March 26, 1977

The meeting of the Joint Select Committee on Employee Compensation was called to order at 3:15 p.m. in room 225 of the State Capitol Building by Senator Joe Roberts, Chairman. Roll call was taken and all members were present.

EXECUTIVE SESSION

Senate Bill 80:

Senator Roberts distributed the attached sheet containing two amendment proposals prepared by Dick Hargesheimer of the Legislative Council; there was a discussion on the first amendment to change page 2, section 1, line 11. Representative South felt that the new section should be numbered section 8, rather than section 10.

In response to a question from Senator Stephens as to the necessity of this amendment, Senator Roberts stated that there is some question by the non-classified university employees that they are going to be without any classification and pay plan without this amendment. It was a concern of the interim committee, Senator Roberts continued, that the state could not consider a classification system for the university employees. This says that the university could do it. He stated that he is not sure this amendment adds or detracts from the bill. Representative South responded that it is necessary because of the language stricken in subsection 7, pages 1 and 2. Senator Himsl asked if the others will be mandated; he thought the understanding was that they would set up a system that was comparable to the state plan. The board of regents, according to Rep. South, has said willingly that they will adopt a pay plan of their own.

The language was stricken and substituted to more accurately reflect the constitutional issue, Senator Roberts stated in response to another question; the university was excluded under the other wording.

MOTION: Senator Fasbender moved that the following amendment be made
Amend page 2, section 1, line 3.
Following: line 3
Insert: "(8) The university system shall continue the administration of the classification and compensation system for employees of the university system;"
Renumber: subsequent subsections

Discussion: Senator Himsl asked if the language on line 2, page 2, would be a conflict. Possibly, Senator Roberts responded, but that would be exempting them from the state system and then stating that the university will do their own.

ROLL CALL VOTE: The motion carried unanimously.

The second amendment considered, again on the proposals prepared by the Legislative Council's Office, is basically a mechanical change. Don Judge, Field Representative for AFSCME, AFL-CIO, said that as the

bill is now written, if any portion of any agreement exceeds the state law, that entire agreement could not be put into effect until it is approved. He suggested that if it was worded to indicate that "any portion of any agreement that exceeds state law", then they would still be able to pay the $10 of a $13 negotiated agreement; but the $3 of the agreement that is in excess of the authorized amount would have to receive legislative approval before it could become effective.

Senator Roberts indicated that he was not sure that was what they wanted to change. The question was raised, what is a "provision"? Senator Roberts said that if negotiations were made for $15 but state law says $10, that provision would be in excess of the state law and that could not be put into effect. He questioned if you could say that the $5 is the provision that could not go into effect. Senator Fasbender said that is the heart of the provision. Agreement with the amendment was voiced by Rep. Fabrega. Senator Roberts suggested that the language could be amended to say "any portion of any provision." It was also suggested that the word "part" could be used. Tom Schneider of the M.P.E.A. suggested the wording "That portion" as opposed to "Any portion;" but that could create a problem if there is more than one portion in that agreement.

MOTION: Senator Fasbender moved that the following amendment be made:
Amend page 9, section 5, lines 13 and 14.
Following: "faith."
Strike: "Any negotiated agreement that includes a provision"
Insert: "That part of a negotiated agreement"

ROLL CALL VOTE: The motion carried unanimously.

The open meeting provision was discussed next, this is on page 14, lines 8 through 19, section 9. Rep. South said that subsection 3 is in conflict with a bill now in the Senate which includes prenegotiation strategies. Senator Roberts indicated that he had discussed this with Rep. Meloy who feels that any negotiations within a school district and any board are open because it is a public body. Senator Himsl said that the whole question of collective bargaining revolves itself around the matter of good faith. The public is entitled to know what they are up against and what demands are made of them; and they can decide how honest and respectable the demands are. The negotiations should be made public, as should the results because the public should be able to know how the demands are acted upon. Senator Roberts said that right now without this act the initial demands and the responses are a matter of public record. Maybe they are technically, Senator Himsl said, but it is not happening that way in practice.

