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Business and Labor Committee
February 04, 2008

[LB926 LB936 CONFIRMATION]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 4, 2008, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB936 and LB926 and gubernatorial appointments. Senators present: Abbie Cornett, Chairperson; Kent Rogert, Vice Chairperson; Steve Lathrop; Amanda McGill; Norman Wallman; and Tom White. Senators absent: Senator Chambers. []

SENATOR CORNETT: Good afternoon committee and staff. I'll briefly explain procedures that we will be following this afternoon. We are varying our procedures a little bit from normal today because of the number of testifiers. First, to my right is Senator Norm Wallman from Cortland; Senator Lathrop is introducing a bill in education and he will be joining us later and he is from Omaha; next is Senator Kent Rogert, Vice Chair of the committee and he is from Tekamah; to my immediate right is Lori Thomas, legal counsel; to my far...to my left is Andrew Zimmerman, committee clerk; then we have Senator Tom White, who is just entering the room, from Omaha; Senator Amanda McGill from Lincoln; and then Senator Chambers may or may not be joining us. I'm not sure at this time. Our page today is Kristen and she's from Ainsworth. I'm going to go over some of the rules of the house and like I said, we are varying the rules a little bit today. These proceedings are recorded and will be transcribed. If you have a cell phone, turn them off at this time or turn them to vibrate. The committee will first hear testimony in favor of the bill being considered or the confirmation, and then testimony in opposition. Then neutral testimony. If you're following other testifiers, please listen carefully to what the other testifiers have said and do not repeat yourself. Testifier sheets are available near the doors and on the testifier table for people who will be publicly testifying. Do not fill out this form if you are not testifying publicly. Please fill out the form completely before testifying so the transcribers have an accurate record. When you come up to testify, place the sheet in the box on the testifiers table. At the beginning of your testimony, please state your name and spell it for the record. If you plan to testify, please come up to the front row to allow for a smooth transition. Obviously, today we have this hearing room in an overflow hearing room. Don't worry about that. Again in order to save time, please make sure you have your testifier sheet filled out completely before coming up. If you are not testifying but would like to record your support in opposition or support to a bill, there's a separate sheet by the back, by the doors. Please sign in and make sure you're signing in on the nontestifiers sheet. If you have printed materials, please give them to the page so they can be distributed to the committee and entered into the record. This includes any written testimony you may have. The committee does need ten copies of any written testimony. The page can make copies for you. Today we will be limiting the testimony from everyone excluding the introducers or the people being confirmed to three minutes. So if you are in support or in opposition to a bill, you will be given three minutes. This gentleman, Andrew, will be keeping track of the time and will signal you when you have one minute left. When you have reached three minutes you will be done testifying. We do have a special

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

overflow hearing room today in Room 1023 on the first floor. If you do not plan to testify, please move to the overflow room to allow for those who wish to. Also, I will allow time for people from the other room to come up here in between bills. And if there is anyone in the overflow room that wishes to testify, they, after we start the hearings it might be a good idea for you to move up towards the doors here and I will have the page check outside the door before we close the hearing. Thank you very much, and we will begin the hearing. []

LORI THOMAS: (Exhibits 1-7) Good afternoon Chairperson Cornett and members of the Business and Labor Committee. For the record I am Lori Thomas, T-h-o-m-a-s, legal counsel of the committee. I'm here today to open on the confirmation hearing of the Governor's appointment to the Commission of Industrial Relations. The Governor has appointed Mr. Sam Jensen to the Commission. Under Nebraska Revised Statute 48-805 each commissioner shall hold office for a term of six years and until a successor has qualified. For your reference, I am handing out a copy of 48-805 as well as a copy of 48-804 which sets forth the qualifications to hold this office. Senator Cornett has also received four letters in support of Mr. Jensen's confirmation and has asked me to read them into the record. They are as follows...actually I think I just handed that away. Whoops, sorry. Here we are. There's four letters in support. They are as follows: A letter of support from Douglas Curry at 8130 Pine Lake Road, Lincoln, Nebraska; a letter from Mark Hunzeker of Baylor Evnen; a letter from William Harding of Harding & Shultz; and the final letter of support is from Mark Schorr from Erickson & Sederstrom law firm. I also have one letter in opposition to the appointment which is from the Nebraska Association of Public Employees, and that is all I have. [CONFIRMATION]

SENATOR CORNETT: Thank you, Lori. Mr. Jensen, could you please approach? Yes, please. Thank you. Please state your name and spell it for the record. [CONFIRMATION]

SAM JENSEN: (Exhibit 8) My name is Sam Jensen, J-e-n-s-e-n, Sam, and I'm sure I do have copies of a written statement. Do you wish me to proceed with my statement at this time? [CONFIRMATION]

SENATOR CORNETT: Yes, please. And when you're done with your statement, we will open up the hearing for questions from the senators. [CONFIRMATION]

SAM JENSEN: Yes. Senator Cornett and members of the committee. I very much appreciate the confidence that Governor Heineman has shown in nominating me to the position on the Nebraska Commission on Industrial Relations. The bulk of my legal practice over the years has been in the area of labor relations. With one or two exceptions, my practice has...in my practice I've represented management. In recent years, the majority of my practice has been involved in representing employers in matters of alleged discrimination because of race, sex, national origin, religion, age,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

etcetera. Also a sizable amount of my practice has dealt with matters involving the Federal Fair Labor Standards Act. Although it has not been a large part of my practice, I have on occasion represented public employers in matters where cases were pending before the Commission on Industrial Relations. The last time I had any involvement with a matter involving the commission was more than two years ago when I had a short phone call and provided some limited advice to the city of Scottsbluff in connection with a matter involving the fire department there. Several years ago I accepted a position with the Berens and Tate Law Firm in Omaha. This firm, while an employment law firm, does not represent any public employers in connection with collective bargaining or other matters which come within the jurisdiction of the Commission on Industrial Relations. I mention these things because it has come to my attention that some representatives of organized labor are opposed to my appointment and confirmation. I should say that I am very well aware of the requirements in the statute which prohibit any kind of representation by any commissioner of any particular sector. The qualifications for the position are to the effect that persons appointed should have knowledge of law, labor relations, and business. While I will not make any claim of any special expertise or accomplishments, nevertheless, I would tell you that my record does indicate experience in matters involved in labor relations, business and the law. Also, my past service on several public boards and commissions would indicate my experience with state and local government. While the commission is not a court, in many ways its decisions and procedures are similar to courts and members of the commission are required to serve in an impartial and unbiased manner. I will be able to do this. I also believe I'll have no difficulty in making decisions based upon the applicable facts, statutory law and the precedents established by the Supreme Court and the commission. I certainly would hope that the fact that I represented employers over the years would not prohibit me from serving on the commission. My representation was that of any lawyer. I provide legal assistance to my client. I would point out to you that a number of past judges, commissioners have come from backgrounds representing management or labor groups. I particularly call your attention to the fact that for many years Dean Kratz served on the commission and during the time of his service he represented management in the private sector negotiating labor contracts and providing advice to employers in the area of labor relations. In like manner, commissioners have served who have represented labor organizations prior to their appointment and I assume they continue to do some work for labor organizations after appointment. It's highly unlikely that if I am confirmed, I would face any conflict of interest which would require me to recuse myself. If my appointment is confirmed, I can assure you that any decision in which I would be involved would be made based upon the evidence and the law and based upon the record before the commission. I am confident that I would join in many decisions which would favor employees and labor organizations. I'll be happy to answer any questions that you have. [CONFIRMATION]

SENATOR CORNETT: Thank you, Mr. Jensen. Are there questions from the committee? Senator White. [CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

SENATOR WHITE: Mr. Jensen, I'm Tom White. We've known each other a long time.
[CONFIRMATION]

SAM JENSEN: Sure. [CONFIRMATION]

SENATOR WHITE: I've, in order to prepare for this, went through a lot of the cases you were involved in, the wonders of computers. And I have to tell you, after reading them all, I'm just absolutely impressed at the quality of your legal work. You've done wonderful work for people for many years. I also was impressed that overwhelmingly it was management you've represented, as you acknowledged so candidly and I appreciate that. I'm also very comfortable that you're an honorable man and have been an honest and able advocate for clients. But you do understand, under the law it is important that any court not only be fair in fact but it appear to be fair so that the public confidence in the institutions not be threatened, do you agree? [CONFIRMATION]

SAM JENSEN: I'm not certain I quite understand what you mean, Senator, by say appear. Obviously, I understand... [CONFIRMATION]

SENATOR WHITE: The appearance of impropriety, are you familiar with that term, sir? If not, that is a concern. [CONFIRMATION]

SAM JENSEN: You know, as I said, as I indicated, that this is a oh, somewhat similar to judicial appointment. [CONFIRMATION]

SENATOR WHITE: Very much. [CONFIRMATION]

SAM JENSEN: And the most important aspect of appearance, is the appearance of impartiality. [CONFIRMATION]

SENATOR WHITE: And that's a value that we have... [CONFIRMATION]

SAM JENSEN: Yes, and I would certainly recognize that in connection with my duties as a commissioner. [CONFIRMATION]

SENATOR WHITE: You may...and I'm sure you did not know this but I was once invited by Governor Nelson to take a spot on the Court of Industrial Relations and I declined because I am very closely identified with the other side of the issues you so often represented. You agree, do you not, that the most honest of judges may have to find facts in your case that would leave you to find against the employer, the employment, the employees or the unions that come before you, do you agree? [CONFIRMATION]

SAM JENSEN: I would assume that the facts that were presented to the commission

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

and to me as a commissioner, sorry about that, that would cause me to rule in favor of employers, employees and unions. [CONFIRMATION]

SENATOR WHITE: And when, if called on to be a commissioner you had to find against a labor union, do you accept that they might, no matter how honest you were in your own mind, not be able to accept that it was a fair playing field, that in fact you were impartial? Even if you were, just the appearance to half of the people who will appear in front of you regularly will be that because of your past you cannot be fair.
[CONFIRMATION]

SAM JENSEN: I would hope that whoever is involved with any decision I make would look at the facts and the evidence and the precedents and then after looking at that, they'd come to the conclusion that they received a fair hearing. I also would point out to you, Senator White, as you are well aware, that on this particular commission, decisions are not made singly. There are a few preliminary procedural things which do arise from time to time where an individual commissioner might make a procedural decision. But as far as substantive decisions are concerned, all those decisions are made by a panel of three commissioners. [CONFIRMATION]

SENATOR WHITE: Well, actually I've tried one major case in front of the Court of Industrial Relations. Oddly enough I was suing the union and it was tried entirely to a solo commissioner because others were unavailable and they were find or fact so in fact often you would be called on to act alone. [CONFIRMATION]

SAM JENSEN: As far as a evidentiary hearing is concerned but the panel that makes the decision, as you are well aware, requires concurrence of two other commissioners.
[CONFIRMATION]

SENATOR WHITE: Do you agree that it may appear to people who represent employees or who are employees that any time you ruled against them, that it was 30 years of representing management, very able, that caused that decision rather than the evidence and the law? [CONFIRMATION]

SAM JENSEN: I can't speak for others as how they would judge the decisions I would make or concur in as a member of the commission. I would hope they would not. All I can say is that I know that I always counsel my clients when they think that any particular judge was appointed by a federal bench or a state bench who might have had some activity in the past on behalf of the plaintiffs bar, as an example, that that person now is a judge, and they're making decisions based on evidence before them, and I would hope that that would be the case in any decisions I'd take part in.
[CONFIRMATION]

SENATOR WHITE: I would tell you, sir, candidly, that a great many of the people who

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

will come before you will not believe, even though you do act with integrity and fairness, that the decisions are in fact arising out of that fairness and integrity. The irony, I find, is you're an exceptional attorney and were you appointed to the Supreme Court for example, in which your docket would maybe have 1 percent labor matters, I would be...find no objection to your appointment. But where 100 percent of your docket is coming out in the very area where you have been identified as probably the leading attorney in the state for management, I fear that the public institutions that we are responsible for, the people trust them, will be corroded by the appearance of impropriety. And it's unfair to you and I want you to know that I declined, to personally declined, to serve on the Court of Industrial Relations because of that, because I am too identified where people perceive me to be too identified with employees.

[CONFIRMATION]

SAM JENSEN: Just for your information, Senator, some years ago I was approached about taking a position on the commission. At that time I spending a great deal of time representing labor organizations...I mean representing employers who were having active contests with labor organizations, some organizing drives and some negotiations and so I also declined because of the fact that my plate was too full. But as I point out in my opening statement, at the present time I am associated with the law firm 90...probably 90 percent of its practice is outside the state of Nebraska and we represent no employers, public employers at the present time. I said the last time I had any kind of contact for a brief matter of minutes was more than two years ago but I gave...briefly talked to someone in the city of Scottsbluff. [CONFIRMATION]

SENATOR WHITE: The firm that you're apparently with, Berens and Tate, in fact is noted throughout the country as being one of the leading management experts on breaking up unions or preventing unions from representing employees and advertises itself and it's handout is the same, correct? [CONFIRMATION]

SAM JENSEN: I would think that one of the things that the firm advertises itself is what is called union prevention. I would think that would be true. [CONFIRMATION]

SENATOR WHITE: Given that, and given a lifetime being devoted to one side, and the fact that this position only issues you ever come in contact with will always pit employees versus management, I'll be honest I fear for the integrity of the public's trust in the institution not because you won't be honest but because a significant portion of the public can never believe your decisions are fair and honest. And that is a terrible position for any man of integrity to be put in. [CONFIRMATION]

SAM JENSEN: Let me just say, Senator, I think I can handle it. Whatever position you're talking about, I think I can...I'd be able to... [CONFIRMATION]

SENATOR WHITE: You might be able to but I fear for the court, the Commission on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

Industrial Relations. It may not be able to. Thank you. [CONFIRMATION]

SAM JENSEN: I would hope it would work out. Thank you, senator. [CONFIRMATION]

SENATOR CORNETT: One moment, Senator Rogert. Mr. Jensen, would you like something warm to drink rather than ice water? [CONFIRMATION]

SAM JENSEN: This is just fine. I...you know, this throat thing all of a sudden dropped upon me. (Laugh) [CONFIRMATION]

SENATOR CORNETT: I was going to say, there's a pretty nasty ... [CONFIRMATION]

SAM JENSEN: And over lunch I had some hot soup and nothing like this. (Laughter) [CONFIRMATION]

SENATOR CORNETT: I was just going to say, there's a pretty nasty flu bug going around so if you do need anything, just let us know. Go ahead, Senator Rogert. [CONFIRMATION]

SENATOR ROBERT: Thank you. Mr. Jensen, I've got a couple, just questions for you, if you would please. Can you elaborate, you mentioned in your opening statement and I have it here in front of me, you've had some previous experience working with groups in front of the CIR, can you elaborate on them a little bit more for me? [CONFIRMATION]

SAM JENSEN: I have not had any actual litigation for probably, probably it must be at least five or six years, and that was...that involved the city of Scottsbluff. I just mentioned I had had a little contact from them and it involved a situation as to whether or not...I'm going to tell...I'm sure you know, Senator Rogert, things right now that are in the public. These are not things that are not known. [CONFIRMATION]

SENATOR ROBERT: Sure. Except I don't have that in front of me. [CONFIRMATION]

SAM JENSEN: Yes. Well, I just want to make sure I address that before I go any further. [CONFIRMATION]

SENATOR ROBERT: Sure. [CONFIRMATION]

SAM JENSEN: All right. Because the issue, it was a decision reached by the commission and the issue was, in which I participated, had to do with whether or not deputy chiefs of a department could be considered exempt or a part of the bargaining unit which contained regular officers. And the question was, does that mean you could have one deputy who is excluded from the bargaining unit or could you have three or four and that was the last issue I had before the commission and I would tell you that I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

was not successful in that case and the commission ruled that basically you could only have one deputy who'd be exempt. [CONFIRMATION]

SENATOR ROBERT: Okay. You also mentioned, you mentioned that there has been a number of past judges or commissioners that have come from backgrounds representing management. Can you help me out with a little bit of that, myself, can you name a few in the past that you know to be directly coming from labor or from management? [CONFIRMATION]

