

Collective bargaining in the public schools in Kansas will continue to grow.

Public school collective bargaining in Kansas: K-NEA perspective

by Bruce Cooper

Collective bargaining in the public education sector is a relatively new phenomenon. The first public sector statute, labeled a meet and confer law, was passed in Wisconsin in 1959. The first collectively negotiated teacher contract was consummated by the United Federation of Teachers in New York City in 1964. In the 14 years since, collective bargaining or professional negotiation has grown in both acceptance and sophistication. Thirty-eight states now have some sort of statute authorizing bargaining rights for public employees, including in most cases teachers.

Efforts to enact legislation authorizing collective bargaining between Kansas teachers and boards of education began in the late 1960s. Prior to the act's passage the only bargaining in Kansas took place in Wichita. Credit for the act's passage, in view of the writer, goes to teacher lobbyists, including K-NEA and NEA-Wichita.

After enactment the statute was labeled by some authorities as a meet and confer law. Parties were required to "meet and confer, consult and discuss in a good faith effort to reach agreement on terms and conditions of professional service," if either the board or teacher organization requested.

The act contained no impasse mechanism for use in the event the parties were unable to reach agreement. There were no prohibited practices, provisions to enable one party to seek redress if the other violates the spirit and intent or letter of the law. To add to its inadequacies, the law was administered by the Kansas State Board of Education, an agency that did not want the responsibility. No effort was made by the state board to promulgate rules and regulations for the administration of the negotiation law.

In spite of the statute's shortcomings, approximately 260 local teacher organizations located in unified school districts, community colleges and inter-local special education cooperatives applied for and were granted recognition by their governing boards. According to the best figures available, all but roughly 70 of the eligible local affiliates of Kansas-NEA are recognized as exclusive representatives of the professional employees' negotiating units in their respective employing districts.

It is difficult to assess accurately the progress made between the act's passage in 1970 and its amendment by the 1977 legislature. It does appear that progress in collective bargaining in Kansas is slower than history indicates for other states enacting teacher bargaining statutes prior to that of Kansas.

Some of the earliest states enacting bargaining laws covering teachers had many collectively bargained comprehensive contracts negotiated during the first two or three years. That did not happen to the same degree in Kansas. The number of comprehensive agreements between boards and teachers grew and is still growing but at a much slower rate than is desirable from Kansas-NEA's point of view. This slowness is caused in large measure by boards of education contesting every point placed on the negotiating table by teachers. Kansas boards observed what occurred in other states after passage of a negotiation statute and apparently determined that "things will be different here."

The same phenomenon can be observed in the private sector nationally. Management is taking an aggressive posture at the bargaining table and in the halls of Congress as witnessed by the difficult time labor is having getting several of its priority measures acted on favorably. It also appears that labor is having a tougher time at the bargaining table. Contract negotiations appear to be longer and any strikes that are occurring are protracted ones.

It will be helpful to this discussion to consider briefly the evolution of Kansas school districts, the state organizational plan and the historical employment relationships growing therefrom. In the 1920s Kansas was served by 9,000 plus school districts. After World War II Kansas still had more than 7,000 districts. One does not have to be the world's most astute manager or economist to envision the inefficiency and duplication of services.

Each school district had a governing board. In many instances board members outnumbered the teachers they employed. It is probably remembered by students, teachers, and boards as a very personal one-on-one situation. Many teachers and former pupils recall fondly their experiences in one-room schools. Along with those fond remembrances are moments of fear and trepidation. When it was "salary setting" time, teachers usually would meet individually with the board sitting as a whole. This situation regardless of whether it was intended to be intimidating did little to enhance salaries and working con-

ditions. Salaries were low, working conditions far from adequate. This aspect of the one-room school era worked to the teachers' detriment.

Today, after the unification of districts in the mid-1960s, the state is served by 307 unified school districts. That number is down from its original 311. Several original unified school districts disorganized or consolidated with other districts because of loss of enrollment. Inflation also contributed. Because of unification student population in most districts has grown, so has the teaching staff. We have gone from what many believed to be a close personal relationship to a very impersonal one. School districts have grown from the one-teacher school district to where the largest now numbers approximately 2,600. Many teachers are left with the feeling that they, as individuals, are unable to provide meaningful input to the decision-making process.

As a district's size increased, demands for different kinds of skills on the parts of school administrators and boards of education were required. Size brings with it problems of a different nature than those of smaller districts. Further, many demands are now being made on public education that were not foreseen even a year or two ago. Policy statements of boards of education are now much more complex and comprehensive than they were years ago. Boards are being required to change direction and provide new services almost on a monthly basis. Factor in inflation and consider that the average teacher salary in this state is approximately \$2,000 below the national average while the per capita income ranks Kansas 18th. It is easy to see why Kansas teachers are approaching the bargaining table in increasing numbers.

In advocating local autonomy Kansas boards see themselves as the last bastion against total takeover of government by public employees. The almost reactionary stance assumed by some boards is difficult to deal with because of its intensity. Many board ears are closed to the fact that teachers do not want to control the schools. Teachers seek more meaningful input into the determination of terms and conditions of their professional service. Teachers recognize the statutory authority of school boards. No one denies their importance and necessary function in the education community. Teachers see the autonomy question as a red herring. It frustrates, and in many cases, blocks meaningful negotiation. Far too many items teachers place on the negotiation table are objected to by board negotiating teams allegedly because they represent an unwarranted intrusion into the decision-making prerogatives of elected representatives. Kansas boards of education are far from autonomous. They are not in any sense of the word fiscally independent. One needs only to consider the school finance structure of the state. Budget growth is controlled by the Legislature. Almost half of the average unified school district budget comes from state collected taxes. The budgeting and accounting process is virtually established by state and federal agencies.

