

BEFORE THE SENATE COMMITTEE ON COMMERCE
TESTIMONY ON HOUSE BILL #2023

Submitted by: Rebecca Proctor
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Mr. Chairman and members of the committee:

My name is Rebecca Proctor. I am a lifelong Kanas resident and, in the interest of full disclosure, am an attorney specializing in labor law and employee benefits law. However, I am not being paid by any client to speak to you today. I speak for myself as a very concerned citizen of this state. I come before you to discuss my concerns about HB 2023 and to urge you to vote against this bill.

As a citizen, I have been following all of the media coverage on this bill. I couldn't understand why, if employees will still have the ability to contribute to political action committees, that the Chamber of Commerce representative who testified before the House committee would be so sure this bill would "get rid of public employee unions." So, I did what most of us who are not directly involved in legislative process rarely do. I read the bill. I can honestly say that in reading the media coverage surrounding this bill, I have not seen any information regarding its full impacts. This bill amends two existing statutes, so to understand the impacts, you have to understand the statutes.

Background

The state of Kansas has two primary statutes that cover public employee bargaining: The Kansas Public Employee/Employer Relations Act (PEERA) and the Professional Negotiations Act (PNA).

PNA covers professional employees, defined as "any person employed by a board of education in a position which requires a certificate issued by the state board of education or employed by a board of education in a professional, educational, or instructional capacity."

PEERA potentially covers any other public employee who is not supervisory, elected/managerial, or confidential. I say "potentially" because only the state itself is automatically covered by PEERA. All other public entities in Kansas must opt-in to PEERA coverage. PEERA and PNA have unique definitions, procedures, and listings of prohibited practices. Prohibited practices are actions in which neither management nor labor may engage, and are not identical between the two laws.

Labor organizations, or unions, are also uniquely defined under each law. Under PEERA, an employee organization is defined as "any organization which

includes employees of a public agency and which has as one of its primary purposes representing such employees in dealings with that public agency over conditions of employment and grievances.”

Under PNA, a professional employee organization is defined as “any one or more organizations, agencies, committees, councils, or groups of any kind in which professional employees participate, and which exist for the purpose, in whole or in part, or engaging in professional negotiations with boards of education with respect to the terms and conditions of professional service.”

PEERA and PNA set the boundaries for the unions and employers under their coverage. Professional employee organizations are not covered by PEERA, and other employee organizations are not covered by PNA. These are two completely separate laws.

What 2023 Does

HB 2023 amends both bargaining laws.

The opening section of the bill, beginning in line 5, amends the PNA. This section does what all the media have reported it does: it takes away the right of a professional employees’ organization (essentially a teacher’s union) to use any funds deducted from a member paycheck for political activities. Subsection (b) starting on line 10 states members may make personal payments for political activities. This part of the bill is where all of the public comments and coverage has focused. I am not focusing my comments here, as I am very sure you will receive plenty of input on this part of the bill today.

I want to focus more on the other parts of the bill. Dropping down to New Sec. 2 on line 30: this section creates a legal penalty for violations of KSA 75-4333. KSA 75-4333 is NOT part of the PNA, but is instead part of PEERA. Up until this point, only the bill’s heading has referenced PEERA. None of the substantive changes prior to this point address PEERA.

KSA 75-4333 is the section of PEERA that sets forth prohibited practices, or the listing of things that neither the public employer nor the public employee organization (union) may do. This subsection of PEERA, in its current form, makes it a prohibited practice for a public employee organization to “endorse candidates, spend any of its income, directly or indirectly, for partisan or political purposes or to engage in any kind of activity advocating or opposing the election of candidates for any public office.”

So, under current law, public employee unions other than teachers unions are not allowed to advocate on behalf of or against any candidates. Essentially, these public employee unions are, under current law, limited to non-partisan issue advocacy.

In HB 2023, the main amendment to PEERA is found on page 3, beginning on line 22. Under the amendment, it becomes a prohibited practice

for a public employee organization to endorse candidates or spend any of its income, including any income in the form of or derived from any dues, fees, assessments, or any other periodic payments, directly or indirectly, to engage in political activities as defined in paragraph 2.