SAM JENSEN: Well, as I said, I mentioned...I think the best example I know of and I, right now I'm sure of it either, is Dean Kratz, who served several terms as presiding judge of the commission at the same time he continued a very active practice for management in the area of labor law and labor relations while he was on the commission. Now again his practice was for most, I think...for the most part at least limited to private employers and that's been my situation also. I have had relatively little work before the Commission of Industrial Relations but I have from time to time done so. And I should also tell you I am very familiar with the commission. Some years ago I was asked along with David Weinberg, who is a well-known union lawyer, to draft the section of the statute has to do with representation elections and that the present law that we have now, basically is the same law that David Weinberg and I drafted some years ago. So I am very familiar with the law and how it operates but my practice is not...I would say, I would be surprised if 5 percent of my practice, as much of that, has actually has had to do with the commission, I'll be very honest with you. But I do know the system very well and I understand how it works. [CONFIRMATION]

SENATOR ROBERT: Okay. Thank you. Thank you, Senator Cornett.
[CONFIRMATION]

SENATOR CORNETT: Senator Wallman. [CONFIRMATION]

SENATOR WALLMAN: Thank you Chairman Cornett. Mr. Jensen, did you actively seek this position? [CONFIRMATION]

SAM JENSEN: No, sir. [CONFIRMATION]

SENATOR WALLMAN: You was asked, you was asked? [CONFIRMATION]

SAM JENSEN: The Governor called me and asked me if I would serve.
[CONFIRMATION]

SENATOR WALLMAN: I have actually went to the Court of Industrial Relations with public employees, the school teachers, and we lost. But we mainly dealt with one judge.
[CONFIRMATION]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

SAM JENSEN: Yes, but we can only make decisions, that can initially be made in panels of three. But you're right, there a trial judge, there's a trial judge and the record is reviewed by the other two judges. So but you're absolutely right as far as when you go...and when you go to that kind of hearing, senator, it very much appears like any other kind of judicial hearing if you just walk in and observe it. [CONFIRMATION]

SENATOR WALLMAN: Well, my son-in-law is a trial attorney so...thank you.
[CONFIRMATION]

SENATOR CORNETT: Senator White. Senator McGill. Thank you, Mr. Jensen.
[CONFIRMATION]

SAM JENSEN: Thank you very much. [CONFIRMATION]

SENATOR CORNETT: If you need anything, just let us know. First proponent? I'm going to have...can you check in the hallway? I'm going to wait a few moments and this is the time that I will allow anyone from the overflow room that is a proponent to reach the hearing room. We'll wait about two minutes. We're going to wait about two minutes. If anyone would like to take a break for about two minutes, otherwise we'll start again at 2:00. All proponents first and then we go to opponents and then to neutral testimony. All right, we will reopen the hearing. [CONFIRMATION]

DAVID KRAMER: Senator Cornett, my name is David Kramer, K-r-a-m-e-r. I'm a partner with the Baird Holm Law Firm in Omaha, 1500 Woodmen Tower, Omaha, Nebraska, 68102, here to speak on behalf of Mr. Jensen, who I would note has been for at least as long as I've been practicing, a competitor but a colleague nonetheless. I wanted to share a couple of things as someone who has spent 15 of the last 18 years of my practice practicing in the labor and employment area. I want to share a little bit about the practice in general and one of the things in particular that I want to note, is that most of us who practice in this area, including a number of the folks here in the room here who practice opposite sides of where I practice, practice primarily only on one side or another. And the reason for that is because we find that practicing on both sides creates positional conflicts for us. And as a result of that, it makes it incredibly difficult to on one day represent employees and on another day represent employers and so most of us practice on the same side. With respect to Mr. Jensen's appointment, I think that it's ironic that some of the discussion has been about the fact that he has had so much experience in this area that it might be troublesome to some. And frankly, I am afraid of creating a standard whereby we wouldn't want anybody on the commission who has had experience in this area. I believe Mr. Jensen presents a great opportunity for us primarily because his firm does not practice and he does not practice in this area. And as a result of the 30 years of experience, that he would bring some great things to the table in the CIR. This is a specialized area of practice. There are very few of us in the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

state of Nebraska who practice before the CIR and I do not believe that the fact that people practice on one side or another should disqualify them for being a member of this body. Let me close with a brief story. I grew up in union household. My father for 33 years was a member of the IAM up in Omaha, worked for the Burlington Northern Railroad. For eight years of those he was union steward and to the day he died, I don't think he ever said a good thing about the railroad. When I went to law school, I chose to study labor and employment law in part and I specialize in labor and employment law at Georgetown in part because of the experiences I had growing up with my father. And when I became a management side labor attorney, every time I would come home, my father used to say to me, you know, excuse my language, it was his, so did you shit on the little guy again today. My father respected my practice and we argued a lot about a lot of different things. He never would have thought that because I practiced on one side or another that I would be disqualified or should be disqualified for a position like the one Sam is up for today. I've had the opportunity to work on the opposite side of Mr. Dowd, Mr. Fahey, Mr. McGuire, Mr. Norby and those are all folks who have zealously represented their clients before the Commission of Industrial Relations and in other matters. I believe they would be eminently qualified to serve on this body. I don't believe that the side that they've chosen to practice should disqualify them and I believe Sam Jensen is eminently qualified and I hope you'll find him to be that way. He will be a plus for the commission, he will be a plus for the state of Nebraska, and I don't believe when people read his opinions that they will decide or believe that he had decided the case before the case had been tried. Thank you. [CONFIRMATION]

SENATOR CORNETT: Thank you, Mr. Kramer. Next proponent. Are there any further proponents? Would you mind checking in the hallway one more time? Thank you. We will move on to opposition. May I please have the first opponent. [CONFIRMATION]

TOM DOWD: Madam Chairman, senators, members of the committee. My name is Tom Dowd. I'm a labor lawyer. I've represented labor for 45 years. I first met Sam Jensen... [CONFIRMATION]

SENATOR CORNETT: I'm sorry, just for the record, could you spell your last name? [CONFIRMATION]

TOM DOWD: D-o-w-d. [CONFIRMATION]

SENATOR CORNETT: Thank you very much. Sorry to interrupt. [CONFIRMATION]

TOM DOWD: I first met Sam Jensen when I was a prosecutor for the National Labor Relations Board back in 1964. He represented a company. I found Sam Jensen to be very aggressive, competent and skilled in representing his client and I've had cases with Sam Jensen ever since, the past 40-45 years. And I've tried to represent my clients with the same aggressiveness and skill and you have to in the labor relations setting

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

because the practice of labor law is a lot different than a personal injury lawyer. It doesn't take a quantum of change of philosophy or sympathies to represent a injured party one day and the next day represent the defendant that injured them. But labor law is different. Labor law involves basic philosophy and attitude and it's hard to represent a company one day that's getting rid of the employee that starting a union and the next day turn around and represent that same group of employees. It doesn't mentally work so I'm not here in any fashion opposing Sam on his competence. He indeed is a very competent attorney. But you know, if the Governor would've approached me to sit on the Commission of Industrial Relations, I'd have to honestly turn him down as Senator White did because of the impression of bias. How can a labor lawyer that's represented unions for 45 years be a finder of fact on a case involving employers and have the employers walk away with a good feeling if they've lost the case? It's natural. You cannot just wash out of your mind and your entire persona what you have become in those 40 some years in your practice of law. So that's why I'm here questioning his qualifications. Not in terms of ability but in terms to be a representative of the public and not be precluded because he's a representative of capital labor. Thank you.
[CONFIRMATION]

SENATOR CORNETT: Thank you, Mr. Dowd. [CONFIRMATION]

TOM DOWD: Any questions? [CONFIRMATION]

SENATOR CORNETT: Any questions from the committee? Seeing none.
[CONFIRMATION]

KEN MASS: (Exhibit 9) Good afternoon, Senator Cornett, members of the Business and Labor Committee. My name is Ken Mass, M-a-s-s, and I'm President of the Nebraska State AFL-CIO and I appear today in opposition to the appointment of Sam Jensen to the Commission of Industrial Relations. In the statutes, in Section 48-805 the qualifications, judges to serve on the CIR, they shall not be appointed because they're representatives of either capital or labor but they shall be appointed because of their experience and knowledge in legal, in financial, labor and industrial matters. It's pretty clarified what we mean by labor and as the previous speaker has stated, as President of the AFL-CIO and an officer of a local union or a steward, it's pretty...even if I wanted to serve on the CIR, I should be turned down because of my position of what the issue may come up on. But in the Webster's dictionary, as I printed out for you, is a definition of capital and I guess someone has to speak out to me what we mean by definition of capital as in disqualification. You see all the different areas there and again, someone's going to have to tell me, why somebody would be disqualified because of capital. Which one of those is going to disqualify him? But any way, it's very clear. Again, a representative of labor at any level would not be appointed but I'm sure Mr. Jensen representing employees, either doing, organizing efforts or where employers want a voice at the job, the workplace, or at the bargaining table or in court, individual

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

representatives employees representing collective bargaining agreements will testify on these situations where Sam Jensen represented the employer across the table from them today. In closing, a fair decision on a dispute before the CIR is what the labor organizations request and a fair decision from Mr. Jensen is hard to visualize. This concludes my testimony and I ask the Business and Labor Committee to not approve Sam Jensen to the CIR. Any questions? [CONFIRMATION]

SENATOR CORNETT: Any questions from the committee? Seeing none, thank you Mr. Mass. [CONFIRMATION]

KEN MASS: Thank you. [CONFIRMATION]

SENATOR CORNETT: Next opponent. [CONFIRMATION]

JIM SHEARD: (Exhibit 10) Good afternoon. I'm Jim Sheard. I'm principal officer... [CONFIRMATION]

SENATOR CORNETT: Mr. Sheard, could you please spell your last name? [CONFIRMATION]

JIM SHEARD: S-h-e-a-r-d, the principal officer of Teamsters Local 554 and President of Nebraska Change to Win. The handout I give you is really, is put's already...Kenny just read I believe as far as the statute and I just like to go through my notes here with you of a little history that the teamster has had with Sam Jensen. Back in 1995 we organized a group of employees with the American Red Cross or Midwest Region Blood Services. That began in the spring of '95. They held an election in July 1995 with 45 employees and we lost that election with less than five votes. We filed objections to the election and with the National Labor Relations Board we had charges and objections investigated by the board and they resulted in a new election. Under the advice of Mr. Jensen, the company would not agree to the National Labor Relations Board's order and a hearing was held in February 1996 with the administrative law judge. Bench decision was issued by the ALJ at the close of the hearing and upholding the charges and ordering a new election. We won the election and consequently certification after that had to be filed with the 8th Circuit Court to be enforced so the company's tactics just was delay and appeal and, but they finally exhausted all those and we negotiated a contract in May 1997. Another instance was Pink Grading. Mr. Jensen represented them in the summer of '93. This was a joint petition for representation with teamsters and operators. The employees won the election but there was no contract settlement reached and the company continued to replace employees with temporaries until there was no support. The Sam Jensen at Erickson and Sederstrom Law Firm wrote regular newsletters for employers concerning issues of labor law to protect their interest and as Senator White stated, he's good at what he does. There's no doubt about that but I don't believe that Sam Jensen should be appointed as commissioner any more than the

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Business and Labor Committee
February 04, 2008

attorney we use for our teamsters local and that's Mike Weinberg. But that...any questions? Thank you. [CONFIRMATION]

SENATOR CORNETT: Mr. Sheard, I believe there's a question or two from the committee. Senator Rogert. [CONFIRMATION.]

SENATOR ROBERT: Jim, Mr. Sheard, thanks for coming down today. The CIR is new to me for the past couple years as some of the members of the committee been around it for quite a while. You've been around it for quite a while. In your recollection, has there ever been a controversial appointment to the Commission of Industrial Relations in the past that's been challenged on either side such as this? Either way. [CONFIRMATION]

JIM SHEARD: Not that I am aware of. [CONFIRMATION]

SENATOR ROBERT: Okay. [CONFIRMATION]

JIM SHEARD: I've been...I've worked for the local for 19 years as a representative or officer and I don't know of any. [CONFIRMATION]

SENATOR ROBERT: Okay. Thank you. [CONFIRMATION]

SENATOR CORNETT: Senator White. Seeing no further questions, thank you. [CONFIRMATION]

JIM SHEARD: Thank you. [CONFIRMATION]

SENATOR CORNETT: Can I see the number of hands of...for people left to testify? Okay. This would be the time that anyone that is in the overflow room start moving towards the hearing room. Thank you. You may go ahead. [CONFIRMATION]

AARON HANSON: (Exhibit 11) My name is Aaron Hanson. I represent the Omaha Police Union, local 101, 13445... [CONFIRMATION]

SENATOR CORNETT: Aaron, I apologize. Can you spell your last name? [CONFIRMATION]

AARON HANSON: H-a-n-s-o-n, 13445 Cryer Avenue, in Omaha. Madam chairperson and honorable members of the Business and Labor Committee. On behalf of the nearly 800 sworn men and women of the Omaha Police Union, I ask that you oppose the appointment of Sam Jensen to the Commission of Industrial Relations. Above all, it is critical that a commissioner with the CIR have the ability to be fair and impartial to both labor and management. Sam Jensen has dedicated his legal career to the ardent advocacy of management and that's okay. Both labor and management need strong

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Transcriber's Office

Business and Labor Committee
February 04, 2008

advocates in order to further each sides goals but it is the same strong level of advocacy that should have no place on a panel of commissioners that are sworn to be fair, impartial and enforce the labor laws of the state. Although Sam Jensen is a skilled attorney and is entitled to advocate for the side of his choosing, the Legislature has a vested interest in insuring that the commission is comprised of impartial commissioners who have the ability to see either labor...side with either labor or management given the facts of any particular case. I believe Mr. Jensen's background would make such impartiality difficult. I would also like to mention there's been some discussion today about the fact that Mr. Jensen's firm has not represented any public employees in the state of Nebraska and I'd just like to mention for the record that just recently in July, his firm did issue a gratis report to the city of Omaha with regard to the compensation levels of Omaha police and firefighters which according to the report, did conclude that they were allegedly overpaid. So just to make sure that that's also on the record as well. I'd be happy to take any questions that you may have. [CONFIRMATION]

SENATOR CORNETT: Senator White. [CONFIRMATION]

SENATOR WHITE: That report's been used subsequently in negotiations to pressure labor in this case to accept deductions or lower raises and other matters correct? [CONFIRMATION]

AARON HANSON: I don't know the extent that that report has been used in negotiations at this point. It was used primarily, in my opinion, for PR purposes and for press related media driven purposes with regard to negotiations. [CONFIRMATION]

SENATOR WHITE: Thank you. [CONFIRMATION]

SENATOR CORNETT: Aaron, do you feel that labor could ever view any decisions from the CIR where if Sam was on, Mr. Jensen, was on the commission as being fair? Unless it was...unless he went out of his way to be one side towards labor. Do you feel that they would ever view him as impartial? [CONFIRMATION]

AARON HANSON: I have a great deal of respect for Mr. Jensen given his background and his experience and expertise but as a leader of the Omaha Police Union I can tell you, I, myself, would have concerns with regard to cases in which he were to oversee simply because of his histories in advocate for management. [CONFIRMATION]

SENATOR CORNETT: Thank you. Senator Rogert, did you have a question? [CONFIRMATION]

JOHN FRANCAVILLA: (Exhibit 12) Madam Chairperson, committee. My name is John Francavilla, F-r-a-n-c-a-v-i-l-l-a and I'm the President of the Nebraska Fraternal Order of Police representing over 2300 law enforcement officers. I have prepared for you a letter

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Transcriber's Office

Business and Labor Committee
February 04, 2008

today to keep my testimony very short. I'd like just to point out a couple of items in it. During my research of this, I went to the Berens & Tate web site on the internet and they said that they specialized primarily in labor relations. In their practice also, they worked with many public sector employees as a representative of management. Second item in my letter there, they spoke about Sam Jensen's appointment, which I'm here to speak against, and in the letter it stated that he was appointed by the Governor to serve the six year term and they also made mentioned from the firm itself, that his position was part-time and he will continue his association with Berens & Tate. I would ask that you do not move this motion any further and that the appointment would not be granted and I will stand for questions. [CONFIRMATION]

SENATOR CORNETT: Seeing none, thank you. Next opponent. Yes, sir.
[CONFIRMATION]

