for original appointment of the member. Each member shall be appointed as representative of the same special interest group represented by the predecessor of the member.

(4) Each member of the board shall be entitled to receive as compensation for the member's services at the rate of \$15,000 per year, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

(5) The board shall organize annually by the election of a chairperson from among its members. The chairperson shall serve in that capacity for a term of one year and until a successor is elected. The board shall meet on the first Monday of each month or on the call of the chairperson or any two members of the board at the place designated. The secretary of labor shall appoint an executive secretary of the board and the executive secretary shall attend the meetings of the board.

(6) The board, on its own motion, may affirm, modify or set aside any decision of a referee on the basis of the evidence previously submitted in the case; may direct the taking of additional evidence; or may permit any of the parties to initiate further appeal before it. The board shall permit such further appeal by any of the parties interested in a decision of a referee which overrules or modifies the decision of an examiner. The board may remove to itself the proceedings on any claim pending before a referee. Any proceedings so removed to the board shall be heard in accordance with the requirements of subsection (c). The board shall promptly notify the interested parties of its findings and decision.

(7) Two members of the board shall constitute a quorum and no action of the board shall be valid unless it has the concurrence of at least two members. A vacancy on the board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(g) *Procedure.* The manner in which disputed claims are presented, the reports on claims required from the claimant and from employers and the conduct of hearings and appeals shall be in accordance with rules of procedure prescribed by the board for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings and decisions in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. In the performance of its official duties, the board shall have access to all of the records which pertain to the disputed claim and are in the custody of the secretary of labor and shall receive the assistance of the secretary upon request.

(h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary travel expenses at rates fixed by the board. Such fees and expenses shall be deemed a part of the expense of administering this act.

(i) *Court review.* Any action of the board is subject to review in accordance with the Kansas judicial review act. No bond shall be required for commencing an action for such review. In the absence of an action for such review, the action of the board shall become final 16 calendar days after the date of the mailing of the decision. In addition to those persons having standing pursuant to K.S.A. 77-611, and amendments thereto, the examiner shall have standing to obtain judicial review of an action of the board. The review proceeding, and the questions of law certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers compensation act.

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

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the board either personally or by means of a designated representative to present evidence and to state the position of the party. Hearings may be conducted in person, by telephone or other means of electronic communication. The hearing shall be conducted by telephone or other means of electronic communication if none of the parties requests an in-person hearing. If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone or other means of electronic communication. The notice of hearing shall include notice to the parties of their right to request an in-person hearing and instructions on how to make the request.

CREDIT(S)

Laws 1937, ch. 255, § 9; Laws 1941, ch. 264, § 6; Laws 1943, ch. 190, § 4; Laws 1959, ch. 223, § 4; Laws 1965, ch. 320, § 1; Laws 1970, ch. 191, § 5; Laws 1973, ch. 205, § 5; Laws 1976, ch. 226, § 4; Laws 1976, ch. 370, § 61; Laws 1979, ch. 161, § 2; Laws 1980, ch. 149, § 1; Laws 1982, ch. 347, § 18; Laws 1982, ch. 216, § 1; Laws 1982, ch. 312, § 2; Laws 1984, ch. 318, § 9; Laws 1986, ch. 191, § 3; Laws 1986, ch. 318, § 59; Laws 1987, ch. 191, § 4; Laws 1990, ch. 186, § 3; Laws 1993, ch. 251, § 5; Laws 1995, ch. 235, § 4; Laws 1995, ch. 241, § 5; Laws 1997, ch. 19, § 1; Laws 1999, ch. 167, § 2; Laws 2003, ch. 158, § 6; Laws 2004, ch. 105, § 3; Laws 2004, ch. 179, § 58; Laws 2010, ch. 17, § 75, eff. July 1, 2010.

Current through 2010 regular session

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