There are regulations and statutes covering non-fiscal responsibilities as well. An important example is student due process. The Kansas Supreme Court spoke directly to the issue of board autonomy several years ago in a case appealed to it by the board of education of Unified School District 498, Marion County. The court ruled that the State Board of Education has general supervisory responsibilities over all unified school districts in the state. This fact can hardly be considered a reaffirmation of local autonomy.

Finally, many boards have given away what is probably the last vestige of their local control when they contract with the Kansas Association of School Boards for development of comprehensive policy manuals. The policy manual is the basic decision-making tool of the district. It is relied upon for such questions as what to do in a fire drill, how to establish the agenda for a board meeting, and how to suspend students. In theory such policies should be formulated with great care and should include the best thinking of the community and the district's patrons. It is true that the board can accept, reject or modify the policy manual prepared by the school board association staff, but the basic preliminary document is developed by outsiders. The local input board's claim to desire is denied at the crucial stage of reducing it to writing.

The collective negotiation act for Kansas was amended by the 1977 Kansas legislature after several years of urging by K-NEA and its affiliates. The amendments made were much less than those sought by the association. In its bill K-NEA had proposed administration of the act be transferred to the Public Employee Relations Board; that detailed prohibited practices be incorporated; that the scope of negotiable items remains unchanged, and that an impasse procedure culminating in mediation-arbitration, sometimes referred to as med-arb, be incorporated into the statute. Lobbying for and against the bill was intense. Virtually all organized groups, including the school board association, school administrators and The Farm Bureau, lined up against it.

During the bill's deliberation much debate centered around the constitutionality issue. Boards advocating their local autonomy positions argued against med-arb, stated that it would remove the decision making authority from local units of government. Inclusion of the K-NEA impasse procedure seemed to hinge upon that question.

The scope of negotiation also was a hotly contested point. School boards wanted to limit the items while the association's objective was to keep it at least as broad as in the original enactment. The association negotiators for years heard from boards in response to their proposals "management prerogative," "non-negotiable" or "that is covered by statute."

The legislature saw fit to amend the law significantly. Administration of the act was removed from the state board of education and placed under the authority of the Secretary of Human Resources or his designee. The scope of negotiable items was defined through the inclusion of a list. As defined, authorities are not certain exactly whether the scope of negotiations is broadened or narrowed. It is K-NEA's position that the definition does in fact broaden the scope of talks, and there are avenues for appeal should a board of education refuse to discuss a matter teachers believe to be clearly negotiable. Included was a list of actions prohibited to both boards and teachers, an impasse procedure including mediation by the Federal Mediation and Conciliation Service, and fact-finding as the final step.

In the negotiations occurring during the years immediately following the act's passage in 1970, teacher organizations were berated by boards for wanting to talk only about money. Virtually all teacher teams were accused of being money hungry, not concerned with professional matters affecting their jobs and the children. "More money for less work" was a frequently heard response to any teacher proposals.

Teachers admit that economic matters are a top

priority and will continue to be so, but non-economic professional issues are commanding more and more attention at the bargaining table. The reaction from boards, while disappointing, has not been surprising. Screams of non-negotiability and local autonomy continue to be heard around the state. It appears that teachers "are damned if we do and damned if we don't."

It appears many boards are using mistakenly a response of non-negotiability to avoid discussing an issue K-NEA believes the statute makes negotiable. Teacher attorneys in district courts, while pressing prohibited practices charges indicate the merits of a proposal are not at question. The issue is whether the negotiation statute requires boards to discuss or bargain, attempt to reach agreement, or at least fully support a refusal to agree. Stated another way, there is nothing in the statute requiring boards to agree with teacher proposals. As the Kansas Supreme Court said in its Shawnee Mission decision, boards are required to discuss proposals and make good faith efforts to reach agreement.

Litigation both in impasse and prohibited practices has been spirited. District courts have heard the disputes and, with an exception or two, have ruled. Many decisions were appealed by either teacher organizations or boards of education. Twenty-seven district courts declared impasse. At this writing 12 disputes are still at one stage or another in the impasse process. Sixteen prohibited practice allegations were filed by one party or the other. A majority of the prohibited practices cases filed alleged a failure of a board of education to negotiate in good faith on a particular topic. Thirteen scope cases were filed. The remainder dealt with acts prohibited to either boards or teachers. The majority of the actions were filed by teachers. Approximately 52 issues were declared non-negotiable by one or more boards across the state. The

issues ranged from class size to contract preamble. Most of the district court rulings are on appeal to the Kansas Supreme Court.

During the 1977 legislative session, while the amendments were being considered, K-NEA worked aggressively to have administration of the act, including impasse determination and prohibited practice resolution, placed under the Public Employee Relations Board rather than the State Board of Education or the Secretary of Human Resources or the courts. The association was concerned with the possibility of delays because of protracted litigation and crowded court dockets. A lack of labor law experience on the part of the Kansas judiciary was a matter of no small concern to teachers. The courts have complied with the timelines established in the negotiation law. They have issued rulings which in most instances indicate a thorough knowledge of the amended statute, plus public and private labor law history nationally.

A paper of this relatively short length and yet which is trying to cover many important points tends to make some broad generalizations. In doing so one can wrongfully include many boards which do not properly belong within this generalization. K-NEA recognizes there are boards that do approach their obligations forthrightly and with a good faith intent to reach agreement as required by the act. They provide examples for other boards to emulate.

Collective bargaining in the public schools of Kansas will continue to grow. It may not be a steady upward path, but nevertheless the number and scope of teacher-board pacts will increase. It is not the K-NEA staff issuing a lone clarion call to "do battle at the bargaining table." Teachers are demanding a voice in those basic decisions affecting their jobs—decisions they certainly are qualified to share in.