ROBERT PARKER: My name is Robert Parker. I work for... [CONFIRMATION]

SENATOR CORNETT: Mr. Parker, could you please spell your last name for the record? [CONFIRMATION]

ROBERT PARKER: P-a-r-k-e-r and I work for Local 271 of the Amalgamated Meatcutters and United Food and commercial work with Omaha for many years, from 1969 to 1994. During those years I learned a lot about Sam Jensen and had a lot of problems with Sam Jensen and getting to know him as time went on, I come to the conclusion that he was nothing but a union buster and he proved that as time went on that he...he met that respect. I agreed with...I can agree with what Tom Dowd said that he was aggressive but he was aggressive to defeat unions. That's the way we found him in organizing and negotiations, grievance matters. Any matters that we dealt with him on, we found him to be out to destroy the union and we drew the conclusion, his philosophy was to destroy unions, the worst of the worst of lawyers. Now I dealt with a lot of lawyers during these years. I never found any of them I couldn't deal with in some respect except him. He was impossible to deal with at the bargaining table, in organizing campaigns or anything to do with labor. He wanted, in my opinion, to destroy unions. And best example of that, in 1982 we represented Hinky Dinky Supermarkets, Omaha, Lincoln, Council Bluffs, Iowa, and he became counsel for that company after they were bought out by a holding company, Cullinan, Dallas, Texas, and he advised us that he was representing the company in the forthcoming negotiations where the contract was to expire May 2nd. He came to the bargaining table by himself as bargainer, never brought anyone from the company, and he brought a secretary with him to keep the notes. All the negotiations we had with him was nothing but to gut the contract. He gave proposals to cut wages two dollars an hour, do away with employee pension benefits, insurance, and all other matters in the labor agreement. He held on to those proposals until after we had a eight weeks strike and he could not win the strike so he brought management into the meetings and finally after several days of

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Transcriber's Office

Business and Labor Committee
February 04, 2008

negotiations, there was an agreement reached to renew the old contract, the old agreement. And everything seemed to be okay but conclusion though, before we...
[CONFIRMATION]

SENATOR CORNETT: One minute left, sir. [CONFIRMATION]

ROBERT PARKER: Pardon? [CONFIRMATION]

SENATOR CORNETT: One minute left, sir. [CONFIRMATION]

ROBERT PARKER: In the conclusion, he failed, he refused to bring back some of the strikers and keep the scabs on the job and that strike proved something to us and one more strike, the Omaha packing, Greater Omaha Packing Company, he became their lawyer and they retained him to do nothing but destroy the union and we were trying not to have a strike and while we were out of town they harassed the employees to walk out. He was their general counsel and he was their spokesman and in conclusion, there were other employers that hired him, Baker Supermarkets, they hired him and they got rid of him. Skinner Macaroni hired him, he came in the grievance meeting, folded up his briefcase when he was half done and said the meeting's over and left. That's the kind of the matters he handled and we, to the very lifetime I dealt with him in the 1990's we found him to be the most vicious anti-lawyer we knew. [CONFIRMATION]

SENATOR CORNETT: Thank you very much, Mr. Parker. [CONFIRMATION]

GREG RHOADES: (Exhibit 13) Good afternoon. My name is Greg Rhoades, R-h-o-a-d-e-s, and I represent the Plasters and Cement Masons, Local 538, Omaha, Nebraska. I'd like to thank the committee for allowing me the opportunity to talk. In the interest of time, because I've been known to wander, I'm just going to read from a prepared statement and then open it up to any questions. As I begin with there, I, you know, beg your indulgence because this tale may take a while to tell. A while back it was brought to my attention that attorney Sam Jensen was being considered for the position of judge on the Court of Industrial Relations. When I was first made aware of this I thought to myself, surely this can't be the attorney from the infamous anti-worker, anti-union law firm of Berens & Tate, can it? Surely this isn't the same Sam Jensen that when employed by a contractor for the purposes of collectively bargaining with the union craft, does everything within his power to strip every benefit that took years to establish and every dollar that has been fought for and crush it with the stroke of a pen and a silly grin, can it? Much to my regret, I now realize that it is. I have always been under the assumption that to be a judge you had to have unmatched credibility as being fair, to be able to listen to both parties involved and make an unbiased, unprejudiced decision based upon the facts. I thought to be a judge the individual had to be neutral in his or her beliefs. It is in my humble opinion that Mr. Jensen is anything but fair or neutral or unbiased when it comes to dealing with working men and women. It is also

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Transcriber's Office

Business and Labor Committee
February 04, 2008

my opinion that Mr. Jensen is heavily prejudiced in favor of the company or the contractor that he happens to be representing at a given time. Senators, I have had the displeasure on several occasions to attempt to collectively bargain in good faith with contractors that Mr. Jensen has represented. Please understand it is my belief that these same contractors retain Mr. Jensen not in the hope of reaching an agreement with labor but in breaking or eliminating the existing agreement between management and labor. In addition, while attempting to collectively bargain with a contractor that Mr. Jensen represented, I have known Mr. Jensen to be rude, abrasive, overbearing, angry, argumentative, uncooperative, with an affection for foul language. I realize that these may be admirable personality traits for a corporate lawyer at the law firm of Berens & Tate. However, I do not believe that these are the traits that anyone of us as citizens in this great state would want or expect from a judge to possess on any level. Now I realize there may be some of you that look at me today and say, this guy can't be that anti-worker, can't be that supportive and bias toward companies, corporations, CEO's, big businesses and so on, can he? In fairness to Mr. Jensen, all I ask is that you look at his record over his many years. Talk with any worker or employee or union representative or negotiating committee that has crossed paths with Mr. Jensen and get their thoughts. I know that you will be enlightened and astonished that such an individual would ever be considered for a position such as the one he is being considered for today. In closing, I would like to thank everyone for allowing me time to speak regarding this issue and we are in strong opposition to Mr. Jensen's appointment. [CONFIRMATION]

SENATOR CORNETT: Thank you, Mr. Rhoades. Any questions from the committee? [CONFIRMATION]

GREG RHOADES: Thank you. [CONFIRMATION]

SENATOR CORNETT: Further opponents? Would you mind checking in the hallway? Thank you. Is there anyone here in a neutral capacity? Okay. That closes the confirmation hearing on Sam Jensen. I'm going to take a five minute recess to allow the room to clear and for the people that are in the overflow room to make their way up here for the next bill that we will hear. [CONFIRMATION]

SENATOR CORNETT: Thank you, Senator Friend. Are you ready, finally. [LB936]

SENATOR FRIEND: I'm ready. [LB936]

SENATOR CORNETT: All right. Senator Friend is here today to introduce LB936 correct? [LB936]

SENATOR FRIEND: (Exhibit 14) That's correct. Chairperson Cornett and members of the Business and Labor Committee. My name is Mike Friend. Last name is spelled

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Transcriber's Office

Business and Labor Committee
February 04, 2008

F-r-i-e-n-d. I represent northwest Omaha, District 10 in the Nebraska Legislature. I am here to introduce LB936 so thank you for the time. LB936 permits a labor organization and employer to enter into an agreement requiring represented employees of the public sector, who are not paying membership dues to the labor organization, to pay a fair share representation contribution. The fair share representation contribution cannot exceed the amount regularly paid for labor organization membership. And failure of a represented employee to pay his or her fair share representation contribution gives the labor organization the right to bring an action in court for a payment with reasonable attorney's fees and court costs. It's been argued over the years that...and this is a little bit different form than some of the things that the Legislature has seen since I've been here over the last five years, that this for all intents and purposes would repeal Nebraska's constitutionally guaranteed right to work. It's my contention that it would not. That it would force any Nebraska public sector worker to join a union and prevent a worker from resigning from membership in that union, it's my contention that it would not do that either. Also a point could be made or we'll probably hear it, that a bill like this would allow Nebraska workers to...that refuse the job or were discharged from a job because the worker either belongs to a labor organization or does not belong to a labor organization or in other words it would be a situation where they would have to make that choice, it's my contention that it would not force them into that situation. I've been here five years and I can sit here just to sum this up. I can sit here and tell you that this is a clear-cut idea for me. It's all about fairness. That it's all about equity and dealing with members of a labor organization and nonmembers as fairly as we possibly can. But I've struggled with this myself over the years. What I know is, since the issue has been around for the amount of time that it has, and some of us, maybe even some of the folks in this room because you've dealt with it, sometimes we just wish it would go away. Well, I'm here to say I don't think it's going to go away and I think I would rather to be part, to use the cliché of a solution, as opposed to being part of the problem. Now, that being said, this discussion always ended, always ended the five years that I've been here and it's my understanding the years previous to that, it's always ended where people have made the assumption that there's just nothing that can be done. That life's just not fair. This is the situation that we're in with a right, as a right to work stay. I don't know that I believe that. I believe that creative minds can probably come together or come up with an approach that we haven't heard yet. You're going to hear over and over again as long as you're in this Legislature that this issue has been out there before, believe me, don't worry about it. To me that's an easy way out. This isn't perceived, this is real. It's a problem. If a company with a union shop has less than 100 percent participation, then they have a problem. And they have a problem because they'll inevitably be squeezed by nonunion employees. Look, I like union employees. I like nonunion employees. One way or the other, that's what they're dealing with. That a percentage of that group in a union shop is not paying those type of fees or paying those dues, and receiving those benefits, I think we all know where the argument goes from there. We all heard it last year. I've heard it for five years. Shouldn't we take a look at ways to dealing with this inequity? Is this bill the answer? It could be and I know

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Transcriber's Office

Business and Labor Committee
February 04, 2008

people don't like this when I say this but I don't know for sure. Based on the time that I've been here and dealt with this thing, I'm not positive. But I do know this, if we quit talking about it, and I think that there's a lot of folks that wouldn't like to be talking about it this year, as a matter of fact I know there are. But if we quit talking about it and we say nothing can be done, then I think we are, in my view, I think we are being intellectually lazy and I would leave it at that. I do have an amendment that I'm going to pass out to you because there was a little bit of confusion. The amendment says on page 2, lines 20 and 21, it says strike Section 48-218. Well, we don't want to do that. (laugh) Okay. So if you've read the bill you would know why. It would actually conflict and it would cause problems with one of the first statements I made that it doesn't actually fly in the face of the right to work in this state. So if I could have that passed around, I would appreciate it. If anybody's going to do anything with this bill, I think at the very least it's a discussion that Business and Labor Committee can grab ahold of, Chairperson Cornett, and deal with the subject matter again because like I said, I don't think it's going away. And there's one more quick thing. I alluded to this a little bit earlier. Some on the floor, you know, in a weird way when I dropped this bill on it, I took a little bit of heat for it by friends, colleagues, whatever you want to call them. How could you carry a bill like that? Well, I hope that what I've given you is enough explanation as to how I feel about it. I don't think this is black and white issue. I don't think its a slam dunk issue and I don't think just saying like I said, that it's unfair and there's nothing we can do about it, is really legitimate to me. With that, I'm sure I can ramble on longer, I will not. I'd be happy to take any questions. [LB936]

SENATOR CORNETT: Thank you, Senator Friend. Any questions from the committee? Senator Wallman. [LB936]

SENATOR WALLMAN: Thank you, Chairman Cornett. Thank you, Senator Friend for bringing this out. I was a former union member so I might be a little bias but do you think the main problem in this fair share is political contributions to one party or the other? Do you think that's the main holdup? [LB936]

SENATOR FRIEND: I think it's a concern. You remember when I, Senator Wallman, when I told you that some people would ask me about it or question me about it, I mean, I think that's part of the kickback. But see we deal with that subject matter at least once a day when we're out on the floor. Dealing with those type of problems or those type of issues. I come at it from a pretty unique perspective and this, I think, goes to your question a little bit. I've never been a member of a union. I've been management a few times (laugh) but never in a union shop. I think that I come at this from a little different angle because of the experience and the most experience that I've gained here through friends, relatives, folks like yourself, who have communicated that there's an issue. Can I be that effective a spokesperson? I'll let the folks behind me be that judge. A spokesperson for the idea that there's a problem and anybody that says there isn't, I don't think has been listening. I guess I'd leave it at that. [LB936]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

SENATOR WALLMAN: I hear you. You know, they represent you on some issues that it's impartial but I appreciate you bringing it forth. Thank you. [LB936]

SENATOR CORNETT: Seeing no further questions, thank you. Are you going to stay for closing? [LB936]

SENATOR FRIEND: You know, I think you'll be pretty tired. Why don't I go down to General Affairs and if anybody would actually need me back to grill me, I'd be happy to come back but I'll waive if you don't see me and you don't need me. [LB936]

SENATOR CORNETT: Okay. Thank you. [LB936]

SENATOR FRIEND: Thank you. [LB936]

SENATOR CORNETT: First proponent. [LB936]

KEN MASS: (Exhibit 15) Chairperson Cornett, members of Business and Labor Committee. My name is Ken Mass, president of Nebraska AFL-CIO and here today in support of LB936 and we thank Senator Friend for introducing it. As you are well aware, for many, many years, we have been tracking this bill I think, yeah, 20 plus years of tracking the bill and it's always had two distinct sectors of labor in it and this is public sector only. Dealing with the CIR takes the National Labor Relations Board out of it on the private sector and it's in the public sector only. Couple of things you've got a printout there, you can read at your leisure but nothing's really changed other than just stressing the point of what does this fair share legislation do. You pass a bill, Governor signs it, then it's up to, it's up to the employer and the unions to reach an agreement. An agreement has to be reached before it goes into effect for the people they represent. It would require a bargaining unit members who are not union members, part of the union, but who receives the benefits of the collective bargaining agreement that the union has negotiated for. They pay their fair share. They pay the cost of that fair share to the union in spending and enforcing the daily, the contract enforcement, contract enforcement. You talk about negotiating, you talk about contract, that's every one year, two year, three year, four year or whatever it may be but on a daily basis the union is in there representing all the employees, the bargaining unit on contract enforcement of them. And again it's been said, it does not affect the right to work. Nebraska will always be a right to work state. Hopefully, one of these days it changes but we always think Nebraska will change to a blue state too but I don't think that going to happen either. (laughter) But anyway you've got some numbers there and some figures with you. Although we're getting closer to a purple state (laughter) and that's all I have and have asked the committee to support of LB936 and turn it now to any questions, feel free to ask them. [LB936]

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Transcriber's Office

Business and Labor Committee
February 04, 2008

SENATOR CORNETT: Seeing none, thank you, Mr. Mass. [LB936]

KEN MASS: Thank you, senator. [LB936]

SENATOR CORNETT: Next proponent. [LB936]

AARON HANSON: (Exhibit 16) Aaron Hanson, H-a-n-s-o-n, representing the Omaha Police Union Local 101 in Omaha. Madam Chairperson, honorable members of the Business and Labor Committee. The Omaha Police Union which represents 800 sworn men and women of the Omaha Police Department is in support of LB936. LB936, the fair share bill, is an important component of promoting fairness within the arena of public safety and public sector collective bargaining. Bargaining and properly administering a collective bargaining agreement can be an arduous and, at times, expensive task. LB936 would ensure that employees who benefit from the hard work of their collective bargaining units would have the incentive to pay for their portion of the effort. I appreciate your consideration. I'd be happy to answer any questions you may have. [LB936]

SENATOR CORNETT: Aaron, how big of a problem is this now to the Police union cost wise, people that are not members of the union requesting union services and how many sworn employees do you have now and how many are not? [LB936]

AARON HANSON: I think roughly the number of actual sworn employees we have now is just below 800 and of that 800 we represent, we have membership of roughly 95 percent. I can give you a recent example of the difficulty that can arise. Recently we had to take a case to the Commission of Industrial Relations for a unilateral change in working conditions. The ultimate outcome of that case resulted in a monetary payment paid to all the affected employees. Four, I believe the number was four, of whom of the I believe it was 40 employees that were affected did receive monetary payment but had not submitted or paid any dues or any, in any way, shape or form into any bit of the case toward the CIR and obviously they are in our collective bargaining unit as well and we have to represent them. And in doing so, all we ask is that they pay their fair share and we understand that doesn't include political activity or other issues but just their fair share for upholding their rights. [LB936]