Mr. Schneider said that he has never had anybody sit in on the school board negotiations; Mr. Judge said that he had people attend them in Libby and Anaconda. The door is open but there is not much public participation. He said that when they do attend, they leave shortly thereafter. Their problem is not having the public know, but they often do not know enough because they do not fully participate. They would prefer to see the negotiating sessions closed, because it doesn't

do anybody any good. Senator Roberts pointed out that in H.B. 302 it says that the strategy session may be closed to the public and anything beyond the strategy session would be open (refer to page 2 of H.B. 302)

Page 3, beginning on line 12, notices of public agencies must give a 72-hour notice of meetings and Rep. Fabrega asked if this would apply to the negotiation session. He felt that the requirement of the 72-hour notice could be a problem for negotiating. Mr. Judge said that he did not think they are adhering to that now; but Senator Roberts indicated they don't have to now.

Section 9 could be deleted in its entirety and that whole issue could be left for H.B. 302, Senator Roberts suggested. He added that he has no problems with the sessions being open to the public; it probably won't be used that much anyway. Rep. Meloy will fight the closed meeting provision if this bill gets to the House floor, Rep. South felt.

Senator Himsl said that just as a practicable matter,when they get involved in a negotiation it seems it is done more effectively when it is done privately; the negotiations are done without being guarded when done privately. Rep. Fabrega indicated that he would agree with subsection 3 because it prevents a lot of "ifs." If the press hears that and doesn't find out what the whole thing is there could really be a bad situation.

The constitutional issue on this must be considered, Senator Roberts pointed out, and the issue of the public having a right to know. If a school board ever tried to close their negotiating sessions that could be bad. Senator Stephens also felt the right would not be used too much, but if it is taken out it would tend to encourage the press to try to get in and find something of news value.

Anotherpossible amendment suggested by Senator Roberts as presented to him by others would be simply to strike the word "not" on page 14, line 17. Senator Himsl asked if both parties do not mutually agree, what happens? The answer was that it would then be open. Senator Stephens said it would be open to the public unless both parties mutually agree to close the session.

MOTION: Rep. Driscoll moved that the following amendment be made:
Amend page 14, section 9, line 17.
Following: "are"
Strike: "not"

ROLL CALL VOTE: The motion carried with a vote of 7-2.

The fourth amendment considered was on page 2, line 22, to restore the stricken language "reasonable classifications and".

Rep. South asked what was accomplished by striking the language; when a person is classified they are put in a grade. Does it make any difference if you allow them to bargain for their grade, he asked. He felt it would be no different than to bargain for the things that would take a person up to a higher grade. Senator Himsl explained that the original intent was that the only thing negotiable would be the

classification. He felt it probably should be the classifications that should be negotiable and not the grade levels. If they both are, then everything is negotiable.

Rep. Driscoll indicated that he is concerned; in the last two years what has been seen is just a preliminary situation and now the settling. He would much rather see positions of grade level being negotiated.

Jim Murry, Executive Director of the AFL-CIO, who had suggested the reinstatement of those stricken words, said that both should be negotiable. Senator Roberts said that it would allow them to negotiate on pay. Rep. South discussed the the matrix and the pay plan, saying that there would be nothing to keep people from bargaining to a higher grade. Mr. Judge said that the proposed blue collar plan which has not received much publicity, they were not on a pay plan as it should be; if this language continues to be stricken from the bill he felt it would prohibit the development of that particular kind of plan. He added that with that portion stricken there would be no way to come up with a pay plan for teachers at the state institutions. Senator Himsl again stated that the original intent of the interim committee was that there should be a scientific determination by the Personnel Division that a certain job has a certain classification; but this is not the way it is being dealt with.

Rep. Fabrega stated that unless the matrix is changed it will automatically bring the grade up; they would negotiate a finance package that then gets them into the grade desired. Rep. South felt that would destroy the classification system. He felt the fringe benefits should be placed in the matrix; Rep. Fabrega felt it is not the classifications that are really being negotiated but the ingredients. Mr. Murry said that there is a basic problem with the pay plan which the legislature adopted two years ago; it was a very poor plan. He feels the classification plan was bad in the first place and this is not the way to handle the problem. The only thing they could do after the legislature accepted the plan was at the bargaining table; many had to go through the appeals process. The faulty classification plan, he said, is about to collapse the collective bargaining process and the appeals process.

