

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 Arrowhead Road | Topeka, Kansas | 66604-4024
785-273-3600 | 800-432-2471 | 785-273-7580 FAX
www.kasb.org

Testimony before the
House Committee on Commerce, Labor and Economic Development
on
HB 2027 – Teacher Contract Negotiations

by
Frank Henderson, President-Elect
Kansas Association of School Boards

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Mr. Chairman, Members of the Committee:

My name is Frank Henderson. I am currently serving as president-elect of the Kansas Association of School Boards, and have served on the KASB Legislative Committee and Board of Directors. Thank you for the opportunity to comment on **HB 2027**. KASB appears as a strong supporter of this bill, but will offer several amendments we believe are necessary to strengthen the bill and clarify the positions we support.

Earlier this session, KASB testified before this committee as a proponent of **HB 2085** because it contained a provision our members made a priority issue for the 2013 session. However, we also said we would not support the entire bill because of other issues it contained. The Chairman invited interested parties to develop proposals for new legislation. We appreciated that offer. With our legal staff and the Kansas School Superintendents Association, which expressed similar concerns on this issue, and with input from our members, we have worked to develop proposals to improve the current system and be more acceptable to all parties. We will offer several additional amendments today.

As we also told the committee earlier, our positions are based on the actions of our annual Delegate Assembly of local school board members. These actions include both permanent policy positions and annual resolutions. KASB's policies on teacher negotiations go back several decades. This year's resolution contains recommendations to make Kansas the top state in the nation for student achievement. Called "First in Education, the Kansas Way," it is the result of two years of study, community meetings, public opinion surveys and input from state and local officials across Kansas. The plan has three core principles: (1) raising standards for students, educators, schools and districts; (2) suitable finance for improving education; and (3) strengthening local school leadership.

We support **HB 2027** because we believe it will help school districts raise standards to improve teaching and learning, and because it strengthens local leadership.

House Commerce & Economic
Development Committee

Date: 3.6.13

Attachment #: 4

Under current law, school boards are required to negotiate with teachers over a lengthy list of mandatorily negotiable items. Once an item is agreed to, it remains in place and cannot be changed without agreement by both sides. While school boards ultimately may issue “unilateral” contracts, this is a time-consuming, expensive and divisive procedure, especially for relatively minor issues.

This process is a legislative choice, enacted through the political process. Based on our policy positions, KASB never voted to endorse or accept all aspects of this system, but school boards and administrators have worked to make it as effective as possible.

However, at a time when educational expectations continue to rise while state and local resources are increasingly constrained, school leaders are under growing pressure to make school operations more effective *and* more efficient; and to make these changes as quickly as possible. They need the flexibility to be more proactive in managing school districts.

In many districts, the negotiations process works very well and there is a high degree of satisfaction with the resulting agreement. In those districts, no changes would be required. But that is not always the case. We know this from meetings of educational stakeholders we have held throughout the state over the past two years; and from recent surveys of administrators.

To address these concerns based on policies our members have adopted, we support provisions of **HB 2027**, with additional amendments, as follows:

First, the bill maintains the requirement that boards negotiate with teachers in a district if a majority of teachers wish to form a bargaining association. It does not seek to eliminate collective bargaining. In addition, with amendments, it maintains a single bargaining unit to exclusively represent the teachers of the district.

Second, it significantly narrows the number of mandatorily negotiable items, or things boards and teachers “must” negotiate, to what KASB believes are the core issues of compensation and the total time that must be worked for that compensation.

Third, it makes most of the currently mandatorily negotiable items permissible, and makes those items void in current contracts. This allows boards to “start over” on these topics. If boards are satisfied current language, it can be immediately reinstated. However, this would give boards more authority to make changes in areas such as evaluation procedures, teaching periods during the school day, disciplinary and reduction in force procedures, and insurance benefits.