SENATOR CORNETT: What was the cost of going to the CIR for those 40 employees? [LB936]

AARON HANSON: If my recollection serves me correctly, I'd say it was anywhere from maybe \$10,000 to \$15,000. [LB936]

SENATOR CORNETT: Thank you very much. [LB936]

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Transcriber's Office

Business and Labor Committee
February 04, 2008

AARON HANSON: Thank you. [LB936]

JOHN FRANCAVILLA: (Exhibit 17) Madam Chairperson, members of the committee. John Francavilla, F-r-a-n-c-a-v-i-l-l-a, President, Nebraska Fraternal Order of Police. We're here to speak in favor of LB936. As a leader of a labor organization, membership is always our number one priority. We will represent anyone when it comes to contract language, protection of our guaranteed rights through our contract regardless of membership or not. However, it is those members that inherently have to pay for the cost to represent nonmembers and we are asking that they pay their fair share when it comes to the negotiations, the protection of contractual rights that we have to represent through the courts. In regards to those members that choose not to be in the labor organizations, this bill here at least gives them an out. They still have their rights not to join our organizations but we also have our rights protected to where they will pay their fair share of the representation that is used through those funds that come in. The monies that are paid are just that, to protect the contractual language as well as contract negotiations. No political entities receive any of the monies that come in from nonunion members paying their fair share as those monies are taken care of separately through PAC cards that they would have to sign off on. Therefore, the monies would stay strictly for those labor contractual protections or labor negotiations. With that said, we are in favor of LB936, and I will stand for questions. [LB936]

SENATOR CORNETT: Senator Wallman. [LB936]

SENATOR WALLMAN: Thank you, Chairman Cornett. Yeah, John, do you have any idea under union membership what a fair share would be for nonunion members? That's a hard question probably. [LB936]

JOHN FRANCAVILLA: That's a very difficult question. With the Nebraska FOP the dues that a member pays is different throughout the states based on the size of the FOP lodge in regards to their makeup. Therefore, you couldn't give an accurate case but if they were in contract negotiations on a yearly basis, there might be more monies if there were cases where their employer did not follow the language of the contract and they had to protest it in the CIR, then there would be more monies. If there was a smooth working relationship between labor and management, it might be very minimum. [LB936]

SENATOR WALLMAN: Thank you, John. Thank you, Chairman. [LB936]

SENATOR CORNETT: John, do you work...you work closely with the Omaha Police Union, correct? [LB936]

JOHN FRANCAVILLA: Yes, I'm an executive officer on the Omaha Police Union Board as well. [LB936]

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Transcriber's Office

Business and Labor Committee
February 04, 2008

SENATOR CORNETT: Yeah, I remember that, but do you know how much it would be for...I mean, Omaha is a fairly stable, it's not like the FOP throughout the state, how much it would be for the nonmembers? And again I know it based on whether you go to CIR but... [LB936]

JOHN FRANCAVILLA: That would be difficult like as Aaron Hanson had stated earlier, was about \$15,000 for the one case in which four members were not part of the union. Therefore, if we were divided amongst the entire body, so if you took the 800 into the \$15,000, that would give you an idea on just that one case that was taken to the courts. [LB936]

SENATOR CORNETT: Okay. Thank you. [LB936]

GEORGE FORST: Good afternoon, senators. My name is George Forst, F-o-r-s-t, and I'm the Vice President of Nebraska Public Employees, Local 251, American Federation of State, County and Municipal Employees. Our unit represents 14 units across the state of Nebraska. The cities of Omaha, South Sioux City, Fremont, Grand Island and North Platte, Douglas County Youth Center Corrections, Omaha Housing Authority and the counties of Sarpy, Dakota, Harlan, York, Pawnee, Otoe, and Nemaha. I'm not going to go over everything that's been said already but because of the breadth and width of our union, we have expenses that our union incurs to represent our members and those employees who are not members. But by statute, we have to represent those people also. This is a fair way of being able to charge back to those people who do not wish to join the union a fair share of the bill to police the contracts, to negotiate the contracts, to basically day-to-day represent those employees. That is all we are asking for. There was a question early on, on political action and political campaigns. Through our international bylaws and constitutions, there is a formula already in place that members are...any dues paying member can request those contributions returned. I would assume that that would also then fall into place for nonmembers who are charged a agency fee or a fair share. If there's any questions? [LB936]

SENATOR CORNETT: Seeing none, thank you. [LB936]

GEORGE FORST: Thank you. [LB936]

KORBY GILBERTSON: Good afternoon, Madam Chair, members of the committee. For the record, my name is Korby Gilbertson, that's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n and I'm appearing today as a registered lobbyist on behalf of the State Troopers Association of Nebraska. STAN has tracked and supported this legislation in many other forms throughout the years and we are currently in support of LB936 and in an effort to be brief, I will leave it at that and try to answer any questions if you have some. [LB936]

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Transcriber's Office

Business and Labor Committee
February 04, 2008

SENATOR CORNETT: Seeing no questions, thank you. [LB936]

KORBY GILBERTSON: Thank you. [LB936]

SENATOR CORNETT: Further proponents? [LB936]

CLARENCE KING: Hi. I'm Clarence King, K-i-n-g. I testify every year on this and I wasn't going to this year but that several questions came up on the expense so, I'm with the International Brotherhood of Electrical Workers and the Midwest organizing coordinator for the IBEW. I live in Omaha, Nebraska and came out of the Omaha Public Power District. The IBEW has 12 locals in the state of Nebraska, five locals represent exclusively public sector employees. Some of the bigger employers, OPPD and MUD, Lincoln Electric Service, City of Grand Island. Also a lot of smaller cities. We represent Fairbury, Falls City, Seward, Northeast Nebraska Public Power District, Gering. I'm sure I'm going to leave some out and (laugh) and rather than go on, I'll just say we have several smaller cities. When it comes to negotiations, it's interesting, and we follow a confirmation hearing on a CIR appointment. When it comes to the smaller cities sometimes our locals look to go to the CIR and the class is very prohibitive. In one situation, and I'll leave the name of the city out, but we went through negotiations, we went almost a year without a contract. We spent \$15,000, the locals spent \$15,000 on a comparability study that was CIR ready so that they could go forward with wage data for comparability. We spent \$8500 on legal fees. This was for a group of 31 employees. So it was \$23,500, that's not including in the wages and expenses for the local officers to take time off from work to attend meetings, to attend negotiation sessions, to travel to Lincoln from, it was about a two hour drive from where they were at, to go to these negotiation sessions, etcetera. If we weren't scheduled on the docket at the CIR when we reached an agreement, they got 4.5 percent increases for all the employees on a three year agreement. Just looking at the \$23,500 it cost...over 31 employees by 36 months it would cost around \$21 a month for the employees. The dues that the IBEW of that particular local charge is one hours pay plus \$12 each month for each employee. The reason it's broken down in that way, \$12 per month goes to the international as our per capita charge to pay stuff like me to come to these hearings and testify. The one hour pay goes to the local so assuming around a \$20 an hour paying job, which you know, these are city utility workers, a lot of them are around that, basically the local's upside down just to go to the CIR over this. I've talked to several of the senators on this issue, the cost of going to the CIR. We gained by having the other bargaining units supplement the smaller ones in years that they're not going and hope that in some years we can get through (laugh) the less controversial negotiations and not have to pay the expenses for the CIR. So again, I just wanted to clarify on the cost. If there's any questions I could answer or if you want some, any of sort of substantiating data, I'll come forward with that. I don't have it with me at this time. [LB936]

SENATOR CORNETT: Any questions from the committee? Seeing...oh, I'm sorry.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

[LB936]

CLARENCE KING: Thank you. [LB936]

SENATOR CORNETT: Next proponent. Are there any further proponents? [LB936]

STEVEN DAWES: Steven Dawes, D, like in David, a-w-e-s. To the Chairman and the distinguished committee members, I've been union for over 30 years in my life. Twice in my lifetime I've had to have a union go to court to win my job back as recently as last year. I was fired for federally protected activity. My union members came together, they spent about \$5,000 for me to win my job back for something that was a protected activity. Somewhere close to half of the people that are in my bargaining unit do not pay dues. I work side by side with them. They are in a higher wage. They have better benefits. Yet they can sit there and laugh and say, I don't have to pay dues because, whatever reason. If you want to talk about right to work law, that's fine. If they want not to participate in the union but we have to hire a staff, we travel statewide in a car, we have to have an office. I mean, expenses pile up. My union went into debt for me. Yet, I'm a union steward and when these people have a complaint that falls under the contract, I am legally obligated to represent them and I do that to the best of my ability because that's why I am a steward. I hope you will consider very...all these different factors that come into play. If you want to say it's fair that they not be in the union, then they should at least participate in their costs of them enjoying all the benefits of being in a union. Questions? [LB936]

SENATOR CORNETT: Seeing none, thank you. [LB936]

STEVEN DAWES: Thank you. [LB936]

SENATOR CORNETT: Are there any further proponents for the bill? Then we're going to move to opponents. Are there any opponents? [LB936]

MARK SCHORR: Madam Chair, members of the committee. My name is Mark Schorr. I am an attorney here in Nebraska. I've specialized in labor and employment law for in excess of 20 years. In the interest of efficiency I'm speaking here today testifying on behalf of four organizations rather than having four people come and share the same arguments. I'm here on behalf of the State Chamber of Commerce, the Lincoln Chamber of Commerce, the Omaha Chamber of Commerce and the National Federation of Independent Business. And while we understand that this bill that is under consideration today, LB936, would only apply to public employment, we do believe that it would erode and come into direct conflict with the Nebraska constitution in our Right to Work law and that it is in direct conflict with a very critical Nebraska state statute. And so we believe that these are important issues and that if this bill were to pass in the public sector, the next step would be to try, as has been in the past, to move it over into

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

the private sector. I want to make four fairly simple and direct points. We've heard a lot about the Nebraska Right to Work Law and I know you're familiar with Attorney General's Opinions, multiple Attorney General's Opinions dating back to 1993. This is a right to work state. It is imbedded and ingrained into our state constitution at Article 15, Section 13. It is also a very defined policy of this state that Nebraska is a right to work state. Regardless of what you have heard here today, this law comes into direct conflict and would constitute an erosion of Nebraska's Right to Work Law. Secondly, this law would also come into direct conflict with Nebraska Revised Statute, Section 48-837 which is our state counterpart to Section 7 of the National Labor Relations Act. This is a very important statute because just as it guarantees employees in Nebraska the right to form unions, to join unions and to support unions, it also carries with it the absolute right that it grants to Nebraska employees to refrain from joining or in any way participating in the union. This fair share fee would be, would constitute the state and local government's coercing employees to participate in the union by paying their hard earned wages over to the union, and that would come into direct conflict with Section 48-837 of the Nebraska Statutes. And as I said before, it would come into direct conflict with our public policy that this is a right to work state. So we believe this is not good policy. We think it's absolutely incorrect for state government or local governments or subdivisions to coerce employees in this fashion and to infringe on the rights granted to these employees under Nebraska law. Whatever you call it, it is a coerced payment. Finally, a couple more points. This law would infringe on employee free choice. A bedrock principle in labor and employment law is espoused in the statute I referenced, and in other laws is that the individual public employees in this state should be left to have freedom of choice and to decide whether their hard earned money should be paid over to the union. We also think it's wrong to put public employers, governmental subdivisions or the state of Nebraska in the middle of this relationship between employees and a bargaining unit and a union. There are other laws and provisions to govern unions relations with the employees in a bargaining unit and the state or a local government should not be placed in between these competing interests. With that I thank you for your time, and I'd open it up for any questions. [LB936]

SENATOR CORNETT: Senator Wallman, you had your hand up first. (Laughter) [LB936]

SENATOR WALLMAN: Thank you, Chairman Cornett. Yes, you pay chamber dues, right? You pay chamber dues? [LB936]

MARK SCHORR: Well, my law firm pays chamber dues, yes. [LB936]

SENATOR WALLMAN: Okay. Do you have a PAC too then? Do you have anything to say how you pay your money out of the PAC? For political action? [LB936]

MARK SCHORR: We don't contribute to the political action committee. [LB936]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

SENATOR WALLMAN: That's separate? [LB936]

MARK SCHORR: Yes. But members of the organization do have a say in how the PAC pays its dues. [LB936]

SENATOR WALLMAN: Okay, so if I make a deal with you, should I be paid \$2 less for nonunion? [LB936]

MARK SCHORR: Excuse me? [LB936]

SENATOR WALLMAN: If your union is backing my contract, so will you take the same pay I get? [LB936]

MARK SCHORR: Excuse me? I don't follow the question. [LB936]

SENATOR WALLMAN: Forget it. [LB936]

MARK SCHORR: If you have a union contract will... [LB936]

SENATOR WALLMAN: Forget it. [LB936]

SENATOR CORNETT: Explain to me something very quickly. When you said that you don't contribute to PAC's, is that what you were saying? [LB936]

MARK SCHORR: I don't believe that my business... [LB936]

SENATOR CORNETT: Then where does the state chamber...oh, then where does the state ... [LB936]

MARK SCHORR: They solicit PAC contributions but I don't believe we contribute to the PAC. [LB936]

SENATOR CORNETT: That would be something interesting to look into. [LB936]

MARK SCHORR: But I don't know what contributing to the state chamber PAC would have to do with this issue. [LB936]

SENATOR CORNETT: I was just curious. [LB936]

SENATOR WHITE: Counselor, I was interested in your theory that the statute prohibits this. Of course if we pass the statute, the second statute would control because it's the latter expression from the Legislature, correct? So there's not going to be a conflict

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

between statutes, will there be? [LB936]

MARK SCHORR: Well, I believe that to pass this law you'd have to repeal 48-837. [LB936]

SENATOR WHITE: Oh, I don't think so. We could pass it. There's no rule anywhere that says we have to do anything of the sort. We could pass a new statute. [LB936]

MARK SCHORR: I suppose you could. [LB936]

SENATOR WHITE: The other thing is, since you seem to think it's a nonfair imposition on employees to have to pay for the representation that a union would provide let's say in economic bargaining, do you think a statute that would say instead, that if an employee chooses not to pay fair share of that cost, they can, and indeed must forego any benefits that arise out of let's say an appeal to the Court of Industrial Relations. That way they really have a fair choice. They don't get to freeload and if they choose not to pay a fair share of the cost to go in to the CIR, why, they just don't get the raise or the better insurance or any other good things that might come out of it. You're okay with that, then? [LB936]

MARK SCHORR: Well, I think there's a problem in any public employment when you treat different employees differently. [LB936]

SENATOR WHITE: But that's what we're doing here though, aren't we? Some of them are paying and others aren't. [LB936]

MARK SCHORR: It doesn't have anything to do with the state or the political subdivision. This has to with the relationship between the employees and a union and whether Nebraska law guarantees them the right to refrain from participating in the union. [LB936]

SENATOR WHITE: Nobody is going to take that away from them. But how about if Nebraska law suddenly says, fine, don't participate in the union but if the union wins any benefits, you don't get to participate in them too. Because after all, good sound conservative principle is, you pay your own way, right? [LB936]

MARK SCHORR: Well, that's your argument. [LB936]

SENATOR WHITE: Do you accept it? [LB936]

MARK SCHORR: No, I do not because the law says that every employee in the bargaining unit is to be treated the same and that once the union is voted in by a majority, that union is the exclusive representative for everyone in the bargaining unit.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

[LB936]

SENATOR WHITE: We make the laws. We can change that law. That's the point.
[LB936]

MARK SCHORR: I understand. [LB936]

SENATOR WHITE: I'm asking you hypothetically. Don't you think it would be far more fair that somebody whose refrained from paying the cost of these things not get the benefit? Don't you think that's fair? Just fundamentally fair. We're not making them join the union. They can choose or not and if they don't choose, they don't get the sugar either. [LB936]

MARK SCHORR: I believe this fair share is tantamount to coercing them into participating in the union. [LB936]

SENATOR WHITE: That again wasn't my question but thank you for your cooperative attitude. [LB936]

SENATOR CORNETT: Senator Lathrop. [LB936]

SENATOR LATHROP: I do have a couple questions if I can. What's the chamber's interest in the relationship between the public employees union and their members?
[LB936]

