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Business and Labor Committee
January 29, 2007

[LB57 LB210 LB472 LB543]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 29, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB472, LB210, LB57, and LB543. Senators present: Abbie Cornett, Chairperson; Kent Rogert, Vice Chairperson; Ernie Chambers; Steve Lathrop; Amanda McGill; Norman Wallman; and Tom White. Senators absent: None.

SENATOR ROBERT: (Recorder malfunction)...be following this afternoon. To my far right is Tess Warner, our committee clerk. Next to her is Senator Wallman from Cortland; Senator Steve Lathrop from Omaha; I'm Senator Kent Rogert from Tekamah, I'm the Vice Chair; Senator Cornett will be here joining us in a little bit. Lori Thomas is our legal counsel. Next to her is Senator Ernie Chambers from Omaha; and Senator Amanda McGill from Lincoln. Our page today is Matt Sells, originally from Falls City. These proceedings are recorded and will be transcribed so if you have a cell phone with you, will you please turn it off or put it on vibrate. The committee will first hear testimony in favor of the bill being considered, then opposition, and then neutral testimony. If you are following other testifiers, please listen to their comments and try not to repeat what has already been said. Testifier sheets are available near the back doors and on the testifier table for people who will be publicly testifying. Please fill out the form completely and put it in the box when you come up. At the beginning of the testimony, please state and spell your last name and if you don't spell it, I'm going to interrupt you. If you plan to testify, come up to the front prior to your testimony. It will speed things up a little bit. There is a chair reserved for you up front for the next testifier. Again, in order to save time, please make sure you have your testifier sheets filled out completely before you come on up. If you are not testifying, but would like to record your support or opposition to a bill, there's a separate sheet next to the back doors that you can sign and make sure you sign that as well. If you have printed materials, please hold them up and the page will come and get them and he can distribute them. We'll need at least 10 copies; 12 would be better. If you don't have those, you might want to go get that done ahead of time. Today we are using a limited, a timed--we are? We're using a timed lighting system? I don't think so. All right. So we are going to go ahead and get started and we are going to open today with the hearing on LB472 by Senator Chambers. [LB472]

SENATOR CHAMBERS: Mr. Chairman, members of the Business and Labor Committee, I'm Ernie Chambers. I represent the 11th Legislative District in Omaha, and I'm presenting to you LB472, which is a very simple bill. What it would do is to remove the designation from members of the Commission of Industrial Relations, change that designation from judge to commissioner. Many years ago, perhaps before some of you were born, there was a move afoot to gut the commission. It was called, in those days, the Court of Industrial Relations. Many times when you read transcripts of hearings, even when you listen to debate on the floor, there are things which might be sub rosa, or under the surface, which are not uttered. So in those days, I did not want to see the

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commission gutted. I didn't even want to see the name changed, but it was, from "Court" to "Commission." I objected to the name of the members of the commission being changed to commissioners rather than judges because I thought there should be something associated with that commission which would give it a degree of credibility and dignity, if you will. As is the case now, there were disputes and there was a tension between the business community and the labor community. So after the commission received that name, the members have been known ever since that day as judges, as they were prior to that change in '79. Since the time that I had done my arguing, the Nebraska Supreme Court ruled in a case, and for those who are of a mind to check it out, Transport Workers v. Transit Authority, 205 Neb. 26, that was in 1979. And the court ruled that the commission is not a court, it is an administrative agency carrying out legislative functions. The court said that the commission cannot exercise judicial authority, judicial prerogatives or functions. And if you look at the bill itself, it's not difficult to see what is done. Every place that the term "judge" or "judges" appears, there will be "member," or "officer," in the case of chief judge, and if you have any questions on that I will answer them. But to make it clear that this is not a court, even though the Nebraska Supreme Court just flatly declared that it's not, I pointed out that the members are not judges; they're commissioners. They are not subject to the Nebraska Code of Judicial Conduct, as are all judges. They are subject to removal by the Governor, rather than by the Nebraska Supreme Court, as is the case with all judges. They are appointed by the Governor with the advice and consent of the Legislature. The Legislature plays no role in the appointment of judges. Proceedings before the commission are known as hearings, not trials. And then I gave a list of other commissions by way of example so that it would be seen that all commissions, no matter what they do, have members who are referred to as commissioners: the Public Service Commission, the Equal Opportunity Commission, State Athletic Commission, Liquor Control Commission, Mexican-American Commission, Commission on Indian Affairs, Commission for the Blind and Visually Impaired. There's confusion in the minds of the public because some of them do think that the members are judges, and that confusion should be done away with. I know of no reason to call an official by something other than what that official is. I've tried to cover everything that I could think of that would be necessary to make clear what the bill is about, and any questions that you have, I will answer them succinctly. [LB472]

SENATOR ROBERT: Thank you, Senator Chambers. Any questions from the committee? Mr. White. [LB472]

SENATOR WHITE: Senator Chambers,... [LB472]

SENATOR CHAMBERS: Yes. [LB472]

SENATOR WHITE: ...this affects no central powers of the commission. Is that correct? [LB472]

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SENATOR CHAMBERS: No, it just changes the name, that's all. [LB472]

SENATOR WHITE: Thank you. [LB472]

SENATOR CHAMBERS: I'd like to...well, I'll keep that to myself, (laughter) but what I was...what I was going to say...what I was going to say that I decided I wouldn't was that I'd like to see the commission stronger, if possible. So I'm not interested in diminishing what they do or the power they do have. [LB472]

SENATOR WHITE: I think I probably agree with you. [LB472]

SENATOR CHAMBERS: Oh, see? I should have gone on and said it. (Laughter) Thank you. [LB472]

SENATOR ROBERT: Are there questions? Thank you, Senator Chambers. Before we go any further I want to introduce Senator White, has joined us from Omaha. Are there any testifiers in...for proponents for this bill? Anybody in opposition? [LB472]

JEFF ORR: Yes, I have my terms turned around here. [LB472]

SENATOR ROBERT: Okay. Yeah, we're missing a box. [LB472]