Gene Fenderson of the Personnel Division said that the right to negotiate on the classification system as such or on the grade in step is what the coalition bargaining concept is all about because the coalition bargaining concept is where all people involved represent the same type of people and can go in and negotiate on all the classification systems. Management says: if we are going to have the right to negotiate on classification systems there must be coalition bargaining or some other means.

Rep. Driscoll asked him if he was meaning that if we have coalition bargaining we won't have to worry about the people who are essentially classified at the same level trying to break away from the counter part at the same level. Mr. Fenderson responded that it would still be there but not at the same level. The problem is trying to get these people that represent the same types of employees to negotiate together.

Senator Roberts pointed out that anything bargained for would have to be approved by the legislature; but Rep. South said that not the grade and steps, only the totals. The costs will be there whether the legislature sees it or not. The problem that developed, Rep. Fabrega said, was the ripple effect within the same type of work. That was eliminated by the coalition bargaining. Fenderson felt that there would still be a ripple effect between one class of workers and others, but it would at least bring them into one group. Mr. Fenderson said that the negotiations with the professional groups will have to be dealt with in the years to come. Rep. Fabrega asked if there will ever be a balance achieved or will this be a continuing problem. Mr. Fenderson responded that any classification system implementation is a difficult thing; but after a period of time they become quite stable.

In response to the suggestion of striking all of the subsection 3 as a remedy to his concerns, Rep. South said he does not see anything wrong with bargaining for what goes into a classification but he does when it is bargaining from one grade to a higher grade. If it is the pay portion of the grade that should be negotiated, that is what should be stated and not the grade level.

Mr. Judge said that striking of that language would be a problem for setting up the pay plan. He did not think any organization had negotiated any employees up in grade in step. Mr. Fenderson said that nobody has negotiated for the grade in step becasue management has said "no." Mr. Judge corrected his statement saying that one group that was going to negotiate for that decided that was not the right approach. Rep. Driscoll said that he would like to see the negotiations for ingredients for reasonable classifications. He suggested that it be worded "reasonable classifications <u>for</u> grade levels."

Senator Roberts explained that the interim committee did not want to have any further negotiations on classifications; but it has been pointed out that that result was not achieved here. There could still be negotiations on economic issues though.

MOTION: Rep. Driscoll moved to amend page 2, line 23, following: "and" insert: "reasonable classifications for"

Discussion: Senator Roberts said that his personal opinion is that while there is potential for abuse it has not occured and it probably won't occur. But it could become a real mess. It was pointed out that the language on the economic issues is on pages 8 and 9, subsection 3 and also page 12, section 7. Senator Himsl said that the intention was that the classification be done by the supervisors of the people involved; the grade on which a certain position fell could be negotiated as an economic issue. The classification should be determined by someone other than the person determining the grade. This amendment does what the interim committee had in mind; it is negotiating where the classification starts on this grade. Mr. Judge said that if they are just allowed to negotiate grades and they are allowed to structure that will still not be within the concept of the plan.

ROLL CALL VOTE: The motion carried with a vote of 7-1.

Mr. Judge on behalf of the AFL-CIO Public Employee Committee presented amendment on the attached sheet. These amendments "are intended to make coalition bargaining a voluntary process among the labor organizations involved."

Rep. Driscoll said he questions whether S.B. 80 really addresses the problems that it should. Amendment #8, to amend page 14, lines 1-4, would leave some flexibility. If they did not mutually agree, the only penalty would be they would not get the negotiations accomplished; they would have to come to something acceptable. We should bargain with the coalitions and how they come in would be the labor unions' business. Mr. Ernie Post, staff representative for the AFL-CIO, gave an example of the steel workers strike in 1967; after 9 months they settled except for the international union of the IBEW who settled 3 days later and accepted the same settlement with two other changes that effected only them. Here everybody would go back and ratify within their own union. Rep. Fabrega pointed out that they ratified after two changes made in classification. They were not bound like the state is, with the equal pay for equal work concept. Mr. Post said they did negotiate for budget evaluation. The two classifications were ones they had looked at in the IBEW contract; they did correct the inequity. The only monetary impact was just in bringing them up to where they should have been. They did not give any other changes at all. Mr. Post said that if the duties assigned to make up a classification would effe the grade or step there would be negotiations of where the position fits on the grade or step.