MARK SCHORR: It has to do with Nebraska's Right to Work Law and Nebraska statutes that guarantee employees an equal right to refrain from participating in the union. Plus we know from last year, if this bill passes, the next step will try...will be to try to carry that over to private employment. [LB936]

SENATOR LATHROP: So it's the thin end of the wedge argument. This would be the thin end of the wedge and so the chamber that doesn't represent the interest of the state, the state of Nebraska but rather some businesses that work or run their businesses here in Nebraska, their best argument is, well, if we let the public employees do this then the next thing they're going to want to do it in the private sector. That's the argument? [LB936]

MARK SCHORR: That's one argument and these businesses are taxpayers and we think it's bad policy for the state to coerce employees in this fashion. [LB936]

SENATOR LATHROP: I think that's all I got. [LB936]

SENATOR CORNETT: Senator Wallman. [LB936]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

SENATOR WALLMAN: Thank you, senator. I'm a chamber member and I don't take this position. Just say, I don't take this position. Yet you force that position on me, do you think that's right? Huh? [LB936]

MARK SCHORR: Well, this position has been developed through the labor relations counsel, the chamber and its board of directors. [LB936]

SENATOR WALLMAN: Well, this fair share has too. That's all I have. [LB936]

SENATOR CORNETT: Mr. Schorr, I guess that I'm a little confused on why you feel it's coercion. We're not asking them to participate in union activities. We're not asking them to join the union. We're not asking them to contribute to political PACs. We're asking them to pay for a benefit that they are receiving that other people have paid to negotiate for. How do you see that as coercion? [LB936]

MARK SCHORR: I believe you're forcing those employees to pay their hard earned wages over to an organization they do not support. [LB936]

SENATOR CORNETT: But they are receiving a benefit from that, am I correct? They're not being held in a detrimental position for anything that is being benefited for. [LB936]

MARK SCHORR: I would have to look at the contract and analyze what benefit they're receiving. They are obviously a state employee or a government employee. They're getting wages and benefits but we have a firm principle in Nebraska law that employees, just as they have the right to form unions and to join unions, they have an equally strong right to refrain from being involved. And we believe this fair share is tantamount to forcing them to make payments to the union. [LB936]

SENATOR CORNETT: Well, I am just going to state now what my opinion is having been a former union member. Having paid dues for people that received benefits for what they're not paying for is not fair and whatever way you view it, I view it opposite. Thank you very much. Senator White. [LB936]

SENATOR WHITE: Again, I don't follow the logic then I understand you're standing on principle right not to join the union. What could you possibly object to then if they say we're not in the union and therefore we will not accept any benefits the union, money and labor and sweat obtains. We're standing apart. [LB936]

MARK SCHORR: I believe you might have to amend the CIR law if you're going to start carving out which employees are entitled to the contract and which ones aren't. [LB936]

SENATOR WHITE: Would you support that though since it really does exhibit complete

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

independence? You don't want to be part of the union, fair enough but you won't get any benefits and you won't pay anything for it. Would you support that personally? [LB936]

MARK SCHORR: I don't believe you could force the employer to treat two employees differently. [LB936]

SENATOR WHITE: Thank you. [LB936]

SENATOR CORNETT: Seeing no further questions, thank you. [LB936]

MARK SCHORR: Thank you. [LB936]

SENATOR CORNETT: (Exhibits 18-21) Is there anyone else in opposition? Are there...is there anyone else in opposition? We'll move on to neutral testimony. Is anyone here in a neutral capacity? Okay. Before I close the hearing on LB936 I have two letters of opposition to the bill that need to be read in, one is from the Department of Administrative Services for the State of Nebraska and the other one is from the Nebraska Grocery Industry Association. We are going to have the page hand those out. And then I have two letters of support for LB936 that I...from the Nebraska Association of Public Employees from two separate members. I will also have these handed out. Thank you. That closes the hearing on LB936. We move to the next bill. [LB936]

SENATOR CORNETT: Senator Lathrop. I don't think we're going to wait for Senator White to return. I couldn't read if that, he was gone for the day or... [LB926]

SENATOR LATHROP: I'm ready if your ready. [LB926]

SENATOR CORNETT: Let's go. [LB926]

SENATOR LATHROP: Okay. I'm here...first of all. Steve Lathrop, State Senator from Legislative District 12 in Omaha. That's L-a-t-h-r-o-p. I'm here today to introduce LB926 which is a bill to prohibit mandatory overtime for certain employees of the state of Nebraska. Our most significant responsibilities as state elected officials is to the quality of care we provide our citizens whose 24-hour custody is with the state. Almost every 24-hour facility under the jurisdiction of the Department of Health and Human Services has been under critical review from the federal government and other health care licensing authorities. Contained within all the criticisms of the facilities is the very real staffing problems associated with not enough staff, not enough training, and not enough retention of existing workers. This is a chronic condition that's been the subject of legislative studies for years. This Legislature has good reason to be concerned about patient safety. LB926 seeks to halt the existing practice of declaring a perpetual staffing emergency that requires our state employees to work mandatory overtime, jeopardizing both the employee's health and the patient's safety. Testimony today from the front lines

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

is the latest in a series of public communications that demonstrates the seriousness of this issue. LB926 is about patient safety and quality care of the most vulnerable folks under the state's care. Mandatory overtime is making a very bad situation increasingly more dangerous. LB926 very simply prohibits requiring mandatory overtime and turns it into a voluntary proposition and further prohibits employers, the state, from changing the conditions or disciplining any employees who do not voluntarily assume overtime. We have today, and you will hear from several employees, state employees, who will talk about the effects that mandatory overtime have on their family lives, how mandatory overtime is affecting the state's ability to hire and retain quality people and how it ultimately affects patient's safety. LB926 would prohibit that practice and thereby, I believe, improve the employment conditions of important state employees and also improve patient care in our 24-hour facilities. Are there any questions? [LB926]

SENATOR ROBERT: Thank you, Senator Lathrop. Any questions from the committee? [LB926]

SENATOR WHITE: Senator Lathrop. In the cases of emergencies, are there exceptions? [LB926]

SENATOR LATHROP: There are exceptions for emergencies but...and they're detailed that snow emergencies, disease outbreaks, things like that that might be encountered in a 24-hour care facility setting but they don't include just chronic understaffing. [LB926]

SENATOR ROBERT: Any other questions for Senator Lathrop? Seeing none, thank you. We'll hear from the first proponent please. [LB926]

MIKE MARVIN: Senator Rogert, members of the committee. My name is Mike Marvin, M-i-k-e M-a-r-v-i-n. I'm the Executive Director of NAPE/AFSCME, the union representative of the state employees. I'm going to be very brief today because we have state employees who have come to talk to you. The one thing that I do want to caution is, I know that there's some numbers that have been sent out that show voluntary versus mandatory overtime. Those are not an accurate reflection of what is actually happening. Our staff has learned that if my child has something on Thursday night, I'd better volunteer on Wednesday night otherwise I'm not going to be able to go. So while it gives appearances of voluntary, it is not truly voluntary. You will hear from...I had scheduled three state employees to come in to speak to you to keep it relatively short but I look back here and a couple look like they have come in on their own to speak to you about this. So if you don't have any questions from me I will turn it over to the state employees and you can hear directly from the staff. [LB926]

SENATOR ROBERT: Thank you. Any questions for Mr. Marvin? Seeing none, thank you. [LB926]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

MIKE MARVIN: Thank you. [LB926]

SENATOR ROBERT: Next proponent, please come forward and we'll ask you to please be mindful and not be repetitive as we go through but thanks for coming. [LB926]

TERESA BERNT: Senators, thank you. My name is Teresa Bernt and I live in Lincoln, Nebraska. I'm a security specialist three at the Lincoln Regional Center in forensic mental health services. I've been... [LB926]

SENATOR ROBERT: You could please spell your name? [LB926]

TERESA BERNT: B-e-r-n-t, Teresa. I've been employed at the Regional Center for 25 years, 15 of those years have been in direct care, the other 10 were in the vocational department. I'm here on behalf of coworkers to discuss the chronic staffing problem and management practices at LRC. It's our hope that you can help us with what we see as a failure in providing quality care, work place and public safety. We desperately need more direct care staff at this facility versus continued use of mandatory overtime to address its chronic staffing problem. The facility continues to run with the least amount of a direct care staff. In contrast, administration reaction to changing certifications standards has been to increase their amount of middle management staff. We have plenty of managers to see that we do our job but we simply do not have resources and direct care staff to do our jobs. These patients that we have cannot be handled anywhere else in the state of Nebraska. They need to consider other standards for the forensic unit if they are going to keep us...I'm sorry, I get a little bit nervous here, if they need to consider other guidelines for that unit in particular if we are not going to be able to increase our staffing, I guess is my point. In dealing with the shortages, management practice has called emergencies. There have been three of them called in the last sixteen months. Two emergencies were defined as unforeseen, as in disasters, fire, etcetera. Chronic staffing problem that they know about is not a true emergency. It would be expected that there's going to be changes in patient acuity, in vacations, sick leave, these are not emergencies. Overtime is required only by the front line staff, the RNs, the psych techs and the security specialists. Just recently we had an emergency right before the holiday. The acuity in the unit had been high for several weeks due incidences that happened. People were on medical leave, pre-approved vacations, and staffing and management knew that this was going to be a shortage, it was not unforeseen. Management staff then wished everybody a Merry Christmas in a mass E-mail after they declared the emergency and the rest of them were off for probably the better part of the two-week holiday period. I believe their wishes were sincere. I'm not saying that they weren't. I just think that their timing and the judgment might have been poor. Many staff were very upset. They didn't get time to spend with their families. They were overly tired. There were 200 overtimes in December alone just in the unit that I work in and many staff were required to work five to six times in a rotation, excuse me. People that are overly worked cause a variety of problems, contributes to patient abuse

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

and neglect. Staff that are overly tired can get injuries more. Patients get injured. Sick leave, you're immune system is depressed. Staff are pulled from the regular units for coverage. Recreation and unit activities are cancelled. The administration continues to focus on the amount of sick leave that staff use rather than advocate for any type of permanent solutions to the problems. The people that do have legitimate sick leave use and overtime restrictions from their physicians are being disciplined and pressured because of the staffing issues in the facility. We need funds for hiring staff development and retention of direct care if we are to give quality care to our patients and provide work place and public safety to the citizens of Nebraska. It's our hope that this bill is seriously considered and passed. It would force the money to go to the jobs that are needed the most and permanently address this longstanding issue. Thank you. [LB926]

SENATOR CORNETT: When you said five or six times in one rotation, how long is rotation? [LB926]

TERESA BERNT: In a one-month period. [LB926]

SENATOR CORNETT: And then that constitutes overtime so they'd be five or six times on overtime in a one-month period? [LB926]

TERESA BERNT: Right. Typically twice a week what was happening. Two to three times a week for some people. And many, many people volunteered as was mentioned before but that was so they could stay ahead and not have to stay or because they actually wanted to volunteer and needed the money. [LB926]

SENATOR CORNETT: Now, just for clarification and maybe for some other people I've discussed this before but when you talking about declaring an emergency then it becomes mandatory overtime, am I correct? [LB926]

TERESA BERNT: There's mandatory overtime regardless of whether it's an emergency as we call it. [LB926]

SENATOR CORNETT: And then you also have just regular overtime that people can sign up for. [LB926]

TERESA BERNT: Right, if there's staffing shortages which is pretty regular. People that truly want the overtime have no problem getting it as a rule. [LB926]

SENATOR CORNETT: Now, at your facility, do you have any numbers on exactly how many hours of overtime are worked, broken down mandatory and voluntary per month? [LB926]

TERESA BERNT: I do not have them on me. I know that there's figures available, I am

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

sure. [LB926]

SENATOR CORNETT: Okay. Thank you very much. [LB926]

TERESA BERNT: Thank you. [LB926]

DOTTIE MEYERS: I am Dottie Meyers, M-e-y-e-r-s, and I'm a med-specialist at the Nebraska Veterans' Home in Grand Island. I've been there 17 years and... [LB926]

SENATOR LATHROP: Can you speak up just a little bit more and maybe into that mike so I can hear you better? Thanks. [LB926]

DOTTIE MEYERS: Yes, sorry. Sure. I've had the privilege of working there 17 years and from when I started, the changes have been drastic, very drastic. The first...it was like, if you could get on at the veterans, you know, for the state, you had it made at this level of education, you know, for the benefits and that but we have not kept up with our competition outside. You can get better wages outside. You can get without the mandatory holdovers. She shared a little bit from the administration side. I would like to give some examples. We have, seem to have a emergency running just...they don't declare it, it's just running. Because we have mandatory hold all the time. It has gotten some better because they have utilized agency which is a terrible expense which is almost more expense than what they could do... you know, if they would just fill the positions. But they have hired agency to come in which lowers our continuity of care because strangers are coming in and popping and taking care of people who, you know, they're not regularly, they're caregivers. We have very strong concerns for the safety of our members because of this mandatory holdover. Like she said, the safety of the members, med errors go up, I mean it's proven. Any time past, you know, your level of quality goes down the tireder you get. Anyway, as far as affecting our families, I'm sorry to say but the state of Nebraska, when you're employed there, is a hostile working environment for families. It is, it is, it's heart breaking to see. I work the night shift and I saw a young mother who was going to be held for the night shift from the p.m. shift and her daughter and her husband came in because they knew they wouldn't see her. They brought her some lunch and that daughter clung to her mother and said, mom, why don't you come home? She said, well, I can't honey, I have to stay. Well that two-year old did not know why her mom couldn't come home and I have seven-year old twins and I work the night shift for quite some time and they would say, are you going to be home in the morning, mom, to get us for school? I said, I can't promise, I cannot promise. There was no guarantee and they says, well, mom, just quit your job. You know, they have no concept of financial problems, (laughter) you know, and it is a very hardship on parents, young single mothers who have to, all out of the blue, get ten minute notice that they're going to be held over and they do not have childcare and they fear for their jobs. So it in many ways, you cannot say that there isn't a hostile working environment concerning families, mothers and fathers that have to be held over. There is also health

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

problems. There's several girls who are problems with diabetic and when anytime their routine shifts very much, it throws them out of kelter as far as their insulin and stuff. Several have had serious health problems because of being held over, being extra tired. I know of one girl, actually she was terminated. She had epilepsy and anytime she would have to be held over, she would get extra tired and so she was more prone for her convulsions and she went to a specialist here in Omaha and he gave her a restrictions. Well, they didn't honor them. They said, of course, you can't have permit restrictions and consequently she has been terminated because of that, you know, which I feel like was a disability she couldn't help. And because if she could not stay the mandatory overtimes, you know, she couldn't continue her job. There are many, many cases. There's a safety issue too. I live about 32 miles from where I work and when I work so many hours, 16 hours, probably I could be considered legally drunk (laugh) and they release me to drive home and I don't know how many times I've woke up and I've been on the other side of the road which not only endangers me but other people in the community. You know, there are so many, so many people that are affected by this. A lot of the people...one of the reasons we can't hire, is because of the mandatory....they know, the community knows we have mandatory holdovers and they says, I can't, I can't cope with that, you know. They're not going to come and work because of the mandatory holdovers. If that was not an issue, you know, they say well, maybe I would think about it but at this point it is a serious problem and to certain extent it gets corrected and then it just kind of cycles again. Thank you. Are there any questions? [LB926]

SENATOR CORNETT: I had a couple. What facility did you say you were with? [LB926]

DOTTIE MEYERS: Grand Island Veterans' Home. [LB926]

SENATOR CORNETT: Pardon me, Grand Island? [LB926]

DOTTIE MEYERS: Uh-huh. [LB926]

SENATOR CORNETT: How many hours, do you know the breakdown of hours at your facility? [LB926]

DOTTIE MEYERS: As far as mandatory versus...? [LB926]

SENATOR CORNETT: Mandatory overtime, voluntary overtime and total hours? [LB926]

DOTTIE MEYERS: Not at this point, no. I think the union did some survey on that and had those numbers. They probably could get them to you. [LB926]

SENATOR CORNETT: Okay. Before I ask of the other committee, Mike are you

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Transcriber's Office

Business and Labor Committee
February 04, 2008

planning on speaking, because I had... [LB926]

MIKE MARVIN: Senator Cornett, I spoke while you were out and I touched on that subject while you were out. [LB926]