JEFF ORR: (Exhibit 1) My name is Jeff Orr, O-r-r. I'm from Kearney, Nebraska. I'm the presiding judge right now of the Commission of Industrial Relations. We have passed out for your packet this morning some very enlightened discussion in May of 1979, led by Senator Ernie Chambers and Senator Landis, at the time, which dealt with, on the floor, the appropriate name for the Commission of Industrial Relations and the term "commissioner" versus "judge." Both Senator Chambers and Senator Landis were very strong proponents for keeping the name "judge," and in fact they both stated that they felt it was a mistake to change the commission, the name of agency, from Court of Industrial Relations to the Commission of Industrial Relations. Nothing has changed since that time in the function of this agency. If anything, the Legislature has expanded the powers of this agency in giving them individual unfair labor practice jurisdiction. Although it is called a commission, it functions exactly as a district court. The rules of evidence apply. Although there are five members, one member presides over the hearing or the trial. The attorneys that appear before this panel bring in their witnesses. As I testified last Monday, the University of Nebraska at Omaha lasted 21 days. There were over 600 exhibits in that case. There have been cases that have lasted anywhere from a week to ten days. In addition to that, hundreds of exhibits, all of which have to be dealt with on an evidentiary basis. The rules, foundation, relevancy, all pertain. And the attorneys who serve as, currently, judges have to rule on those evidentiary matters just the same as a district judge would. The opinion rendered by this commission is subject

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to appeal and that appeal is directly to the Supreme Court, not to the district court, not to the county court, but goes directly to the district (sic) court. The importance of whether I'm called a commissioner or I'm called a judge is not important to me. And I don't think it's really that important to the other members of this agency. What it is important to, and I think that lends credibility, is what Senator Chambers said back in May of '79. It's the public perception. There are substantial effects and repercussions sometimes from some of our decisions. We're a little-known agency. Ninety percent of Nebraska probably doesn't even know we exist. But as Senator White, who has appeared before us, would testify, to his clients and the people that are involved in that, the decision is extremely important. And I think the public perception of that opinion is better accepted if it comes from a judge, as opposed to a commissioner. Grand Island just got done trying a case that came back to us three different times (inaudible). In The Grand Island Independent, there were four or five front-page articles on this case that appeared before us. Once the decision was decided, which, as in all decisions, one side was very happy and the other side was very unhappy, Grand Island had spent well in excess of \$100,000 in fees and costs in pursuing this and they were forced to pay some additional wages to their employees. That was an ongoing two-year battle internally with them before they got to us, almost. That decision coming from...rendered by a judge, I think, had more acceptability and less controversy than it would if it came from a commission. I think Senator Chambers was right when he first stated that the correct name change, really, for the function this agency performs, would be to change it back to Court of Industrial Relations rather than Commission of Industrial Relations for the same reason. It's not for my ego. I think it's for acceptability of the decisions from a little-known agency that carries such an impact. And in that regard, I would highly recommend and suggest that you not change the name from "judge" to...or designation from "judge" to "commissioner." And I promise I will not be before you next Monday. This is my second Monday in a row. Thank you. [LB472]

SENATOR ROBERT: Thank you, Mr. Orr. Any questions for the testifier? Senator Chambers. [LB472]

SENATOR CHAMBERS: And, Judge, since the bill has not become law, I'm going to continue referring to you as judge until such time as the change occurs. If my argument way back then was based on the notion that the public would lend more credibility if the members were called judges, if that argument was valid then, how can we say it's valid now when the Supreme Court has told us that the commission is not a court, the members are not judges, that it's an administrative agency carrying out a legislative function? Why should we mislead the public as to what this body is? And I think the length of hearings, the number of witnesses, the number of exhibits, none of that really has anything to do with what we call this entity. [LB472]

JEFF ORR: I don't know what the impact is from a jurisdictional standpoint, and that's probably an incorrect statement. If the court, in referring to...said that we were not a

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court in the fact that we couldn't enforce our own orders; that those orders...if I found you in contempt in the Commission of Industrial Relations, the other side, say it was Senator White, would have to take that order to the district court to enforce it. Now in your intro of this bill, you made the statement that we are not bound by the Code of Judicial Ethics. We are, with the exception of two areas, and I can't recall the other. One is with regard to investments. I cannot go out and raise money to try to lobby the Governor to reappoint me. I cannot participate in strong political activities or are strongly encouraged not to, and most of the Code of Judicial Conduct applies to us as administrative judges, which is just...it's just one step down from the district court; very little distinction. [LB472]

SENATOR CHAMBERS: Are you mentioned in the Code of Judicial Conduct? Are judges... [LB472]

JEFF ORR: Of the commission, no, no. We weren't known when they wrote that. [LB472]

SENATOR CHAMBERS: But they have amended it many times since it came into being. And the Supreme Court is the one that amends the code. [LB472]

JEFF ORR: I think you look at the...excuse me Senator. I think you look at the definitions in the code and then we clearly fit within the administrative judges. [LB472]

SENATOR CHAMBERS: But here's the thing. The code relates to those standards which, if not met, can result in the removal of a judge. You cannot be removed by the Supreme Court from your job, I don't care what violation you make of the Judicial Code of Conduct. You cannot be removed by the Nebraska Supreme Court. You want me to tell you who removes you? The Governor. [LB472]

JEFF ORR: The Governor. [LB472]

SENATOR CHAMBERS: This entity was created by statute. The Legislature, having created this entity, establishes how it's going to operate, what its duties are, what the limitations of its authority are, and so forth. The Governor cannot remove any judge. That's what I meant when I said that they're not subject to the Code of Judicial Conduct. And I don't see any reason, and you still haven't given me one, why we should, in effect, mislead the public as to what this entity is and what the members of that entity are. Are you ashamed to be called a commissioner? Do you feel it would diminish you if you weren't called judge? [LB472]

JEFF ORR: I don't think it makes one freckle of a bit of difference to me, Senator Chambers. And I would function and continue to function just as I always have. It's as I argued and you argued in 1979, it's the public perception. And from '79 to today, the

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Legislature has actually expanded the authority of the CIR, giving it more authority to affect more people. And my argument here today is that I think the cases that we decide have such import on the people before us, the more credibility we can lend to that the more acceptability there is of that argument or that decision. [LB472]

SENATOR CHAMBERS: I think that's irrelevant because there are other commissions whose decisions carry a lot of weight. The Public Service Commission rules on rates, phone bills, and things of that kind which affect many, many, if not every citizen in his or her home. What you all do doesn't and, as you said, most of the people in the state don't even know you exist. But why should we not...oh, and by the way, I have gained more knowledge about a lot of things since 1979. The person that I was in 1979 is not the person sitting before you here today. In fact, Billy Joel sang a song which described me in those days, (singing) when I wore a younger man's clothes, (laughter) although I wear the same clothes that I did then (laughter) and, I might add, the same size. But anyway, I don't want to...I'm not being argumentative. I just want to give an opportunity to put everything into the record that might be there as far as the discussion of the issue. So I don't, at this point, have any other questions and I appreciate your cooperation. [LB472]

JEFF ORR: You were still awful articulate in 1979, Senator. [LB472]