Like the Legislature, local school boards must balance many competing interests: teachers as well as other employees, students, parents and community concerns. The changes in this bill would allow boards and administrators to more quickly adopt policies and procedures addressing employee standards and allocation of resources. In these difficult circumstances, boards must make difficult choices; for example, between more compensation and benefits for existing employees or hiring additional staff to expand early childhood programs, lower class size, or add career technical education programs. Boards may also seek to strengthen teacher evaluation or disciplinary procedures to improve classroom instruction. Language in current agreements can block these changes or require “trade-offs.”

Nothing in the bill *requires* districts to make any changes in these areas, but it allows boards to take action if these locally elected officials believe such changes are in the best interest of the district.

Fourth, the bill would allow boards more authority to provide additional compensation outside of the negotiated agreement for teachers based on performance and high demand qualifications. The purpose is to help reward outstanding performance and attract individuals to fill shortage areas, both of which have a direct impact on student achievement. This authority would also be based on local decisions.

Finally, I also want to address some concerns about school board relations with teachers. Kansas School boards have a long history of supporting and working collaboratively with teachers. Some examples include:

First, in recent years, local school board members have taken the political risk of increasing local option budgets, including local property taxes, by hundreds of millions of dollars to provide salaries, benefits and maintain teaching positions. Many districts that are "capped" at the maximum LOB seek additional local funding authority.

Second, over the past 10 years, teachers have remained slightly over 50% of total district employees, and teacher aides and student and teacher support positions have increased as a percentage of the total, while administrators, maintenance, and other support positions have decreased. The percentage of current expenditures spent on instruction, which is mostly teacher salaries and benefits, has also increased.

Third, as noted above, districts already have the "ultimate authority" to issue unilateral contracts. For past 20 years, KASB records indicate this is rarely used more once or twice a year – and frequently not at all. Under the proposed new law, boards will continue to be fair and reasonable with their staff and will continue to be concerned for their welfare if for no other reason than the market will demand it.

Fourth, school boards are in competition with each other for teachers. Boards will continue to be under pressure to provide not only competitive salaries and benefits but total working conditions to attract and retain staff. Additional compensation for individual teachers will also promote competition.

Finally, this bill will continue to allow boards to collaborate with teachers on all current issues. Boards can and will seek input from teachers both within and outside of the collective bargaining process, because it will be necessary to achieve educational goals.

Thank you for your consideration. I am now going to ask KASB Director of Insurance Services, David Shriver to explain several changes we would like to propose on this legislation. We will stand for questions at the appropriate time.

The Professional Negotiations Act

The Professional Negotiations Act (PNA), K.S.A. 72-5413, et seq. governs the interaction between boards of education and professional employees (teachers) when negotiating terms and conditions of employment. The PNA applies only to "professional employees," which includes "any person employed by a board of education in a position which requires a license issued by the state board of education or employed by a board of education in a professional, educational or instructional capacity," but excludes administrative employees. The PNA is administered by the secretary of human resources, who is responsible for unit determination elections, impasse procedures and prohibited practice adjudications.

Permissible and Non-Negotiable Items

Permissibly Negotiable Items

Topics which do not fall within the statutory or case law definition of "terms and conditions of employment" may or may not be negotiated, depending upon the parties. The parties may mutually agree to negotiate a matter which is not mandatorily negotiable, but either party may refuse. Permissibly negotiable items include:

- academic and personal freedom;
- assignment and transfer of teachers;
- professional employee evaluation criteria;
- class size;
- grade card frequency;
- school library hours;
- special resource personnel;
- classroom management including funds for instructional materials, types of instructional materials, the establishment of an instructional materials center and training center;
- copyrighting teachers' works;
- facilities and equipment, materials and supplies;
- safety of personnel and students;
- substitute teachers (orientation, preparation, pay qualifications, coverage); and
- teacher aides.