SENATOR CORNETT: Okay. I have some questions that I'll ask you later then. [LB926]

MIKE MARVIN: Okay. [LB926]

SENATOR LATHROP: Can I ask just a few questions of you? Thanks for coming down today. I appreciate it. Can you give me a sense of how many hours you average? I mean, your regular would be 40 so what are you typically working in a week? [LB926]

DOTTIE MEYERS: Okay. At our crisis level there was often times I had 24 hours of extra overtime and more in a two week period. [LB926]

SENATOR LATHROP: Okay. When you're asked to work overtime, are you working an extra shift, are you working an extra hour or two or... [LB926]

DOTTIE MEYERS: It depends. Sometimes its four, sometimes it's a full shift. Depends on the need. [LB926]

SENATOR LATHROP: Okay. And do you have notice that it's coming? [LB926]

DOTTIE MEYERS: They...in just, in past practices it's been an hour. But like I said, there was often times I just had a call because I'm the president and a steward there. I get calls and they said, Dottie, I've been given ten minutes notice. I have no childcare. Well, their job was on the line because...and then they fear too that they'll get it for abuse and neglect because of, you know, leaving their job which we've done some checking on that. But it just...sometimes you get notice and sometimes you, its...and if its a no call, no show. I said, sometimes we will accept those because those they cannot. But sometimes it's just a mix-up. This nurse didn't tell this nurse and this...so then this person pays and her child pays. [LB926]

SENATOR LATHROP: Okay. When Mr. Marvin was testifying or when he presented, he talked about a survey that we received or a kind of a sheet that showed mandatory overtime versus voluntary overtime and I want to make sure I understood it so I'm going to ask you this. And that is, that hours that show up in the voluntary column those aren't necessarily people that want the overtime, they're just people that are choosing the day they get the overtime which puts it in the voluntary column. [LB926]

DOTTIE MEYERS: Right. Correct. Because if you know you're life...it's a way of controlling a little bit of your schedule. Otherwise it's low man, you know, per the union

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

standard. [LB926]

SENATOR LATHROP: And in fairness, there are some people that want the time, but... [LB926]

DOTTIE MEYERS: Yes, yes. [LB926]

SENATOR LATHROP: ...a good number of employees that don't. [LB926]

DOTTIE MEYERS: Oh, most of them, yeah. And some of them are older, older ladies who it is a real hardship on their health to have to work six, another, you know, another eight hours. [LB926]

SENATOR LATHROP: Thanks. That's all I have. [LB926]

MARK MARVIN: (Exhibit 22) Senator Cornett, the first testifier had handouts and forgot to leave, give them to... [LB926]

SENATOR CORNETT: Okay. Thank you. Further proponents? [LB926]

JUDI TERRILL: Good afternoon. I'm Judi Terrill, T-e-r-r-i-l-l and I'm a 27 year employee at the Grand Island Veterans' Home and I just want, I thank you so much for the bill. It feels like we've been out there so long without any help. I appreciate the emergency part of the bill. It...we've been told over and over again that lack of staffing is an emergency. One of the coworkers I work with, she was going to school to be a nurse and she had brought her class schedule in and this was the days she was to have class and she was to be excused from the overtime for that day and it was declared an emergency that morning and she had to stay and miss class. So it...the word is thrown around where you just never know. I have been on the receiving end and coworkers have been on the receiving end. I just worked with a girl on Saturday who came in Friday night at 6:30, at 6:00 and did not leave until 10:30 Saturday morning. She was mandatorily held 16 hours when she had to turn around and come back at 6:30 Saturday night and stay and then until she...her regular shift was at 12:00 but she was held another four hours mandatorily. She said her legs were really throbbing and she was really concerned to be held again then on Sunday morning. We have to have some kind of rules. Our union contract says that you will be held three times in in...which amounts to be a month. But that just seems to not hold any water. Another coworker was told Saturday morning that she was going to be mandatorily held. She said I have stayed my three times per union contract and I would like to see it in writing that your mandatorily holding me. They called a supervisor at home and she said, yes, you're mandatorily being held and we do not have to put anything in writing. So we really...the rules change daily as to, you know, how many times and again I don't mean to repeat myself but the voluntarily and the mandatory do not...you cannot, you cannot wait for it

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

to happen to you if you want a life. It, it...five minutes before the shift ends, you need to know how to get your children home from school or how to get them to school. You have to be able to have some control over your life, and thank you for letting me speak. [LB926]

SENATOR CORNETT: Senator Wallman. [LB926]

SENATOR WALLMAN: Chairman Cornett. Thank you. Thank you for coming. [LB926]

JUDI TERRILL: Thank you. [LB926]

SENATOR WALLMAN: I appreciate your problem. As a young buck I used to work 80 hours a week, 40 some hours overtime but that was my choice. And do you think, how can we get more employees into the healthcare field? [LB926]

JUDI TERRILL: I think, I really do believe a lot of girls have left the veterans home and gone to the hospitals and have gone to the smaller nursing homes that don't have the mandatory overtime. If we threw that out I really do think there would be a lot of people who would volunteer. I think it would get us through the crunch and people would come in with the idea knowing, okay, my shift starts at 6:00 and at 2:30 I'm going to be at the school to get my children. You cannot, if you're a single mother, you cannot leave that up to...I've seen girls being held nine and ten times. It has been that bad. It has been that bad. [LB926]

SENATOR WALLMAN: Yeah. I appreciate your coming. Thanks. [LB926]

JUDI TERRILL: Thank you. [LB926]

SENATOR CORNETT: Next proponent? How many further proponents do we have for the bill? [LB926]

MIKE MARVIN: Senator, I have one more scheduled to come but she must have gotten mandatory or tied up. (Laughter) [LB926]

TED BURI: Madam chair, ladies and gentlemen. Thank you for your time. My name is Ted Buri, B, as in Baker, u-r-i. I'm a contract administrator with NAPE/AFSCME. The primary focus of my daily duties revolves around employee grievances and appeals and related issues. My direct knowledge of the issues before you today arises from Lincoln Regional Center but I also have considerable contract, contact with employees at all the 24-hour facilities in the central and western part of the state. I don't have to tell you that it takes a very, very special type of person to work in the type of facilities that we're talking about here today with the developmentally disabled, the mentally impaired, our older veterans that need constant care. And people that work in these institutions are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

dedicated to the point where they routinely sacrifice their basic rights and their basic dignity in order to do whatever is required of them, to work, to provide for their clients, their patients, their members at the veterans home. And that's the biggest drawback that the union has in dealing with these issues because when you start talking about activities in objection to the positions, and the attitudes that you've heard about at these facilities or filing grievances, employees overwhelmingly don't want to do that for two reasons because they view concerted activities, grievances, even writing letters, as being contrary to the interest of their clients. And they're scared to death. They live in constant fear of suspensions, disciplines. Even though the constant flow of suspensions and disciplines is contrary to the interest of the clients, contrary to the interest of the facilities and the interest of the agencies, it's not a good business practice. I think what we need to do here, is to focus more on what we do as our business and it is our business...the business of the folks at this table. And you can't run a business if you don't have enough clerks to man the registers. You just can't do it, okay. So the question...Mr. Marvin talked about overtime and he's right about those numbers. I believe you've all seen those reports that were compiled by the agency. I have some question about the, you know, the absolute accuracy of the numbers but even if they're remotely close, they're horrendous. If you'll think about it, if you take an average wage including full benefit packages and divide it into that total gross overtime, there's enough money out there to fill every vacant position, and I exaggerate only a little bit. So the question is, if there's money to fill the positions, why aren't we filling them? Okay. Is the agency and are the facilities making a good faith effort? For the most part I think they are. I think the agency is sincere about filling those positions. The facilities are certainly...they're doing a better job than they were a year and two years ago in terms of advertising and aggressively pursuing applicants. The turnover's horrendous. The attitudes with which people are treated at the institutions and the vacancies themselves, and the mandatory overtime, it's creating a terrible picture of these facilities in the community. There was a time, not that long ago, when you went to Beatrice State Developmental Center or to a lesser extent, Lincoln, Norfolk, the Grand Island vets home, generation after generation of people in those communities worked at those facilities. It was the facility...it was the employer of choice. And that situation's gone and it's gone because of the very issues that you're dealing with here. Attitudinal issues. Let me give you an example. There was a man, not long ago, down at Beatrice State Developmental Center who was placed on restrictions by his physician for a number of overlapping serious illnesses. He was not allowed to work more than eight hours in a day. Okay. His response was, boss, I can't work more than eight hours in a day but I'll work every day off and the man, for the better part of a year or more, worked every day off, every holiday, to do his fair share because he couldn't work the mandatory. If it weren't for the intervention of our folks in Beatrice, a couple of kind folks in the administration, and some people in the upper level administration of the department, the man would have been fired. It's horrendous beyond belief. Now, what can you do to fix it? If the money's out there, okay, and they still can't fill these positions, and they can't, okay, even after their diligent efforts, then what you have to do you're never going to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

overcome that blemish, that perception out there of these institutions until you relieve the overtime, however you do it, okay. One of the things you may have to do is to provide some temporary incentives to people. Okay. The state will tell you, well, we can't do that because we have to bargain it. Nonsense. All you have to do is reopen the contract. The parties can open that contract in good faith and they can accommodate some of those needs. Okay. If they can't fill the positions in their best efforts, you got to do something. You got to try something different. Something unique and that's what's going to have to happen. It's not a matter of, it's not a matter of an agency sitting there that's uncaring. It's not that they sit there and plot to make people's lives worse. They're in the same dilemma with the rest of us. I've had occasion here recently to speak with two of the higher level administrators in the agency. They're good decent people. They have families, they have kids, they have relatives that are in institutions and they do care. But somehow we're all locked into this concept that says, and I heard it earlier, well, gee, there's nothing we can do. And that's simply not true. It's just a matter of people of good faith sitting down and finding a way to do it. One more word on overtime and I'll quit. The other thing that scares me about those overtime numbers. The agency now has responded to that and has said, well, we have to cut overtime and we have to cut it drastically. And that's true. It's another business decision. Okay. But the problem is, the results of those cuts. Okay. If...one of the things that you can do that ought not be done is people that need extra attention in the institutions. People who are routinely on one-on-one direct visual observation because they have extreme episodes of self-injury. Okay. You can't go around taking them off of, off of those one-to-one observations. It's not fair to the patients. It's not fair to the institution and those types of things are happening. We've discussed those very recently and you have to be very careful when you carry out those cost savings in order to help make up your overtime deficit. But again the bottom line is there's enough money out there to pretty much fix this problem. We just have to find a creative way to do it. Thank you. [LB926]

SENATOR CORNETT: Thank you. Thank you. Oh, I'm sorry, Senator Wallman. [LB926]

SENATOR WALLMAN: Thank you, Chairman Cornett. Now, we know, you know, money can't fix everything but this overtime problem, you know, some institutions have the...their administrators in the building may take over or something like this, do they ever put in overtime or just the frontline workers? [LB926]

TED BURI: Good question. I think you heard from Miss Meyers a moment ago speaking in regard to her experience at the Grand Island vet's home. I will tell you and for what it's worth, that her perception holds true pretty much at the other institutions. Some of the institutions, for example, Beatrice State Developmental Center for some reason or reasons, the working relationship there is better. There's a more of a give and take. It's not as big an issue there but at other institutions, for example, I don't want to name a particular administrator. I don't think that's fair. But oh, about six months ago an emergency was declared at one of the institutions west of Lincoln and when you looked

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

around, the chief operating officer of that institution was off on vacation after declaring the emergency. Declared the emergency and took off on vacation. Emergencies...the statutes, the statutes say that the Governor has the ability to declare an emergency. We know that the Governor has the authority to delegate the authorities and declare an emergency to an agency head. In most of the institutions you have nurses, five levels down in the administration of this department, declaring emergencies. That's not right. That's not appropriate. It's contrary to the law. Part of it, part of it is insuring that the chief executives of those, of each of those institutions work with their staff, administrative and rank and file staff to make sure there's some sense to what they're doing and that sense doesn't exist now. It really doesn't. I would...one last thing and it relates to your question. I would like to complement, if my information is correct, the folks at the Grand Island vets home. It's my understanding...I was talking to some folks Saturday that there is an effort under way for the staff and the management to sit down and try to make some sense of this question of emergencies and to determine exactly those kind of questions. If we have a real emergency and they don't, by definition, but if you have a problematic situation where you don't have enough warm bodies to care for the clients and you declare whatever you want to call it, emergency or blackeyed peas or whatever you want to call it, that there be some requirement that the administrative staff, the administrative nursing staff, have a participation in that process. If you have an emergency, there shouldn't be any vacations. And I'll get lynched when I get back to my seat. But it's true, if it's an emergency, treat it like an emergency. It's only an emergency for some of the folks. [LB926]

SENATOR CORNETT: Thank you very much. [LB926]

TED BURI: Thank you. [LB926]

SENATOR CORNETT: Next proponent. [LB926]

MIKE MARVIN: Senator Cornett, may I have permission to take a seat again. [LB926]

SENATOR CORNETT: You may, sir. I actually had a couple of questions for you so long as you're back... [LB926]

MIKE MARVIN: Okay. Again, my name is Mike Marvin, M-a-r-v-i-n, Executive Director of NAPE/AFSCME. I wanted to clarify one thing in Ted Buri's testimony here. We recognize that there is a problem in a lot of these places hiring people and we put in the last collective bargaining agreement, language in that contract that allowed the agencies to do hiring bonuses, merit raises, whatever it took to bring new people in and hold on to the people we had in those agencies. So they don't have to come to us to ask for permission to do it. They have it in the contract. [LB926]

SENATOR CORNETT: That was my question because you and I...I had reviewed the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

contract and it was my understanding that we could currently be giving merit bonuses and hiring bonuses to people rather than paying overtime which pretty well would equate to hiring enough people to fill the positions. [LB926]

MIKE MARVIN: Correct. [LB926]

SENATOR CORNETT: That, that's what my question was going to be so... [LB926]

SENATOR WHITE: Are we doing that? [LB926]

MIKE MARVIN: No. [LB926]

SENATOR CORNETT: No, No. [LB926]

SENATOR WHITE: Thank you. [LB926]

MIKE MARVIN: Thank you very much. [LB926]

SENATOR CORNETT: Thank you. [LB926]

MIKE MARVIN: I think that's all that I have lined up to speak. [LB926]

SENATOR CORNETT: Then we'll move to opponents. [LB926]

BOB HOUSTON: (Exhibit 23) Good afternoon, members of the Business and Labor Committee. My name is Bob Houston, H-o-u-s-t-o-n. I'm Director of the Nebraska Department of Correctional Services. I appear before you today to respectfully oppose the provisions of LB926. The provisions of LB926 would prohibit employees in 24-hour care facilities from being mandated to work overtime. The provisions would pose an extreme challenge for our agency to maintain adequate staffing levels that are critical for the good order, safety and security of our institutions. Our prisons require an adequate staffing level at all times to maintain security and safety for the inmates and the staff at the facility, for any contractor or visitor to the facility, and ultimately the community. Staff illnesses, vacations and other absences such as necessary training, often alter the ability to maintain a full complement of staff and dictate our use of overtime. Historically, and currently, our agency has used overtime, both voluntary and mandatory, to maintain these appropriate staffing levels. The agency has carefully identified a minimum number of positions on each shift at each facility to allow the Department of Corrections to operate safely. This minimum staffing requires DCS the ability to continue to provide the programming and rehabilitation opportunities we are obligated to provide for those in our custody and care. The union contract specifically, Appendix M, addresses and allows for the use of such overtime. Our agency is aware that overtime can be a significant burden on our staff. Although staff is compensated for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

working these hours, we realize the imposition of overtime places on our staff and their families. The majority of our facilities use mandatory overtime only on an occasional basis. However, this is not the case for the Tecumseh State Correctional Institution. Due to staffing shortfalls that have persisted at TSCI since we opened in 2000, the utilization of mandatory overtime has been critical to the facility's safe operation. As an example, in fiscal year 2006-07, TSCI tallied a total of 13,303 hours of mandatory overtime to maintain safe levels of staffing. As high as this number is, it represents a significant decrease in the use of mandatory overtime at TSCI. The facility has made great strides in the past couple of years to reduce vacant positions that are at the heart of the mandatory overtime issues. They have done so through the intensive recruiting and retention efforts including collaboration with agencies such as the Department of Health and Human Services. Chris Peterson is a member of that Blue Ribbon Panel. On this Blue Ribbon Panel which was formed specifically to address TSCI shortfalls, but we're finding that it assists in other agencies also. We also take care to fairly manage the overtime process. Our state statutes require that we have the duty to for custody, control and safety of those persons in our care. A key component of the agency's mission is to serve and protect the public. The Nebraska Department of Correctional Services prides itself in being able to maintain safe institutions for our staff, our inmates, our volunteers, our contractors, and for the public. The provisions of LB926 would have the potential to significantly jeopardize our ability to provide this safe environment. I'd be happy to answer any questions that you have. [LB926]