SENATOR CHAMBERS: Well, and that hasn't changed, except I might be a little bit better at it. (Laughter) [LB472]

SENATOR ROBERT: Any other questions for Judge Orr? Thank you, sir. [LB472]

JEFF ORR: Thank you. [LB472]

SENATOR ROBERT: Is there any neutral...oh, any more opponents? [LB472]

MARK McGUIRE: Senator Cornett, members of the committee, my name is Mark McGuire, M-c-G-u-i-r-e. I am general counsel for and lobbyist for the Nebraska State Education Association and we're in opposition to LB472. Let me move right into my notes because the real reason I'm here has to do with public perception and I'm really going to attempt today to just simply point out a few things that I think are important with respect to the public's perception of the CIR. As I indicated to you last week, when we were together, I've tried a lot of cases before the commission, and they are cases, and they're run with decorum, like...very similar to a district court trial. The judge does not have ex parte conversations with the people. The cases are tried like a district court trial in terms of question and answer, rules of evidence, motions, briefs, all that sort of thing. All of the cases that we do, obviously, involve school teachers in wage determination matters or sometimes unfair labor practice cases, or sometimes bargaining unit cases, but they are all in behalf of that constituency. We try and make an effort to have a

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number of teachers from the impacted school district there in the commission hearing room to see and hear what takes place, and what they see and hear is a process. It would be the same as in any district court in the state in terms of, Your Honor, the objections, I'm Mr. McGuire, I'm not Mark, that sort of thing. I think it is important...the reason I invite the local negotiators, or local association officers or whatever, to feel free to be present is for them to see the process. And they do walk away with respect and they do refer to, the judge decided this or that. And at the end of the whole thing we get a written opinion, oftentimes many pages long, where the judges have...or the judge, with the concurrence of the other judges on the panel, have set forth their findings and deliberations and that does garner respect amongst the public. So if had a singular point to raise, that would be that there is a public perception issue. And I think everything that goes into enhancing that perception of the commission, i.e., referring to the presiding individual as judge, is helpful, and I point that out. I looked up or tried to find if there's really a meaningful definitional difference between commissioner and judge. A judge, I found literally in the dictionary, forms an opinion through a careful weighing of evidence. That is precisely what the judges now do. Commissioners have quasi-judicial, as well as administrative, as well as policymaking powers. I've thought, okay, county commissioners, they do a variety of things, but they are not done in a trial basis looking for evidence. They will consider certain public policy issues that come before them and make decisions accordingly. I think, and it's worth noting, and perhaps we should all give ourselves a bit of a pat on the back, that Nebraska does have a unique system for resolving public sector collective bargaining issues. Because the decision was made in 1920 that public employees can't strike, the trade-off, if you will, was the creation of the Court of Industrial Relations or that in the constitution, admittedly, Senator Chambers, refers to commission, and that laws may be enacted, which this Legislature has done over the years. It's interesting to note that in from 1920 on that all sat there rather silently. The disputes we need to recall of about...started about 19...or 35 years ago as to whether or not the CIR was even constitutional, and it was found to be so. So I point that out there, that in my experience, over quite a period of time as well, that the public who are part of the parties affected are impacted and walk away with an opinion and part of that opinion is based upon the whole process that includes having the individual presiding called judge. I would suggest that you consider those points as you debate LB472. I would be pleased to respond to any questions that you might have. [LB472]

SENATOR ROBERT: Any questions? Senator Chambers. [LB472]

SENATOR CHAMBERS: Mr. McGuire, since the term "commissioner" has a meaning, which is a member of a commission, should we change the name of all those who are members, of all the other commissioners, to "judge," so that we have consistency and the public is not misled? [LB472]

MARK MCGUIRE: No, I don't think so. I was rude with the Court of Industrial Relations but I don't know as to whether the public, Senator Chambers, really is misled. The

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person is presiding; they are deciding a case based upon the evidence that's produced by the parties. I view that as a different sort of process than a policymaking role... [LB472]

SENATOR CHAMBERS: Well, you can view the process however you choose, and I'm not quarreling with that. We're talking about a title, a designation, a label. [LB472]

MARK McGUIRE: Right. [LB472]

SENATOR CHAMBERS: If we were not discussing this particular entity with which you have a lot of dealing, and you heard the term "commissioner," a "commission," what would you think the name of a member would be? What would a member of a commission be called? [LB472]

MARK McGUIRE: You would think normally a member of a commission is a commissioner. I mean, sure. [LB472]

SENATOR CHAMBERS: Tell me any other commission where a member is called a judge. [LB472]

MARK McGUIRE: I'm not familiar with any. [LB472]

SENATOR CHAMBERS: Even on the Boxing Commission, where they have judges of boxing matches, they're called commissioners. When you said you wanted to find out if there's any meaningful difference between a commissioner and a judge... [LB472]

MARK McGUIRE: Correct. [LB472]

SENATOR CHAMBERS: ...where did you get your definitions from? [LB472]

MARK McGUIRE: The Webster Dictionary. [LB472]

SENATOR CHAMBERS: You know that a dictionary doesn't declare what is right usage; all it does is record what the popular usage of language is. They determine that and that's what they offer. So when you give what you gave us, the question I am going to ask you, is that a legal definition that you gave us? [LB472]

MARK McGUIRE: It would be as no more than a Webster's Dictionary. I, frankly, I thought--because I was kind of wrestling around with the same question as I was thinking about coming to this--because in my mind there somehow is a difference between a judge and a commissioner, and knowing what the CIR does, strike what it's called, but what it does is reach opinions based upon a weighing of evidence. And I see commissioners of the various types of commissions that you identified a few minutes

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ago being more policy-oriented. I think of... [LB472]

SENATOR CHAMBERS: Don't arbitrators reach decisions by weighing evidence presented? [LB472]

MARK McGUIRE: Do arbitrators? [LB472]

SENATOR CHAMBERS: Yes. [LB472]

MARK McGUIRE: They can. Some arbitrators are less tied to evidence than...I think there is a difference between an arbitrator and a district court judge, in my experience. [LB472]

SENATOR CHAMBERS: We're talking about reaching a decision through the weighing of evidence because that's what you mentioned... [LB472]

MARK McGUIRE: Right. [LB472]

SENATOR CHAMBERS: ...as a telltale giveaway... [LB472]

MARK McGUIRE: I think arbitrators make decisions based upon evidence, certainly. [LB472]

SENATOR CHAMBERS: Would members of the Public Service Commission, if there is a dispute before them, going to take evidence, weigh it, and render a decision? [LB472]