Non-Negotiable Items

In addition to mandatorily negotiable and permissibly negotiable topics, some topics cannot be negotiated even if the parties mutually desire to address the issue. Occasionally, a party will notice for negotiations or submit a proposal on a matter which is controlled by state or federal law. Naturally, the parties are prohibited from usurping the law. Contractual provisions which conflict with the law will not be upheld. Topics which are controlled by law are typically referred to as "nonnegotiable topics."

Prohibited Practices

It is a prohibited practice for a board of education to:

- Interfere with, restrain or coerce professional employees in the exercise of rights granted in the PNA act;
- Dominate, interfere or assist in the formation, existence, or administration of any professional employees' organization (PEO);
- Discriminate in regard to hiring or any term or condition of employment to encourage or discourage membership in any PEO;
- Discharge or discriminate against any professional employee because such professional employee has filed any affidavit, petition or complaint or because such professional employee has formed, joined or chosen to be represented by any PEO;
- Refuse to negotiate in good faith with representatives of recognized PEOs;
- Deny the rights accompanying recognition of a PEO which are granted in K.S.A. 72-5415;
- Refuse to participate in good faith in mediation or fact-finding efforts or arbitration pursuant to an agreement to arbitrate disputes; or
- Institute or attempt to institute a lockout.

It is a prohibited practice for professional employees to:

- Interfere with, restrain or coerce professional employees in the exercise of rights granted under the PNA act;
- Interfere with, restrain or coerce a board of education with respect to rights or duties which are reserved to it under the PNA act, or with respect to selecting a representative for negotiating or for adjusting grievances;
- Refuse to negotiate in good faith with the board of education or its designated representatives;
- Refuse to participate in good faith in the mediation or fact-finding efforts or arbitration pursuant to an agreement to arbitrate disputes (if applicable); or
- Authorize, instigate, aid or engage in a strike or in picketing of any facility under the jurisdiction and control of the board of education.

Mandatory Topics of Bargaining

The PNA mandates negotiation of properly noticed topics which fall within the statutory definition of "terms and conditions of professional service." The following is a list of mandatorily negotiable topics:

- (1) Salary
- (2) Wages
- (3) Pay Under Supplemental Contract
- (4) Hours of Work
- (5) Amounts of Work
- (6) Vacation Allowance
- (7) Holiday Leave
- (8) Sick Leave
- (9) Extended Leave
- (10) Sabbatical Leave
- (11) Other Leave
- (12) Number of Holidays
- (13) Retirement
- (14) Insurance Benefits
- (15) Wearing Apparel
- (16) Pay for Overtime
- (17) Jury Duty
- (18) Grievance Procedure
- (19) Binding Arbitration of Grievances
- (20) Disciplinary Procedure
- (21) Resignation
- (22) Termination of Contract
- (23) Nonrenewal of Contracts
- (24) Reemployment of Professional Employees
- (25) Terms of the Individual Contract
- (26) Form of the Individual Contract
- (27) Probationary Period
- (28) Professional Employee Evaluation Procedures
- (29) Reduction in Force Procedures
- (30) Access to Teacher Files
- (31) Association Privileges
 - voluntary payroll deductions
 - use of school facilities for meetings
 - dissemination of negotiations information through direct contact
 - use of bulletin boards
 - use of school mail system and
 - leaves of absence for members of the unit to take part in union activities

Although these are the only association rights specifically listed in the statutes, other similar association rights are probably mandatorily negotiable.

Good faith bargaining requires parties to honestly consider proposals and explain why they are unacceptable.

Negotiations Timelines

Statutory Deadlines

There are two key statutory dates that apply to the negotiations process.