SENATOR CORNETT: Mr. Houston, I find it disturbing that we're sitting here looking at legislating something into statute that the state should be taking care of on its own. These are state employees we're talking about. How did we move from a position where these were sought-after jobs to the point that you have employees from all over the state who are unhappy, who feel that they're, that they're in an unfriendly work environment. How did we reach this point and what do you suggest we do to correct the employee morale that has brought us to this point today? [LB926]

BOB HOUSTON: Well, I don't know that we're at the point as described. I think staff like working inside of our facilities. I know they like working on the site of our correctional facilities. Some people come to work especially when you open a new institution like Tecumseh. We have 500 staff there and 960 inmates. People come to work and prison work is not for everybody. It's intense. You come into work and you've got eight hours of inmates. I did those jobs for years. You got eight hours of inmates and you got no place to go and you got to deal with those inmates. And amazingly the people that like it, love it and they stay. I was talking to a woman this morning, turned down a job that pays twice as much in another state because she loves Nebraska and loves the Department of Corrections. We have other people who come to work for us and they hit into this environment and they're gone in a very short period because it's just not for them. But for those people that come to work and we know that, you know, that pay is always an issue but, you know, in order to pay our employees a better wage that money has to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

come from somewhere. But those people that come to work for the department and get into our environment, go through our training, pay attention, they dedicate themselves to this job and they're excellent public servants. [LB926]

SENATOR CORNETT: And that may have been an unfair question for you. I know your with the Department of Corrections and it seems that the people that are most, most unhappy that we've heard the most from are more the nursing homes and the care facilities. Do you not find that you have employees complaining about overtime at your facilities? [LB926]

BOB HOUSTON: We have. We've disciplined employees for not, for not performing overtime. We haven't had to do that. The reason that mandatory...I mean most of it's voluntary and I think Mike Marvin aptly described it. That 13,000 hours of mandatory is out of 60,000 hours of overtime we did at Tecumseh. So there's a lot of overtime down there but what we did was, we worked with the...the staff worked with the employees down there and changed it so that a mandatory...that a person could volunteer for their overtime and that would count, take them to the bottom of the mandatory list. And so by doing so, it lowered the number of mandatory overtime. Also a year ago when we started the Blue Ribbon Panel we had about 77 vacancies down there and right now we have 30 to 32 vacancies so we've cut it in half. And a lot of it has to do with the work and there's some people in the room here that are part of that Blue Ribbon Panel that have worked hard with us. We done quite a few things. We have a recruiter full-time for the Department of Corrections. We also appointed a year ago, a recruiter for the Tecumseh correctional facility. Several years ago we entered into a contract with UNO on surveying employees that leave employment. We now are carrying that through with the state personnel, Mike McCrory, etcetera, are doing an excellent job of continuing on that effort and the results that came from that survey, we used as a checklist to improve our agency. We have...we're using the Department of Administrative Services first level supervisor training because a lot of the reasons that people leave is because they don't like their supervisor. Well, then you've got to work on the supervisors to make sure you've got a good supervisors. But when that supervisors asking people to work overtime and they don't want to work overtime, that does make for some bad relations, and so we really work on retaining staff and hiring staff. Tom knows the situation I walked to in Douglas County almost five years ago. We had rampant overtime there but we were in a metropolitan area and so we were able to hire staff and hire staff fairly quickly and then I remember celebrating the first grievance that I got because a person of less seniority got the overtime that the person of more seniority wanted so that's a good problem, and we're now starting to get that at Tecumseh. [LB926]

SENATOR CORNETT: This is an oversight on my part as I had asked Chris Peterson for the breakdown of hours for the Grand Island nursing home and the different Health and Human Service agencies. I did not ask that from you. Did you say you had 60,000 hours of overtime? [LB926]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

BOB HOUSTON: It might have been 62,000, 61,000, 62,000 I believe in the past, last year. [LB926]

SENATOR CORNETT: And one facility. [LB926]

BOB HOUSTON: One facility. Out of that 13,000 hours was mandatory. [LB926]

SENATOR CORNETT: Was mandatory. But if people hadn't volunteered, then there would have been more that was mandatory. [LB926]

BOB HOUSTON: Oh, absolutely. [LB926]

SENATOR CORNETT: Is there anyway that you could get my staff a breakdown of each facility, the amount of overtime at those facilities, mandatory versus voluntary? [LB926]

BOB HOUSTON: I think Connie Nemeec's writing that down right now, isn't she? (Laughter) [LB926]

CONNIE NEMEC: Senator Cornett, do you want that by year? [LB926]

SENATOR CORNETT: Yes, please. By year and by month, please. Okay. Thank you very much. [LB926]

SENATOR WHITE: First, I'd like to kind of run through some of the costs. Sixty thousand hours of overtime, you pay time and a half correct? [LB926]

BOB HOUSTON: That's correct. [LB926]

SENATOR WHITE: So that's 90,000 normal work hours? [LB926]

BOB HOUSTON: That's correct. [LB926]

SENATOR WHITE: If a person works 40 hours a week, 50 weeks a year, that's 2,000 hours of an employee's, one employee full-time, correct? [LB926]

BOB HOUSTON: Two thousand eighty-six hours, yes sir. [LB926]

SENATOR WHITE: So basically you could have had 45 full-time employees for the price of that overtime, correct? [LB926]

BOB HOUSTON: That's right. [LB926]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

SENATOR WHITE: Do you have any pressure to reduce head count? [LB926]

BOB HOUSTON: No. [LB926]

SENATOR WHITE: And can you tell me why you, and these are your words, persistent and enduring shortages of employees in a town that recruited heavily to have that facility located at? [LB926]

BOB HOUSTON: Well, it's a sparsely populated part of the state and that brings on its own difficulties not to just us. I mean, I talked to people that run federal facilities that pay much more money than Nebraska does and they have almost identical experiences in their rural areas because you've got a baseline of people to select from. Well, a lot of the turnover that we have is turnover that we created because of...(Recorder malfunction--some testimony lost.) [LB926]

BOB HOUSTON: ...came up to me and said director wants. I said, wants what? One time I'd been mandatory in six months and I said, yeah, that's really good. She said, well, I just volunteer for my overtime and I can pick the days. I think, Mike, had indicated that, you could pick the days that...or one of the other persons spoke to that, said you could pick the days you want to work and the more we lower the number of vacancies we have there because we're trying to hire all of them, the greater our flexibility becomes. [LB926]

SENATOR WHITE: But that person is actually doing mandatory overtime. They're just picking the day that's assigned to them. [LB926]

BOB HOUSTON: Absolutely. Yes. [LB926]

SENATOR WHITE: Thank you. [LB926]

SENATOR CORNETT: This is probably a question similar to the horse has already left the barn but was the facility built in a place that was too isolated or too rural to get the staffing that it needed? Was that taken into consideration when it was built? If it's so sparsely populated knowing what the prisoner capacity was going to be before it opens, you would have also known...not you specifically, but the staffing needs should have been known and it seems a little illogical to me to open up a facility that you can't staff. [LB926]

SENATOR WHITE: Well, Senator Chambers said it was too far from prisoners families to come and visit. [LB926]

BOB HOUSTON: Right. Well, I was with the Department of Corrections when

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Business and Labor Committee
February 04, 2008

Tecumseh was planned, designed and opened. I was not part of the selection committee. There was a selection committee that was selected for that and there was criteria that was set up and the different areas of the state bid on that. The decision came to be Tecumseh and that's what I inherited as director. [LB926]

SENATOR CORNETT: That's what you inherited. Okay. [LB926]

BOB HOUSTON: Right. And with that having been said, I must say that I am from an urban area and we were able to increase Douglas County but at the same time I find no falloff when we go to greater Nebraska as far as work ethic is concerned, dedication, etcetera, so... [LB926]

SENATOR CORNETT: Oh, I'm not referring to that. I'm just referring to the fact and I'm not saying the people that work there aren't doing their very best. What I'm saying is, if we spent the money to build a facility knowing what the capacity was going to be and what the staffing needs were going to be, I would have thought that we would have looked into what the employee pool in the area was before we invested that type of money. [LB926]

BOB HOUSTON: Well, I believe at that time there was an interest in going to greater Nebraska and bringing employment opportunities to those areas that are more sparsely populated. [LB926]

SENATOR CORNETT: Okay. Thank you. [LB926]

SENATOR WALLMAN: Thank you, Chairman Cornett. Now, I toured your prison a while back and I was impressed with it and the employees also. And I know one employee that works there from Syracuse and, I think she's, it's a woman. I think she's going to stay there as long as her health holds out so I don't think I could work there myself. Thank you. [LB926]

BOB HOUSTON: Well, good. (Laugh) Well, you have to love it to do it, so. [LB926]

SENATOR WHITE: I would like to say by the way, that we visited your facility and it is incredibly well run. As you know, I've seen the inside of a lot of facilities over the years representing prisoners and correctional officers and I was impressed. It was well run. It was clean. It really was well done. [LB926]

BOB HOUSTON: Thank you. I wanted to make that tour. I couldn't do it and I appreciate your comments and the fact that you went through, I appreciate that. [LB926]

SENATOR WHITE: You're not here though telling us that there are no problems with employees down there who feel they're getting pushed into overtime, that it's hurting

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Transcriber's Office

Business and Labor Committee
February 04, 2008

their families. [LB926]

BOB HOUSTON: No, the challenges, the personal stories we're told here, we can tell you more of them. It is a challenge for staff and that's why we're always, always after it. [LB926]

SENATOR WHITE: Thank you. [LB926]

BOB HOUSTON: You bet. [LB926]

SENATOR CORNETT: Thank you very much. [LB926]

BOB HOUSTON: Okay. Thank you. [LB926]

SENATOR CORNETT: Next opponent? The page will be back in a moment. [LB926]

JOHN WYVILL: (Exhibit 24) Good afternoon, Senator Cornett and members of the Business and Labor Committee. I am John Wyvill, W-y-v-i-l-l, Director of the Division of Developmental Disabilities in the Department of Health and Human Services. I'm here to testify on behalf of the department in opposition to LB926 which would limit the number of work hours and consecutive work days for employees at 24-hour facilities. For the department, this includes four veterans homes, three regional centers, two youth rehabilitation and treatment centers, and the Beatrice State Developmental Center. First and foremost, I want to acknowledge the highly dedicated employees who work in our 24-hour facilities. Each day they go above and beyond the call of duty to provide outstanding care to our citizens. The work is not easy, in fact it is often quite demanding. Each one of them know as soon as they are hired that they care for those residing at our facilities can never be compromised and before I go further in my prepared text, I do want to take an opportunity to let you know what the department is doing to address overtime in three facilities. First, in the Grand Island veterans home they originally had three shifts and they shifted to 12 hour shifts. In the Grand Island veterans home in July 2007 the number of voluntary hours was approximately 2,248. Mandatory overtime was 758. As Of January 2008 the voluntary overtime at the implemented into the 12 hour shift have reduced to 930 hours and all the mandatory overtime was reduced to 171 hours. At the Beatrice State Developmental Center which is one of my facilities, we are in the process of implementing right sizing the facility which would downsizing the number of clients that are in a population while keeping the staffing, staffing ratio the same. At the LRC and NRC they are working with David City to help out find appropriate space and staffing and also conducting town hall meetings to see how we can address overtime and also in, I think the last year, in 2007, there were three staffing emergencies declared at the LRC around Labor Day, Memorial Day, and Thanksgiving. Today, however, I'm here to discuss how this bill could compromise the care and to address the terms and conditions of employment that we have followed.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

The department has bargained in good faith, provisions regarding work schedules including voluntary and mandatory overtime that apply to our employees. The bargaining of these provisions occurs every two years with their exclusive bargaining agent, the Nebraska Association of Public Employees, Local 61, of the state, and county and municipal employees referred to as NAPE and AFSCME as certified by the Nebraska Commission of Industrial Relations. Permanent work schedules for our employees in a 24-hour facilities are limited to the maximum of six consecutive days, unless agreed to by the employee. Work schedules are set so employees can have two consecutive days off. This may not be the traditional Saturday or Sunday. If practical, we attempt to get them a Saturday and Sunday off together every other week. There are two categories overtime work in our 24-hour facilities, voluntary and mandatory. When a shift is left uncovered due to a vacancy, a scheduled absence or a need known in advance that the staff to patient ratio needs to be temporarily increased, known as the acuity level, we post a request for voluntary coverage. The employee with the most state seniority is awarded the overtime if more than one express interest in covering the shift. In some instances, we will not know in advance that a shift will be uncovered because an employee calls with a same day unavoidable issue such as illness or family emergency. Our first attempt to cover this unplanned absence would be to see if there is adequate staffing without requiring overtime. If not, we ask if any qualified employee from the prior shift is interested in volunteering to stay to work those hours. Our dedicated employees cover the majority of our overtime hours voluntarily. There are, however, times when no one is interested in covering a vacant shift. Even known absences are sometimes difficult to cover. When that happens, employees may be held for mandatory overtime, which could be up for eight hours. Who stays for mandatory overtime is based on seniority, starting with the least senior and working up to the most senior, through a rotation process. The provisions mandating how this is done, and in what order, were all bargained. They are outlined in Appendix C of the labor contract. I have included a copy of the Appendix C. The contract sets forth the provisions for which up to three mandatory overtime assignments within a two pay period window, which would be four weeks. Employees can use voluntary overtime to substitute their turn on the mandatory rotation schedule. By doing this, employees can work when it is convenient for them and avoid being held over when it does not work as well. Employees receive time and a half for overtime in compliance with the labor contract and Fair Labor Standards Act. It is never the desire of the facility to require mandatory overtime. Unfortunately, we are not always able to project the need for overtime. In most locations, we struggle to find qualified staff to fill out our full-time vacancies. We have hired temporary employees, when possible, to staff on-call pools to alleviate mandatory overtime. Although not our first choice, we have also gone outside staffing agencies for help when necessary. We hesitate to use people from outside staffing agencies because they are unfamiliar with our facilities and people served. If LB926 would pass as written, it would compromise our ability to provide safety and care for the employees served in our facilities. The bill, which would negate any penalty for refusing to work more than 12 hours, would allow needed staff to walk off the job with no

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

replacement. This could leave our patients, members, and clients with substandard care, which is not acceptable, and could jeopardize our federal funding and accreditation standards through the Center of Medicare and Medicaid Services and/or Joint Commission on the Accreditation of Healthcare Organizations. Members of the committee, I wish that we would never have to use mandatory overtime. Our recruiting efforts are extensive and ongoing, yet we are not able to fill the positions we have vacant in our facilities. Even our best efforts to predict possible coverage for those not reporting to work sometimes fall short. With careful scheduling and constant recruiting, in fiscal year 2007, 13 percent of our total overtime hours at our 24-hour facilities were mandatory. As you are aware, we are taking, as you may be aware, we are taking additional steps at BSDC to right size the facility. BSDC clients are being evaluated to determine which clients can be served appropriately in the community. Reducing the client census should positively affect our staffing ability. Staffing shortages have led to many of the concerns cited by CMS in recent surveys, and could jeopardize CMS certification and Medicaid funding. I would ask the committee to leave this issue with collective bargaining. Work schedules and overtime are terms and conditions of employment and therefore should be left to the bargaining process. Having both of these issues addressed in the same arena will allow for the best possible outcome for the employees and the people we serve. Thank you very much for your time, senators and I would be happy to answer any questions. [LB926]

SENATOR CORNETT: Senator Wallman. [LB926]