MARK McGUIRE: I honestly don't know, Senator Chambers. If in the reality...I've never been to the Public Service Commission. I haven't seen one of their proceedings. [LB472]

SENATOR CHAMBERS: Well, let me ask you this. Are you saying that the only ones who have a responsibility to reach decisions, the only ones who do that by weighing evidence are judges, no matter what they're called? [LB472]

MARK McGUIRE: No. Other people make decisions... [LB472]

SENATOR CHAMBERS: And the fact that these people on this commission make decisions indicates that you don't have to be a judge to do that. Why must the public be misled? Is the only way you can get respect for what these people do is to label them something other than what they're not? [LB472]

MARK McGUIRE: I'm not...I don't think I'm labeling them for something other than what they are. I think they generate...I think the CIR has a lot of respect because of the

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people who have served as judges on the CIR over its 35 years that it has really been an active entity. And if you... [LB472]

SENATOR CHAMBERS: What do you think the public's opinion would be if we put the question to them: Should we call somebody who is on a commission a commissioner or a judge? And let them know that all other commission members, whatever the commission is concerned with, are called commissioners. Do you think the public would say, but these people should be called judges because we wouldn't respect them or what they say if they weren't called judges? In other words, you put on the red cap, you put on the resplendent robes, you give the person a scepter, and those accoutrements will lend more weight and validity to what this person says and does than somebody not outfitted in that fashion. Is that what we are dealing with, with these people who are on the commission, like the Wizard of Oz? (Laughter) [LB472]

MARK McGUIRE: No, I've never seen them wear anything other than their normal attire. So the trappings of the position aren't there. And I'm not sure, I don't know if that adds to it. I think that, well... [LB472]

SENATOR CHAMBERS: What would they do differently if they were called commissioners from what they do now? [LB472]

MARK McGUIRE: If your question is about would my life be different in the way I try cases and present cases and everything, the answer is no. There wouldn't be any difference. I think that... [LB472]

SENATOR CHAMBERS: And if 95 percent of the people don't even know that they exist, there's not going to be any tremor going through society because people who are members of a commission are called commissioners. [LB472]

MARK McGUIRE: The people I'm talking about are the people who are there whose lives are affected because their income level is going to be decided based upon the evidence that's being produced at a hearing and I can simply say, based upon 30-something years of experience, that the individual clients leave and they talk about the judge that this... [LB472]

SENATOR CHAMBERS: Well, that wouldn't have to change. They call them judges because that's what they are called. If they did the same thing as commissioners, they'd say the same thing about commissioners, but they'd call them what they are, wouldn't they? If there's a discrete, identifiable group, more or less, and by group I meant those with certain interests, who go before that commission, whatever you call the people who sit there, these people are going to look for the same kind of action, the same presentation of their case, the same presentation by the opposing side, and then for the commissioners to render a decision. They will know that they are still dealing with the

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same people. If Judge Orr were called a commissioner tomorrow, would you lose respect for him? [LB472]

MARK McGUIRE: No. [LB472]

SENATOR CHAMBERS: Do you think he wouldn't be as smart then as he is now? [LB472]

MARK McGUIRE: He'd be exactly the same. [LB472]

SENATOR CHAMBERS: Now you are a professional man, highly educated, trained, experienced, and I know you do a good job, and that's not to stroke you, to let people know that I'm aware that you are a competent person in your profession. And yet, here you sit saying we need to hornswoggle the public to get them to respect something which otherwise they wouldn't respect and I'm supposed to go along with it. In '79 I made statements. [LB472]

MARK McGUIRE: Um-hum. [472]

SENATOR CHAMBERS: Things change. The Supreme Court stated that this commission doesn't carry out judicial functions. I don't care how you lay it out and describe it point-by-point, it's the Supreme Court that said they do not carry out judicial functions, the CIR doesn't. Now if the court didn't mean what it said, that's for the court and you to argue with them and tell them you all were wrong. Things are what the Nebraska Supreme Court says that they are. Things or entities created by the Legislature do what the Legislature empowers them to do. And if people don't like that, there are many things in this world that people don't like, but what I am gathering here so far, from what I've heard from you and the other witness, is that we need to mislead the public in order to make them respect something that we want them to respect. That's what I'm gathering. Because they are not judges. [LB472]

MARK McGUIRE: Well, that's where you start with a conclusion, they're not judges. [LB472]

SENATOR CHAMBERS: Well, then are they? Then I'm going to leave you alone. (Laughter) Are they members of a commission? [LB472]

MARK McGUIRE: Are the judges members of a commission? [LB472]

SENATOR CHAMBERS: Are the individuals you and I are discussing members of a commission? Is the entity of which they are members called a commission? [LB472]

MARK McGUIRE: Obviously, yes. [LB472]

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SENATOR CHAMBERS: Are there other entities created by statute, and at least one by the constitution, the Public Service Commission, are there other entities called by the name "commission" in Nebraska? [LB472]

MARK McGUIRE: Are there other things called commissions? [LB472]

SENATOR CHAMBERS: Yes. [LB472]

MARK McGUIRE: Oh, dozens and dozens of them. [LB472]

SENATOR CHAMBERS: Are the members of those entities, known as commissions, known as commissioners? [LB472]

MARK McGUIRE: I would say that's the general...certainly. I don't know, I don't know. I'm not going to play games with you, I don't know of any other bodies, the Liquor Commission, that they call them judges. They're.. [LB472]

SENATOR CHAMBERS: Right. None. [LB472]

MARK McGUIRE: ...called commissioners or whatever. [LB472]

SENATOR CHAMBERS: None. [LB472]

MARK McGUIRE: Although I would say that the proceedings before the Liquor Commission are quite different than proceedings before the Commission of Industrial Relations. [LB472]

SENATOR CHAMBERS: All that is irrelevant. We are talking about how you designate the people who sit there and they ought to be called what they are. It would be like saying that you have a person in the schools who is a disciplinarian. Therefore, we are going to call that person a police officer, a law enforcement officer. And you might say, well, that person can take students into custody and all these other things so, since that is what a cop does, he's a cop. It doesn't work that way. But that's all that I would have of you, Mr. McGuire. I promised, and as Lincoln said, the promise having been made, must be kept. (Laughter) [LB472]

MARK McGUIRE: Thank you. And we were all... [LB472]

SENATOR ROBERT: Any other questions for Mr. McGuire? [LB472]

MARK McGUIRE: ...younger men once upon a time. We still had the same color hair; it was just a different color, right? (Laughter) [LB472]

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SENATOR ROBERT: Thank you, sir. [LB472]

MARK McGUIRE: Thank you. [LB472]

