

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

Business and Labor Committee  
March 27, 2008

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[CONFIRMATION]

The Committee on Business and Labor met at 12:00 p.m. on Thursday, March 27, 2008, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments. Senators present: Abbie Cornett, Chairperson; Kent Rogert, Vice Chairperson; Steve Lathrop; Amanda McGill; Norman Wallman. Senators absent: Ernie Chambers; Tom White. [CONFIRMATION]

SENATOR CORNETT: I'll go ahead and get to the preliminaries and then we'll wait for the other senators. I want to welcome you all to the public hearing of the Business and Labor Committee. I'd like to introduce the members of the committee and committee staff. To my far right is Senator Wallman, Norm Wallman; just joining us is Senator Kent Rogert; to my immediate right is legal counsel, Lori Thomas; to my left is Senator Amanda McGill, and committee clerk, Andrew Zimmerman. And I don't actually know our page today so...and our page today is Bri. If you have any printed materials to hand out, she will do that for you. Just for the record, the proceedings are recorded and will be transcribed so if you have a cell phone, please turn that off or to vibrate at this time. The committee hearing, we will first hear testimony in favor of the appointment and then if there is any opposition to the appointment and any neutral testimony will follow that. Testifier sheets are on the table. Please fill those out completely if you're going to be testifying today. In order to save time, please have those filled out before you come up. If you are not testifying in regards to this appointment but would like to record your support or opposition, there is a separate sheet for sign-in on the table. If you have printed materials, please distribute those to the page. If you need copies of those made, the page can do that for you. Today's...excuse me, I'm getting over a cold. Today's appointment or agenda will include the appointment of Judge Bernard McGinn to the Commission of Industrial Relations. We have a quorum present, so that's going to go ahead and open the hearing. [CONFIRMATION]

LORI THOMAS: Chairperson Cornett and members of the committee, for the record I'm Lori Thomas, T-h-o-m-a-s, counsel of the committee and I'm here to introduce the recent gubernatorial appointment to Commission of Industrial Relations. The appointment is Mr. Bernard McGinn and he is appointed pursuant to the constitution and Nebraska Revised Statute 48-804 and now is before you for your review. So with that, I will turn it over to Judge McGinn and allow him to introduce himself. [CONFIRMATION]

SENATOR CORNETT: Thank you, Lori. Judge McGinn. Sir, could you please state your full name and spell it for the transcriber? [CONFIRMATION]

BERNARD J. MCGINN: Bernard J. McGinn, B-e-r-n-a-r-d J. M-c-G-i-n-n. So I'm pleased to be here. My wife and I were on vacation first week of March and got a phone call from Larry Bare of the Governor's office and he asked me if I would consider coming out

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of retirement to be a commissioner on the Commission of Industrial Relations. I promptly told him I had been enjoying being retired for approximately two years very much but that I would certainly consider it. And I did consider and after we got back to Lincoln, called the Governor's office and said, yes, I would be happy and honored to accept the nomination. Well, let me also mention that my eye isn't always closed like this and I didn't get in a fight on the way here or anything like that. (Laughter) I had a eye issue that I got to see the eye doctor yesterday and I had a couple tears in my retina, so he said it was a rather an emergency so at the risk of being a little bit disabled here today, I let them freeze portions of my eyeball to adhere the tears to the back of the eye. So I can see but I'm just a little bit uncomfortable. Over my legal career of 11 years in the Lancaster County Attorney's office and 25 years on the district bench in Lancaster County, I never really had any contact with or knowledge of the particulars of the Commission of Industrial Relations. Since getting the phone call from Mr. Bare, I've done a little research and think I understand the basics, and I believe that based on my prior experience as a deputy county attorney and a district judge that I can perform the work of the commission and would be honored to be allowed to do so.  
[CONFIRMATION]

SENATOR CORNETT: Thank you very much. Are there any questions from the committee? Seeing none, thank you very much, Judge McGinn. [CONFIRMATION]

BERNARD J. MCGINN: Okay. Thank you. [CONFIRMATION]

MARK D. MCGUIRE: Good morning Madam Chairman, members of the committee. My name is Mark D. McGuire, M-a-r-k D. M-c-G-u-i-r-e. I am general counsel for and a registered lobbyist for the Nebraska State Education Association. I've known Judge McGinn for all of the 35 years I've been practicing law. I've known him as a deputy county attorney, as a district judge, and I look forward to continuing knowing him as a CIR commissioner. With respect to the CIR, I think I've suggested this to the committee before but I try at least 100 cases before the CIR, thus, I believe, I have a valid perspective of the kind of person and jurist it takes to be an effective CIR commissioner. Judge McGinn is an outstanding appointment and he will be an asset to the commission. Earlier this year, there was a debate in this room regarding the necessity of the public having confidence with respect to the integrity of the judicial process. Judge McGinn brings a 30-year history of having and demonstrating judicial integrity. The test, in my opinion, of judicial integrity is not in the first instance the judgment of lawyers but rather is the perception of the parties involved. It is my experience that litigants before Judge McGinn always, without fail, feel as though they've gotten a "fair shake" whatever the outcome on the case might be. This attribute is of particular importance and significance in the CIR. There the parties are always public employers and public employees. Whatever their issues are, when they leave the CIR hearing room, they go back to work the next morning. Each side must feel they've been treated by the CIR because after all, by necessity they have to get along with each other. Judge

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McGinn will bring that sense of fairness to all those that appear before him. I am pleased he is appointed. I am glad he is willing to serve and I heartily support his confirmation. Thank you. I'd be happy to respond to any questions you might have. [CONFIRMATION]

SENATOR CORNETT: I see none, thank you very much. [CONFIRMATION]

MARK D. McGUIRE: Thank you. [CONFIRMATION]

KEN MASS: Senator Cornett, members of the committee, my name is Ken Mass, M-a-s-s, representing the Nebraska State AFL-CIO. And on behalf of the state AFL-CIO, we are here in support of Mr. McGinn for the appointment to the CIR. Under my communications and of individuals because basically I just met Mr. McGinn for the first time and seeking advice on him, I can tell you, it all come back positive. Positive to the point of, we have always said anybody that sits on the CIR should be able to give a fair decision and we feel very comfortable that Mr. McGinn can do that, and both sides will have an opportunity to stress their points. So on behalf of the state AFL-CIO, we support the appointment of Mr. McGinn and we look forward to working with him so. [CONFIRMATION]

SENATOR CORNETT: Thank you, Mr. Mass. See any questions from the committee? Seeing none, thank you. Are there any further testifiers? Are there any testifiers in opposition? Is there anyone here in a neutral capacity? That closes the committee hearing on the appointment of Judge McGinn. Thank you very much for coming today and move we go into an Executive Session. (Exhibit 1) [CONFIRMATION]

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Chairperson

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Committee Clerk