SENATOR WALLMAN: Thank you, Madam Chairman. Thanks for being here, John. I appreciate what John and Chris have been doing for BSDC and I know it's a tough job and I don't know all the answers, John, don't get me wrong. But this, Teresa said about middle management here...you know in the military we used to say, too many chiefs, not enough Indians. Do you think we have some of that problem or... [LB926]

JOHN WYVILL: I don't think so. At BSDC I don't think we have that problem. [LB926]

SENATOR WALLMAN: This was a Regional Center here, I think, Lincoln, yeah. Are they paid managers or set wage, right? Are they hourly wage, no, huh? [LB926]

JOHN WYVILL: My understanding that management is not paid hourly. [LB926]

SENATOR WALLMAN: Okay. So they probably don't have any incentive to work overtime, you know what I mean? [LB926]

JOHN WYVILL: They work a lot of hours. [LB926]

SENATOR WALLMAN: Do they? Okay. That's fine. Thanks, John. [LB926]

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Transcriber's Office

Business and Labor Committee
February 04, 2008

SENATOR WHITE: What would you think about a rule that said that anytime management calls for an emergency overtime, they must be on the premises until such order is lifted. [LB926]

JOHN WYVILL: I would have to think about that and get back with you. (Laughter) [LB926]

SENATOR CORNETT: Seeing no further questions, thank you. [LB926]

JOHN WYVILL: Okay. Thank you. [LB926]

CHRIS PETERSON: Senator Cornett, members of the committee. I'd be glad to answer any questions you might have. [LB926]

SENATOR CORNETT: Thank you, Chris. I had the page ask Chris, Miss Peterson, to come up to speak because I had a couple of questions that I wanted to ask or...Chris, you are new to Health and Human Services, correct? You've been there a year now. [LB926]

CHRIS PETERSON: I am new to the operations. [LB926]

SENATOR CORNETT: To the operations. [LB926]

CHRIS PETERSON: I'm new to the management of it, yes. [LB926]

SENATOR CORNETT: That would be a better way of putting it. And you and I have had some frank discussions about that you inherited somewhat of a mess. Particularly regards to how some of the finances were being handled and it came to your attention later this year that your staff underneath you wasn't necessarily all on the same page in regards to that, is that correct? [LB926]

CHRIS PETERSON: That's correct. [LB926]

SENATOR CORNETT: One of the things that I've found listening to this and talking to people that I found most disturbing is that the contract and discipline is not handed out evenly across facilities. That there seems to be the opinion that there is one facility that handles staff and is more staff friendly and less hostile to the employee than others. Having come from a labor background, there's nothing more frustrating than watching a contract being implemented fairly against one person and unfairly against another or have it being interpreted by different supervisors in different manners. And I know that we talked in regards to the financial issues with Health and Human Services that you were working on, maybe not classes, but training for your supervisors in regards to standard operating procedures, if you want to call them that, for their management

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

practices. Do you have anything in place or do you plan on implementing anything in that manner for your 24-hour facilities so we don't hear that employees are treated one way at Grand Island and they're another way at Norfolk that things are being...the contract is being handled fairly for everyone? And do you have operating procedures in place for your management in regards to how that contract is interpreted? [LB926]

CHRIS PETERSON: Just for a brief explanation, senator, these HR responsibilities are under the operation section which is under me specifically and I have a chief operating officer that handles those in conjunction with myself. In the staff, the staff are out in the facilities on site at each facility. We have an HR person that basically is directed by central office. They work independently but with in collaboration the facility administrator so what I would say is, if there is an indication that there is a difference in how people are being handled in the different facilities, we would not want that and we would be glad to change that if there is any...if you can give me specifics. I do know that at BSDC we have had an extreme amount of disciplinary actions that have gone on there based upon the CMS review of our investigation process out there. CMS made it very clear to us that if there was any suspected allegation of abuse and neglect, that we had to take disciplinary actions that were above and beyond of what we had been doing there and we have now implemented that. The last survey that they came back to, they spun the fact that we in essence had no credibility with them. They said they would be willing to look this time if not removing someone from the premises which is what we had to do and they would be willing to look into observing that person to see if their actions did rise to the level of abuse and neglect. So I would say BSDC probably has had a different standard maybe than the other facilities have had in terms of abuse and neglect. Beyond that, they're supposed to be fairly uniform and if they're not being interpreted that way as with anything, as I worked with the union on some of these, let us know. We will track it back and we will fix it. [LB926]

SENATOR CORNETT: Do you have something...and I'm just going back to my history, something like a standard operating procedure or a procedure book that your management has to follow in regards to written notification of mandatory overtime, notice for overtime, and what type of discipline is being...going back up the chain when those standards aren't followed? I mean, we've heard that you can be disciplined for not doing the overtime, not doing the mandatory overtime, calling in but what is being done up the chain when that proper notification isn't given? [LB926]

CHRIS PETERSON: I can give you what I have heard. I'd have to go back and get the exact language in it. Yes, we have a procedures manual and yes, we have specific things. We have a progressive disciplinary action that we work through that all of our HR managers are trained on and that's what they handle out in the facilities. I do know that in terms of mandatory overtime, staff are asked, I believe there's a minimum of one hour and going up to two hours of notification if you're not going to be able to come in, that you're asked to call within that time. Also what we do if someone has, say, a childcare

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

issue, we try to allow them to have someone watch for them while they go home and take care of that. But in essence, if they walk off, which we have had happen, then they...there possibility that would rise to a level of dismissal. [LB926]

SENATOR CORNETT: Thank you. [LB926]

CHRIS PETERSON: I would say one other thing too, senator. As you get into licensure issues with a nurse, that is not an option open for them. [LB926]

SENATOR CORNETT: Again, I understand the licensure issue. We talked about it this fall and I know that you have been in state government for a while. And I guess I can pose the same question to you that I did to Mr. Houston in regards to, how did we go from being a sought after employer to being in the position we're in now where your employees and the union are coming to us asking us to legislate fair work practices? And I know you've been here through the system. [LB926]

CHRIS PETERSON: Sure, I've been involved with state government probably for, I think, eight years and before that seeing it from the other side with people coming to me for concerns about working for state government. State government used to be, I think, an employer of choice and in many communities it still is. We have good benefits. We provide a good wage. In fact, many times if we look at possibly closing an office or moving a facility or something, obviously there's great concern about that because it is...we are a good paying agency. In terms of what I see in the last maybe couple of years, is the extreme scrutiny that state employees are under specifically with different surveying entities coming to them. We have had at BSDC over the last...I think in one month, out of 25 days, we had 16 days that the feds were there and there is a high level of standard that they are held to. And I'm not saying that they can't rise to meet that but sometimes it's almost as if they don't catch a break, I guess what I would say. So while I would say one thing we don't ever want to see, there is nothing we can do. We are trying to do many, many things. We fought really hard on the CMS with BSDC and we could not get the staffing up to where it needed to be. We had the minimum standard staffing but we didn't hit the habilitative staffing on that and so we're looking at the right sizing of that facility get down so that our employees aren't burned out. We're looking at mentoring. One of the things I would tell you is that when people exit state government, many times it's not the money. It might be one of the top three things but the other reasons they don't feel supported. They don't feel respected and they don't feel like somebody's listened to them. Part of that has to do with how we treat them when we bring them on in a new position so we're looking at mentoring in the programs. You also brought up the issue of administration and are they helping when there is an overtime. Your question was, should we require them to stay on site if there's an emergency call? Actually we're doing that with the Grand Island Veterans Home and looking at how to do those with BSDC. BSDC is a little tougher because you can't bring somebody who has not been specifically trained in abuse and neglect out to cover a spot but yes, we're

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Transcriber's Office

Business and Labor Committee
February 04, 2008

trying that. We're doing heavy recruiting in job fairs. We've actually had on-site job fairs. We work with the universities, the community colleges, putting the ads out. We advertise on Monster.com. So I would say certainly there is a feeling that it's not that great to be a state employee anymore and we're trying to get that feeling, that respect back. [LB926]

SENATOR CORNETT: Two more things and then I'll let Senator White. I know that he has a question. Why are you not utilizing the ability under the contract to provide bonuses or to provide hiring incentives if staffing is that bad of a problem? And weigh that against the cost that you're paying in overtime. Understand that it probably...I'm asking you to compare apples to apples, well, apples to oranges here to a certain extent, but the amount you're paying in overtime wouldn't that necessarily be spent in a better fashion rather than trying to retain the employees you have or hire new ones? [LB926]

CHRIS PETERSON: Senator, I'd just be honest with you. We have not considered it and it's something we can certainly look at. [LB926]

SENATOR CORNETT: And you know, this is just a personal statement for me. The woman that has the twins, you know that I have my twins and my baby and if someone gave me ten minutes notice to find daycare, I would be unable to do it and you would have a walk-off from the job. Because you cannot expect someone that has a family to be able to provide that type of daycare or services for them in that short of a time period. [LB926]

CHRIS PETERSON: I would agree with you and that's why I want to thank Dottie for coming down. Dottie and Casey actually had us come to Grand Island Veterans' Home. We had a meeting there with the staff and that's where we resulted in the 12-hour shifts coming up. In addition, one of the other things we're doing at the homes, BSDC, we've moved all of those units out in what we call neighborhoods now. And in essence each of the staffing units in each of those neighborhoods now is going to be responsible for working out their own staffing so that they see themselves as a team. We are trying to make it part of a group effort to help somebody if they do have daycare. Are we there yet? Absolutely not. Am I telling you that it's a rosy field? Absolutely not. The good thing I see is that when we are able to work with recruitment and mentoring, as well as working with the staff themselves, we're able to see some changes in those overtime hours. [LB926]

SENATOR CORNETT: Thank you, Chris, and I just want to tell you I appreciate all the cooperation you've given me on all the issues we've dealt with so far. Senator White. [LB926]

SENATOR WHITE: Yes, thank you. First of all, it's in the contract with the unions that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

you can use bonuses so clearly somebody has been contemplating it, correct? [LB926]

CHRIS PETERSON: That might be, senator, I haven't. [LB926]

SENATOR WHITE: How long has it been in the contract? [LB926]

CHRIS PETERSON: I could not tell you that. [LB926]

SENATOR WHITE: Are you going to leave here with the firm resolve to start using bonuses to get people into those empty spots? [LB926]

CHRIS PETERSON: No, I'll leave here with a firm resolve to look into it. [LB926]

SENATOR WHITE: And then if we leave here with the firm resolve that you're forcing employees unnecessarily to work additional hours in abusive circumstances, you're okay with that? [LB926]

CHRIS PETERSON: No, senator, I'm not. That's why I said we're working on looking at a variety of things. That would be one tool. [LB926]

SENATOR WHITE: But there was clearly a tool at your disposal, you knew about it, you had considered it because it's in the contract, maybe not you personally, but your agency did and you're not employing it. Now, there's a difference between telling somebody go out and dig a hole and not give them the tools and then telling them go out and dig a hole, here's a shovel. He comes back and complains and he hadn't even tried to use the shovel, I have a lot more difficulty accepting that don't you? [LB926]

CHRIS PETERSON: Yes, sir. [LB926]

SENATOR WHITE: Now, how do you expect people being given mandatory overtime over and over again and when they ask around, hey, I'm coming out of nursing school, should I go to work here and the nurses say, heck no. I mean, they put my family in crisis all the time. I get threatened with firing because I'm either got a choice to criminally violate the laws of the state regarding abandonment of children or getting fired. And you're not even using bonuses to get bodies in there. How do you expect to fill those spots? [LB926]

CHRIS PETERSON: I agree, senator, that it's a challenge for us. [LB926]

SENATOR WHITE: Finally, you said that the scrutiny that state employees are undergoing has discouraged people to come there. We don't really want to talk about why the feds are looking at some of our facilities now do we? [LB926]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

CHRIS PETERSON: Oh, I'm sorry if that's the impression I gave. What I said was there has been a lot of scrutiny on employees. I don't know if it's, that it's discouraging them from coming there but it's certainly in the media as well as just word of mouth that this is a place where it's, you don't have...I think, in fact, one of the advertisements was you can work someplace without stress. We have stress in our facilities. [LB926]

SENATOR WHITE: I don't have a problem with that. What I have a problem with is, we have a crisis here. You're coming to speak against the bill. You say the problem is we don't have the right people. You have had a tool for how long? How many years have you had a tool you've refused to use, bonuses, other kinds of methods to attract people, and yet you say, you know, we're against this bill. That's not very good footing. I mean, if you were here and said we're trying bonuses, we're doing this, we're doing that, we can't get them but we're doing the best we can, we just have to ask our employees to hang on, I could see it but when you come in a situation where you're just ignoring. [LB926]

CHRIS PETERSON: We have tried a variety of tools. This is, I'm not saying one, it's one that we're not, we're just ignoring. What we've asked for and have received going through the negotiations is to allow people who have past experience that before that hadn't counted in terms of the salary they start out, we were allowed to get that. [LB926]

SENATOR WHITE: Are you using it? [LB926]

CHRIS PETERSON: Uh-huh. [LB926]

SENATOR WHITE: You're using that to offer them better pay, excellent. But you're not using signing bonuses? [LB926]

CHRIS PETERSON: No, sir, not at this time we're not. [LB926]

SENATOR WHITE: It's worked really well for the military and jobs in Iraq and Afghanistan are notorious for being stressful. [LB926]

CHRIS PETERSON: Yes, sir. [LB926]

SENATOR WHITE: Why aren't we using them? [LB926]

CHRIS PETERSON: Sir, at this point we just haven't considered it. [LB926]

SENATOR WHITE: Thank you. [LB926]

SENATOR CORNETT: Any further questions? Thank you very much for coming up, Chris. Are there any further opponents? Anyone here in a neutral capacity? [LB926]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

POLIDOROS C. PSERROS: My name is Polidoros C. Pserros. That is P-o-l-i-d-o-r-o-s, middle initial C, my last name is spelled P-s-e-r-r-o-s. At work I'm called Bill. I work for the Nebraska Department of Corrections. I'm a union member. I'm not representing either organization. About 28 years experience total. From 1973 to 1981 I worked at Omaha work release centers in the Omaha area. We had a small staff and I believe I worked seven days in a row on two or three occasions, something this bill would prohibit. Since 1988 I've worked at the Omaha Correctional Center as librarian and as a caseworker in an inmate housing unit since September 2006. I have never been required to work overtime but I am subject to this provision. I've signed up as a neutral but it is more like a concurring opinion. I've read this bill and I'm in support of it but I would like some clarification from the committee for the legislative history. Under this bill, would it be wrong for an agency to require an employee whose shift is eight hours to work an additional four hours up to twelve hours? Also under this bill, would it be wrong for an employee whose shift is eight hours to refuse to work the additional four hours if he or she is asked to do so by the agency? I mean, first they look at the plain meaning of the law and then they look at the legislative history. That is the extent of my testimony. I ask for clarification on those questions only. Thank you. [LB926]

SENATOR CORNETT: Sir, just because you state you're in support and you're just looking for clarification, we're going to mark you in the supporters category. [LB926]

POLIDOROS C. PSERROS: Okay. [LB926]

SENATOR CORNETT: Neutral testimony is really just for coming in and maybe giving us an analysis of the bill like the state agencies do frequently. [LB926]

POLIDOROS C. PSERROS: Okay. I'm sorry, then. [LB926]

SENATOR CORNETT: Okay. And Senator Lathrop would you like to answer those questions? [LB926]

SENATOR LATHROP: Well, I think we can take it up as we move it through the process but we appreciate the questions. [LB926]

SENATOR CORNETT: You can contact Senator Lathrop's office and he will get you the information that you need, okay? [LB926]

SENATOR WHITE: We'd be happy to work with you. [LB926]

POLIDOROS C. PSERROS: Okay, sure. Thank you. [LB926]

SENATOR CORNETT: (Exhibits 25, 26 and 27) Thank you. Any further testifiers in the

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Transcriber's Office

Business and Labor Committee
February 04, 2008

neutral capacity. That closes the hearings for today and I move we go into Executive Session. [LB926]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Business and Labor Committee
February 04, 2008

Disposition of Bills:

LB926 - Indefinitely postponed.

LB936 - Indefinitely postponed.

Chairperson

Committee Clerk