SENATOR ROBERT: Are there any neutral testimonies? Seeing none, that closes the hearing on LB472. [LB472]

SENATOR CHAMBERS: You didn't ask me if I want to close. [LB472]

SENATOR ROBERT: Oh, do you want to close, Senator Chambers? [LB472]

SENATOR CHAMBERS: Just to teach you a lesson, I am. (Laughter) [LB472]

SENATOR ROBERT: I even had it right here. [LB472]

SENATOR CHAMBERS: Thank you, Mr. Chairman. I'm somewhat of a mentor also and no offense was taken by me because of the hearing was going to be closed before I had the opportunity to offer a closing. And some people probably wish that I would not close, but I've got to. We are lawmakers. We say that we deal with the truth. We should label things what they are, no matter how anybody may feel personally about a given entity. I love animals. I would not let anybody call a little poodle, that I really like, a child. It is the offspring of another poodle. I've taken her to the groomer and the groomer will say, oh, daddy brought you. Well, people use that and I didn't want to be, you know, "put-downish," but, no, I'm not her daddy. I'm not the daddy of any four-legged creature. And people can use that kind of terminology when they really care about their animals, but I don't equate them with children and I'm not a parent. I'm not even a guardian. In fact, of that little one I'm a valet, a chauffeur, a general all-around flunky, but I'm not a parent. (Laughter) We should set the example by how we do things. The Legislature named this entity the Commission of Industrial Relations. The Legislature could have retained the name "court," but it chose not to. In those long-ago days I was able to prevent them from stripping away everything, but the commission was a lot younger in those years, almost 30 ago, than it is now. It has gotten its own legs under it. It has a track record. The groups and individuals appearing before it know what is it they are appearing before, regardless of what it would be called. They know what the processes, the procedures, the standards, and all of these other things that go into the work done by that entity. Until the Legislature renames it a court, the members should not be called something they're not. A member of a commission is a commissioner. I like Mister...what was that last testifier's name? [LB472]

SENATOR CORNETT: McGuire. [LB472]

SENATOR CHAMBERS: I like Mister..oh, is he still here? Okay. Letting him think I got

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some slippage here, but I've known Mr. McGuire a long time and I also know that the group he represents would probably oppose practically anything that I would bring, anything. They've gone on public record, after a vote, taking a position against something that means a great deal to me. Since he's their lobbyist, he does what they tell him to do. What significance does the name of the CIR have to teachers? When have you ever seen teachers take a position on something that has absolutely nothing whatsoever to do with education? It has nothing to do with wages, has nothing to do with hours, has nothing to do with conditions of labor, has nothing to do with discipline, has nothing to do with anything other than that Senator Chambers brought a bill and they don't like Senator Chambers. So that's why he is here. When you work for somebody you do what they tell you to do or you cease working for them. Judge Orr is accustomed to being called a judge. In this society, to be called a judge has meaning unless you are not a judge and then it's meant to be an insult or a slam. If somebody knows you're not a judge and they call you a judge, it's meant to insult you because that's what they used to do to black people when they wouldn't say mister to us. They would say anything to us. They would call us colonel, judge, captain, president to show their contempt. There is something in a name. There is something in labels and I want to have truth in labeling. I'm not on unfriendly terms with any of the people on the commission, but they are commissioners. And I'm going to do all I can to have that proper designation put into the statute. Here's a deal I will make with Judge Orr. If he can show me any other commission in this state where a member is called judge, as the official and formal designation, I will back away from this, because it means I did not do my research. It wouldn't mean that the position that I'm taking is invalid. It would mean that I did not do my research and when I said no member of a commission is called judge, then I was wrong. And the consequence for me will be that I will abandon this struggle. So until somebody shows me that, I'm going to continue it. And I always try to let the committee know what it is that I intend to do. I believe this matter should go before the Legislature. If it does not, by way of a vote by the committee, then I'm going to try to raise it on the floor. And we will see if a majority of the senators are willing to bring this matter for debate on the floor so we can determine if the Legislature is going to give an honest title to the people serving on an entity. And if anything I said generated any questions, I will respond. [LB472]

SENATOR ROBERT: Questions? Thank you, Senator Chambers. [LB472]

SENATOR CHAMBERS: Thank you, Mr. Chairman. [LB472]

SENATOR ROBERT: That officially closes the hearing on LB472. (Laughter) Senator Cornett from Bellevue has joined us and will take over for the remainder of the day. [LB472]

SENATOR CORNETT: The next bill is LB210, change membership of the Nebraska Workforce Investment Board. Lori Thomas, committee clerk (sic), is here to introduce

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that bill. [LB210]

LORI THOMAS: Thank you, Chairperson Cornett and members of the committee. For the record, I am Lori Thomas, T-h-o-m-a-s, and I'm here to introduce LB210. The committee is introducing this bill on the behalf of the Department of Labor. LB210 would streamline the Nebraska Workforce Investment Board by reducing its size. Currently, the board consists of 47 members. The first change would make the two legislative members of the board nonvoting. The board would likely then be able to move beyond being merely advisory in nature. Second, the second change would remove both of the mayors of the metropolitan class and the primary class cities from the membership on the board. Third, the bill would also allow the Governor's designated representative to vote in the Governor's stead and be considered a member of the board for quorum purposes. Finally, the department has asked the committee to consider amending the quorum requirements that are proposed in this bill. Originally, the idea behind making a 20-person quorum was to lower the threshold which would have enabled the board to conduct business with fewer members present. However, the department is currently also hoping to make some other consolidations within the nonrequired member section and, therefore, 20 could end up actually being a supermajority if those other consolidations occur. I have requested an amendment to that effect. It's not here from the Bill Drafters yet, but it would be a simple enough change. And I believe that's all I had for my opening remarks. [LB210]

SENATOR CORNETT: Are there any questions? [LB210]

SENATOR LATHROP: I do. In the bill summary...first of all, the function or what's going to be accomplished by this bill, if it passes, is you will take...presently, two state senators serve on this board. Is that right? [LB210]

LORI THOMAS: Correct. They're vacant as of right now, but there's a place for them. [LB210]

SENATOR LATHROP: Okay. And we have one or two mayors of larger cities that also serve? [LB210]

LORI THOMAS: Yes. The Lincoln and Omaha mayors both serve. [LB210]

SENATOR LATHROP: And then we have the Governor. [LB210]

LORI THOMAS: Correct. [LB210]

SENATOR LATHROP: And essentially what we do...and incidentally, the board right now is advisory... [LB210]

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LORI THOMAS: Yes. [LB210]