February 1	Written Notice. Either party seeking to negotiate new items or amend existing contract provisions must notify the other party in writing of these items. K.S.A. 72-5423. Deliver notice letter to association by this date. (NOTE: If February 1 falls on a weekend, deliver notice letter the preceding Friday.)
June 1	Statutory Impasse Date. The parties are at statutory impasse if they have not reached an agreement by June 1. K.S.A 72-5426(d). The secretary of human resources does not strictly adhere to this date. Parties may file a request for extension and continue negotiating or file a joint or single declaration of impasse.
All other time frames in which the negotiation process occurs are very flexible. The following will provide some general guidelines:	
On-going Basis	Share budget/financial information (perhaps monthly) with association.
October-December	Administrators review negotiated agreement to identify problem areas.
November-December	Board reviews negotiated agreement and discusses issues noted by the administration. Board selects negotiating team members. Board discusses negotiations priorities.
December-January	Finalize review of negotiated agreement. Set negotiation priorities and provide negotiation parameters for the negotiating team. Develop notice letter.
February	Review the association's notice letter and discuss it with the board. Board should set negotiation parameters for team regarding association items. Develop necessary data to support board positions and address association positions. Draft board proposals. Negotiate at mutually agreeable times and places. (NOTE: Actual negotiation sessions may start as early as March; however, it is not uncommon to start as late as May.)
May	Parties will receive letter from Kansas Department of Human Resources regarding June 1 Impasse date and whether the parties need additional time to negotiate. If negotiations are not completed on June 1, the parties may file a request for extension.

THEORY AND PRACTICE OF IMPASSE

How Do You Get To Impasse

If the parties have not reached agreement by June 1, they are statutorily at impasse. However, the secretary will grant additional time for negotiations at the request of the parties. Prior to June 1 there may be a hearing before the Secretary of Human Resources to determine if impasse exists.

The parties may also agree that impasse has occurred, and file a declaration of impasse with the Secretary. Declaration of impasse can be filed either jointly or separately. The parties may continue to voluntarily engage in negotiations after impasse is declared.

The Impasse Procedures

Once impasse is declared, the law provides two mechanisms to help the parties reach agreement: mediation and factfinding. Mediation and factfinding sessions can be closed to the public, sometimes making movement easier. These procedures also allow for recommendations from impartial individuals outside the negotiations process.

Mediation

At mediation, the parties continue to try to reach agreement on the issues with the help of an impartial third party, the mediator. Mediation is handled by professional mediators with the Federal Mediation and Conciliation Service, at no cost to the parties. Mediators schedule mediation at the parties' mutual convenience.

During mediation, the mediator usually meets with the parties jointly and separately to explore possible movement on the issues at impasse. The mediator's sole purpose is to help the parties reach agreement, not necessarily a good agreement.

If an agreement is reached in mediation, the parties should meet and go over in detail all agreements and all previous tentative agreements to avoid misunderstandings. The agreement should be reduced to writing. If no agreement is reached, then seven days after the first meeting with the mediator either party may, within the next 10 days, request the Secretary to appoint a factfinder.

Factfinding

The Secretary maintains a list of trained factfinders. In most cases the parties request a list of five factfinders and, upon receipt of the list, alternately strike names until only one remains. That individual serves as the factfinder. The parties share the cost of the factfinder.

Within three days after the request for factfinder, each party must prepare a written memorandum describing the issues on which they disagree and their final position(s) on the issue(s).

The factfinder schedules the factfinding hearing at the mutual convenience of the parties. At the hearing, the board team presents testimony and documents to show the reasonableness of the board's position the unreasonableness of the association's position on the issues at impasse.

From the evidence presented by both parties at the hearing, within 10 days of the hearing, the factfinder must provide a written report, containing findings of fact recommendations for resolution of the impasse to each party. Within 10 days thereafter, the parties must meet at least once in an effort to reach an agreement.

Unilateral Contracts

If agreement is not reached following factfinding, negotiations are concluded and the board may issue a unilateral contract. In this process the board must "take such action as it deems in the public interest including the interest of the teachers and make such action public." Unilateral contracts can include any issue and the board has the right to change items not previously noticed for negotiations. Upon issuance of a unilateral contract, teachers may resign (within 15 days after the unilateral contract is issued), accept the unilateral contract or elect to continue under the previous year's contract.