Paragraph 2 subsequently contains the following definition of political activity:

Political activities means any activity carried out for the purpose of influencing, in whole or part, any election for a state, local government or board of education office, including activities or causes of a partisan political or ideological nature engaged in by a public employee organization for such purpose, and including contributions to a political committee, continuing political employee committee, or both, for the purpose of aiding or promoting the endorsement, nomination, election, or defeat of any candidate for public office of the state or of a county, municipality or school district or the passage or defeat of any public question.

This is a lengthy definition, so let's break it down. Political activities, which under this bill unions may not spend any income on include:

- Activities carried out for the purpose of influencing any election for a
 - State
 - Local Government or
 - School board office
- This includes
 - Activities or causes
 - Of a partisan political nature OR
 - Of a ideological nature
 - Engaged in by a public employee organization for such purpose
AND
 - Includes contributions
 - To a political committee, continuing political employee committee
 - Or both
 - For the purpose of aiding or promoting the
 - Endorsement
 - Nomination
 - Election OR
 - Defeat
 - Of any candidate for public office of

- The state OR
 - A county OR
 - A Municipality OR
 - A school district OR
- The passage or defeat of any public question

Under this language, simply promoting union ideals or values could be considered “activity of a partisan or ideological nature” used for the purpose of influencing an election. Because, let’s face it, both parties do not have the same record on traditional union issues. Accordingly, a union paying for written or in-person communication to any potential voter could be prohibited political activity under this bill (as the bill does not indicate that said activity must occur within any particular timeframe leading up to an election). Additionally, issue advocacy, in which public employee unions are currently permitted to engage, would be completely forbidden.

Taken together, what do the changes mean or do?

First, while this bill in Section 1(b) creates a specific right for members of professional employee organizations to make personal payments for political purposes, it completely eliminates the right for ALL other public employee organizations to use ANY funds received as a periodic payment for political purposes, regardless of the source.

Essentially, the only funds public employee unions (other than teachers unions) could use for political purposes are one-time or irregular payments. Any monies or contributions received regularly (weekly, quarterly, monthly, even yearly) are periodic payments that may not be used politically. The bill’s prohibition is not limited to monies received payroll deduction, or monies received from union members. It applies to ALL income, no matter the source.

This is an EXTREMELY BROAD prohibition, as it would not only catch regular member contributions, but would also catch any periodic payments submitted to the public employee union by other supporting organizations (such as a national union).

Second, the broad definition of “political activities” with its wide-sweeping prohibition on activity of a ideological nature that could impact an election would prevent public employee unions not only from acting politically, but also from serving the membership.

For example, under the terms of this bill, public employee unions could not spend any income to communicate with employees about how bills like this one would impact employee rights. No mailings could be sent out informing members what important issues were being discussed at the next meeting of their city council or county commission. Unions could not spend money to provide

members with information about how their elected officials voted, or about the union's views on any pending issues. Police unions could not use any of their income to hold open forums to discuss concealed carry or to send representatives to you, the legislators, to discuss the same. Firefighter unions could not pay to send representatives to the legislature or any other public governing body to discuss safety concerns or working conditions. Voices of all of these public employee groups would be silenced, and they would lose their ability to communicate with their members, with the public, and with government officials.

Third, under PEERA's definition of "employee organization" this bill would reach far beyond what we normally view as a union. Remember, under PEERA, an employee organization is "any organization which includes employees of a public agency and which has as one of its primary purposes representing employees in dealings with that public agency over conditions of employment and grievances." So, this would include even groupings of employees who act together to bring concerns to their employer but are not part of a formal or traditional union. Those employees could not do something as small as pool their money for gas to send a representative to speak to the legislature or even to the city commission. Although this bill has primarily been covered as a "teacher bill" it goes far beyond that.

Conclusion

Once I read this bill, I understood why the Chamber of Commerce representative said this bill would get rid of public employee unions in Kansas. Under the new prohibited practice language and the new sweeping definition of political activity, public employee unions would be unable to engage in two of their most vital functions: communication and member advocacy.

Some of your colleagues in the House have publicly said that this bill is to prevent teachers from being "bullied" into contributing payroll deduction to political action committees. To those members, I say please carefully re-read the bill. This bill doesn't prevent bullying...it creates bullying by completely removing public employees' choice to participate politically through a union. I encourage all of you to fully read this bill and understand its impacts. I then urge you to join me in opposing HB 2023. Thank you.