SENATOR LATHROP: ...for the most part. And what it does do, is there is federal monies that come into the state somewhere in the \$9 million range;... [LB210]

LORI THOMAS: As I understand it, yes. [LB210]

SENATOR LATHROP: ...that this board advises people, advises the government where to spend the money. Is that right? [LB210]

LORI THOMAS: In an advisory capacity, yes, it makes recommendations. And I believe page 2 of your summary does kind of lay out the duties, too, if that helps. [LB210]

SENATOR LATHROP: Okay. I've read the summary and it prompts me to a few questions. First of all, you want to take the state senators off from voting members. They can serve, but not be voting members. Is that the case? [LB210]

LORI THOMAS: Correct. [LB210]

SENATOR LATHROP: And then you want to take the mayors off and...either completely, or make them nonvoting members. [LB210]

LORI THOMAS: As the bill is written, it would take them completely off. [LB210]

SENATOR LATHROP: Okay. And then the Governor, instead of serving on this commission, is now going to either have the Lieutenant Governor, or someone he designates, serve. [LB210]

LORI THOMAS: If he so chose, yes, that would be... [LB210]

SENATOR LATHROP: And he would remain a voting member. [LB210]

LORI THOMAS: He would remain a voting member, and if he had chose to appoint someone as his designee in his place, the designee would be a voting member. [LB210]

SENATOR LATHROP: In the bill summary, it says LB210 would make the legislative members of the board nonvoting members and, therefore, the board could move beyond merely being an advisory board. Does that mean the board would then make decisions about how this federal money would be spent? [LB210]

LORI THOMAS: I think that's it. [LB210]

SENATOR LATHROP: As opposed to merely being advisory? [LB210]

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LORI THOMAS: Yes, I think that's the intention behind it. [LB210]

SENATOR LATHROP: What is it about getting the state senators off of the board allows it to become...the sentence would suggest that removing the state senators now makes it possible for this board to do something more than simply advise, but now they can spend the money. [LB210]

LORI THOMAS: Yes. [LB210]

SENATOR LATHROP: Why is that? Is there a connection between the two? [LB210]

LORI THOMAS: Yes. It comes down to the constitutional issue of separation of powers. And as I understand it, and I'm sure that the commissioner is going to follow me, so he could probably do a better job of explaining it. However, by making them nonvoting members, it is, I guess, it's arguable that they could go beyond that. If they're voting members, it's a separation in powers issue. Have I not answered your question? [LB210]

SENATOR LATHROP: Well, you said the commissioner is coming after you? [LB210]

LORI THOMAS: Yes. [LB210]

SENATOR LATHROP: Well, let's hope the commissioner has an answer then. [LB210]

LORI THOMAS: Okay. [LB210]

SENATOR LATHROP: All right. Thanks. [LB210]

SENATOR CORNETT: Are there any other questions? Proponents? [LB210]

FERNANDO "BUTCH" LECUONA, III: (Exhibit 2) Senator Cornett and members of the committee, for the record, my name is Fernando "Butch" Lecuona, III. I am Commissioner of Labor for the Nebraska Workforce, Department of Labor. I want to thank the committee for introducing LB210 on behalf of the department. I'll go over my prepared testimony first, then I'll answer the senator's question. Nebraska Workforce Investment Board is currently comprised of 47 members. That is really too large of a board, and a body, to either advise or oversee one federal training program. As required under the federal Workforce Investment Act, WIA, of 1998, the Nebraska Workforce Investment Act provides that certain government officials must be appointed to the state workforce investment board and that a majority of the membership must be from the private business community. The Governor has asked the department to consider ways to reduce the size of the board and to appoint a designee as his voting representative

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so that there can be more direct participation by the Governor's Office on the state board without constantly running into conflicts in the Governor's schedule. The membership of the board is somewhat complicated and, at Senator Cornett's request, we circulated a table explaining the membership of the board late last week. I've had the page distribute a copy of that table today, along with a list of all current members of the state board. As set forth in the table, there are 17 federally mandated government and training program officials who must be on the board. Absent consolidation of those programs into a lesser number of entities, that number cannot be reduced. Because of the federal mandate that business representatives must comprise a majority of the board's members, the present minimum size of the board can be...in Nebraska is 35 members. To get to that number, the Nebraska Workforce Investment Act would need to be amended. Because they, along with the Governor, are direct grant recipients of the federal WIA funds, the Nebraska Workforce Investment Act provided that the mayors of Omaha and Lincoln must be members of the state board. To reduce the size of the state board while staying compliant with federal law, LB210 would remove the mandatory membership of the mayors of Lincoln and Omaha. In addition, in order to further reduce the size of the state board and to allow the board to move beyond its current advisory-only role, LB210 would make the members of the Legislature appointed to the state board nonvoting members. Though it has not been tested in court, there is some indication in Attorney General Opinion Number 69 from 1985 that the determining factor when deciding if a board violates the separation of powers doctrine set forth in Article II, Section 1 of the Nebraska Constitution, may come down to whether the members of the Legislature have a voting membership on the board. In addition, by removing the voting status of the members of the Legislature serving on the board, it reduces the number of members of the business community who must be appointed to the board. As noted in the table circulated earlier, there are other members of the state board who are not required by state or federal law, but have been appointed to the board. The Governor and I, as Commissioner of Labor, will be reviewing these members to determine whether they can be consolidated into other membership groups mandated under federal law. Finally, LB210 reduces the number of members needed to achieve a quorum. LB210 was originally drafted, it appeared the minimum membership was in the 40s. Given what we know now, we would ask the committee to reinstate the original quorum language and remove the 20-member requirement. That concludes my prepared testimony and I would be happy to try and answer any questions that you may have. Senator Lathrop, you had a question earlier about... [LB210]

SENATOR LATHROP: I do. Maybe I'm going to start out with a couple of different ones... [LB210]

FERNANDO "BUTCH" LECUONA, III: Sure. [LB210]

SENATOR LATHROP: ...so you can tell me, just by way of background, what...there's some money that comes into the state and then is managed by Nebraska Workforce

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Development? [LB210]

FERNANDO "BUTCH" LECUONA, III: Yes. That's correct. [LB210]

SENATOR LATHROP: Where does the money come from? [LB210]

FERNANDO "BUTCH" LECUONA, III: The money comes from the federal government through the U.S. Department of Labor. [LB210]

SENATOR LATHROP: Does it come annually? [LB210]

FERNANDO "BUTCH" LECUONA, III: It comes annually. [LB210]

SENATOR LATHROP: And in the last five years, what's the average amount of money that we get managed through the Workforce Development? [LB210]