Mr. Judge explained that the unions have an international constitution to which they must adhere; there is no local control over the unions. They have local autonomy. Mr. Schneider said that if a person feels he is classified wrong that is an appeal. If they feel a job is classified wrong, that is a classification problem. In discussion the options for ratifiying and negotiating, Mr. Judge said that if the law says that they have to accept something and their constitution says no they don't, it could go to the courts for a decision.

Rep. Driscoll said that the two proposed amendments to section 8, subsections 4 and 5 would put more burden on to the management. He asked how that would be done so that they don't have to make the changes themselves. Mr. Judge said that voluntary rules would have to be set up. Rep. Driscoll said "rules of the coalition" would be the ground rules. Mr. Judge pointed out that their constitution has the protection of the Taft Hartley Act also.

MOTION: Rep. Driscoll moved that Amendment #8 on the proposal from Don Judge be adopted.

A substitute motion was made to cover the representation and ground rules; motion was withdrawn because that is implied in the bill.

ROLL CALL VOTE: The motion carried with a vote of 7-0.

The amendment listed as #9 on Don Judge's proposals was the next to be discussed. It was felt by Rep. Fabrega that they should be left to figure out; we are dealing with each individual unit rather than the coalition. If we were to use the same language as in the last amendment

the coalition has to decide. Mr. Judge indicated they were going to strike that entire subsection; but the courts will have to answer that question raised by it. The reason the language proposed was added was to keep the whole process out of the courts. It should be clarified in the law that the unions' constitutions do apply. They attempted to write a section of the law to agree with the mandates of their constitution to keep it out of the courts.

MOTION: Rep. Fabrega moved the amendment #9 on Don Judge's proposals.

Discussion: Senator Himsl said that the ratification dealw with the economic issues. Senator Roberts asked if there could be an agreement within the coalition to have an 80% vote or more than a majority to be required to ratify. The problem would be, Rep. Fabrega pointed out, if we mandate something that is in violation of their constitution, and we should try to keep this out of the courts. He said that since this is a two-year process, and we probably cannot find a perfect solution, we should see how this goes over the next two years. Mr. Schneider indicated that anything that has a fiscal impact will have to go through the legislature. He also pointed out that the constitutions say how they can ratify, and they cannot change that easily. Rep. South said that this would not make it easier for management in the executive branch of government and not easier for the legislature. If management is being unreasonable, the legislature still has the last say. In response to another question, Mr. Judge said that the labor unions are not by virtue of their constitutions not to cross picket lines. It is a moral commitment. The AFSCME union crossed the picket lines last year, but it is not mandated by their constitutions. The whole question of strikes is a pretty moot question, he felt, that will not be resolved in this bill. Mr. Murry indicated that 98% of all contracts are accepted. Mr. Post concluded by saying that everybody is saying we have to make it easier for management. If we believe in true collective bargaining, then there is no reason for Senate Bill 80. If take away the rights of ratification and the rights of voluntarily getting together, you are saying you will tell us what is best for us.

ROLL CALL VOTE: The motion carried by a vote of 8-0.

Referring to page 13, lines 12 through 21, Rep. Driscoll asked why those particular categories were selected. Senator Roberts said that the interim committee looked at other states that mandated units along those lines which brough in those categories in state government and (g) would allow for some flexibility. Mr. Judge said that (g) would have a limiting effect.

MOTION: Rep. Driscoll moved that amendments #5, 6, and 7 be adopted from the sheet of Don Judge's proposals.

ROLL CALL VOTE: The motion carried with a vote of 8-0.

Rep. Tropila asked why amendment #4 was included on Don Judge's list; Mr. Judge responded that all the amendments listed were intended to go along with making the coalition bargaining voluntary. It does not mean that they will be put in a category, it is voluntary.

MOTION: Rep. South moved this bill (S.B. 80) be given an AS AMENDED BE CONCURRED IN recommendation by this committee.

ROLL CALL VOTE: The motion carried with a vote of 7-1.

The meeting adjourned at 5:30 p.m.

Joe Roberts, Chairman

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