FERNANDO "BUTCH" LECUONA, III: Anywhere between \$8 million and \$10 million dollars for the WIA program. [LB210]

SENATOR LATHROP: Okay. Currently, with the composition of the Workforce Development Board, or commission,... [LB210]

FERNANDO "BUTCH" LECUONA, III: It's a board. [LB210]

SENATOR LATHROP: ...how many people do we have serving on that board presently? [LB210]

FERNANDO "BUTCH" LECUONA, III: On the state board there are approximately 47, 48 members. [LB210]

SENATOR LATHROP: What do they do with respect to this \$8 million to \$10 million? [LB210]

FERNANDO "BUTCH" LECUONA, III: They advise the Governor on where the monies should be spent with regards to priorities and high demand, high wage, high growth occupations. They look at a lot of demographic information on what's happening in the state and try to make some sound judgments based on where the need is, on where those monies ought to go. [LB210]

SENATOR LATHROP: What need are they trying to identify? What are we spending the money on once we identify the need? [LB210]

FERNANDO "BUTCH" LECUONA, III: Well, the money goes to individuals who need

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training to get back into the work force. A lot of individuals who may be laid off or new entrants to the work force sometimes don't have the skill sets that employer is looking for, so they need to get those skills somewhere. This provides that mechanism to do that. [LB210]

SENATOR LATHROP: Once they give advice to the Governor about where they think this \$8 million to \$10 million should be spent, how does it get spent? Does it go through the Legislature at all or does the Governor just get to announce? I get these e-mails from him that he is announcing these grants going out to different places for hundreds of thousands of dollars at a time. Is it one of those situations? [LB210]

FERNANDO "BUTCH" LECUONA, III: Those are not the same. Those are not the same kind of grants. [LB210]

SENATOR LATHROP: All right. [LB210]

FERNANDO "BUTCH" LECUONA, III: These grants are funded...or fund workforce investment programs at the local level. Each of the three local entities, there's three local workforce investment boards in the state of Nebraska, each of those have 48, 49, 50 members. They each represent population areas as divided in the state. The three local workforce investment areas are: one, the Omaha workforce investment board that comprises of Douglas, Sarpy, and Washington Counties; Lincoln comprises of Saunders and Lancaster County; and greater Nebraska represents the remaining 88 counties. [LB210]

SENATOR LATHROP: My question, though, let me go back... [LB210]

FERNANDO "BUTCH" LECUONA, III: That's where the money goes.. [LB210]

SENATOR LATHROP: ...to the question because I think you're answering it. And the advisory board makes some recommendations to the Governor, whomever that might be at the time. How does that money get distributed then or spent? Does any of that money pass through the Legislature? [LB210]

FERNANDO "BUTCH" LECUONA, III: Through the appropriations process, it's part of the appropriations bill that the department provides every year...or every two years, in biennium. [LB210]

SENATOR LATHROP: Okay, so the Appropriations Committee is going to look at that \$8 million to \$10 million. And do they ultimately have a say in how the money is spent? [LB210]

FERNANDO "BUTCH" LECUONA, III: Not in this, they don't. It's just an appropriations

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process that we go through. [LB210]

SENATOR LATHROP: Are they sending it over to Appropriations just so they can see where the \$8 million to \$10 million went or does the Appropriations Committee have a say in how the money is spent? [LB210]

FERNANDO "BUTCH" LECUONA, III: The Appropriations Committee does not have a say in where the money goes. [LB210]

SENATOR LATHROP: Does the full Legislature have a say in how that money is spent? [LB210]

FERNANDO "BUTCH" LECUONA, III: No, they do not. [LB210]

SENATOR LATHROP: Why are we taking two members of the Legislature off the board? What's the constitutional rub? [LB210]

FERNANDO "BUTCH" LECUONA, III: In the constitution's separation of powers issue, and what we're trying to do is divide...or trying to walk the thin line, what gives us what the federal requirement is, which mandates that two members of the legislative body, in this case, sit on that board. But Nebraska Constitution, which we're one of...the only state in the United States that has that constitutional provision, doesn't allow us to have voting members of the Legislature serving on that board. They didn't write this law for us. [LB210]

SENATOR LATHROP: Let me back up to the last part. First of all, the federal law requires that we have two state senators serve on this board. Is that right? [LB210]

FERNANDO "BUTCH" LECUONA, III: That's correct. [LB210]

SENATOR LATHROP: What you want to do is take away their ability to vote on how the money gets spent? [LB210]

FERNANDO "BUTCH" LECUONA, III: Well, I don't want to take away their ability to vote. What I'm saying is... [LB210]

SENATOR LATHROP: I don't mean to suggest that this is something that you are doing yourself. [LB210]

FERNANDO "BUTCH" LECUONA, III: Yeah. Right. No, it's a constitutional issue. It puts us in jeopardy with the federal law because federal law requires it, our state constitution doesn't. [LB210]

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SENATOR LATHROP: What is it about our state constitution that you think you need to take the state senators off in their capacity as voting members? [LB210]

FERNANDO "BUTCH" LECUONA, III: Well, again it's a violation of the state's separation of powers. I'm not an attorney, but my guess is that if you ask for a legal opinion, what they would come back and tell you is that because the way the constitution addresses the separation of powers, in terms of what happens with those kinds of monies in this particular instance, that would be an issue that would violate our provisions that we accept the money under from the federal government. [LB210]

SENATOR LATHROP: Okay. [LB210]

SENATOR WHITE: So it's not a constitutional issue. [LB210]

FERNANDO "BUTCH" LECUONA, III: Well, it is a constitutional issue with regards to voting requirements, but other than that, no. [LB210]

SENATOR LATHROP: And the closest thing you have to an opinion to that effect is the Attorney General's Opinion Number 69 that was in 1985. [LB210]

FERNANDO "BUTCH" LECUONA, III: That's correct. [LB210]

SENATOR LATHROP: So if I look at that, that's the authority that you're using for this argument. [LB210]

FERNANDO "BUTCH" LECUONA, III: That's correct. [LB210]

SENATOR LATHROP: Okay. [LB210]

SENATOR CORNETT: I have a problem with removing any elected officials from this board. Now there would be no more...no elected officials, except the Governor, on the board after this. Am I correct? [LB210]

FERNANDO "BUTCH" LECUONA, III: That would be correct. [LB210]

SENATOR CORNETT: Okay. What is the reasoning, other than shrinking the size of the committee, for removing the mayors? [LB210]

FERNANDO "BUTCH" LECUONA, III: Just the size. [LB210]

SENATOR CORNETT: It's not a constitutional issue? [LB210]

FERNANDO "BUTCH" LECUONA, III: No, not for them. [LB210]

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SENATOR CORNETT: I didn't see that it would be. [LB210]

FERNANDO "BUTCH" LECUONA, III: No, it's not. It's just the size. And I would also say that if you look at the attendance of the elected officials, it really hasn't been... [LB210]

SENATOR CORNETT: Well, I understand the attendance hasn't been good up until this point. [LB210]

FERNANDO "BUTCH" LECUONA, III: Yeah. [LB210]

SENATOR CORNETT: Matter of fact, it's been nil. [LB210]

FERNANDO "BUTCH" LECUONA, III: That's right. [LB210]

SENATOR CORNETT: Where in the constitution specifically do you see a problem with this? [LB210]

FERNANDO "BUTCH" LECUONA, III: I don't know if I can cite the long... [LB210]

SENATOR CORNETT: I mean what...the wording. Do you... [LB210]

FERNANDO "BUTCH" LECUONA, III: Just the voting, separation of powers issue. That's... [LB210]

SENATOR CORNETT: Even though we are not allowed to change how this money is used once it's appropriated. We have no say in it, correct? [LB210]

FERNANDO "BUTCH" LECUONA, III: Right. [LB210]

SENATOR CORNETT: Okay. [LB210]

FERNANDO "BUTCH" LECUONA, III: Senator. [LB210]

SENATOR CORNETT: Oh,... [LB210]

SENATOR CHAMBERS: Madam Chair... [LB210]

SENATOR CORNETT: ...yes, Senator Chambers. [LB210]

SENATOR CHAMBERS: Why does this go through the Legislature's appropriation process? [LB210]

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FERNANDO "BUTCH" LECUONA, III: The Department of Labor is 98 percent federally funded, as you know, Senator. And as part of the...as a code agency, all of our federal dollars go through the appropriations process to allow us to spend the money in the state. [LB210]

SENATOR CHAMBERS: So then the Legislature can refuse to appropriate money to your department. Is that true? [LB210]

FERNANDO "BUTCH" LECUONA, III: That would be my take on it. [LB210]

SENATOR CHAMBERS: And you wouldn't have that money to spend then. [LB210]

FERNANDO "BUTCH" LECUONA, III: That would be correct. [LB210]

SENATOR CHAMBERS: So the Legislature does have absolute control over whether or not any money will be spent. [LB210]

FERNANDO "BUTCH" LECUONA, III: I wouldn't argue that. [LB210]

SENATOR CHAMBERS: But you're saying it can't tell how it will be spent. [LB210]

FERNANDO "BUTCH" LECUONA, III: Because of the framework of the Workforce Investment Board structure in the state and this country, quite frankly, that's how the money comes in. The Governor's Office receives the money from the federal government. It's passed through the Department of Labor through to the local areas, like Omaha, Lincoln, and greater Nebraska. [LB210]

SENATOR CHAMBERS: Does the federal legislation say that...let me ask it a different way. Let's say that \$1,000 is the amount, so I can try to make clear what I'm asking. Does the federal government, the law that created this program and which governs its administration, state that when this \$1,000 comes into a given state, this full \$1,000, if it's accepted by the state for participatory purposes, must be spent in this manner? [LB210]

FERNANDO "BUTCH" LECUONA, III: To provide certain services under that particular grant area, yes. [LB210]

SENATOR CHAMBERS: Then why do you need this board? [LB210]

FERNANDO "BUTCH" LECUONA, III: The Workforce Investment Act of '98, in Congress' mind, and I'm not a congressman so I can't tell you what was completely in their minds, but... [LB210]

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SENATOR CHAMBERS: They can't either. (Laughter) [LB210]

FERNANDO "BUTCH" LECUONA, III: Wouldn't argue. But the point is that when they wanted to make this an inclusive process as best they could to get as many people to the table to talk about what was best for states and local areas to provide services. As you remember, back when some of the earlier predecessors of the Workforce Investment Act legislation, we had CETA, we had JTPA, we had the Conference of Manpower, we had the MDTA programs, of that nature, every time those were cycled out the federal government, through Congress, tried to make the improvements to the program to make sure that more money went to the direct services piece to make sure that people were getting the right kinds of skill attainment, education if needed, and job placement services to the degree that they could. And so now we find ourselves in this time period where we have Workforce Investment Act legislation. Again, in their wisdom, they decided that it was best to have these big boards to do these big things in terms of guiding governors and states, and determine what kind of needs the state, in terms of those kinds of efforts, were needed. [LB210]

SENATOR CHAMBERS: And while I'm engaging you in a bit of discussion, without arguing the validity of its application to what we're talking about here, I think what the argument on the constitutional issue was went something like this. These are executive functions, executive department functions, and under the constitution each of the three branches is given specific lines of authority and no two can exercise the powers of the other, and no one of the other two, unless specifically authorized to do so by the constitution. So this being considered an executive department operation, a member of the Legislature can have no decision-making authority in it because that would have the Legislature carrying out an executive function... [LB210]

FERNANDO "BUTCH" LECUONA, III: Executive function, correct. [LB210]

SENATOR CHAMBERS: ...and that would violate the separation of powers. [LB210]

FERNANDO "BUTCH" LECUONA, III: The separation of powers, correct. [LB210]

SENATOR CHAMBERS: Which brings me back to what I was saying on my bill. Since the Nebraska Supreme Court said that the CIR is an administrative agency carrying out a legislative purpose, the people on it cannot be judges. But anyway, I think that's the argument they give on why, if a senator is on here and votes, then it can only be advisory. [LB210]

FERNANDO "BUTCH" LECUONA, III: That's correct. [LB210]

SENATOR CHAMBERS: But if it actually carries out executive department functions, then you can have the senators sitting there, but they can't make any decision. [LB210]

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FERNANDO "BUTCH" LECUONA, III: Correct. [LB210]

SENATOR CHAMBERS: And I think what my colleagues are asking is why would there be a necessity to structure this in such a way that the senators would not vote since it's only advisory anyway. It would still be advisory, wouldn't it? If the senators were not on it, what would it do then that it's not doing now? [LB210]

FERNANDO "BUTCH" LECUONA, III: Well, Senator, to answer your question, I believe that what would happen is that if the state board wanted to assume more responsibility and not just be advisory, but actually look at what kinds of things can and should be done for work force development programs in the state, that would give them that opportunity to do that. [LB210]

SENATOR CHAMBERS: And now with the senators able to vote, and that's not being done, who is carrying out that function now? [LB210]

FERNANDO "BUTCH" LECUONA, III: We do it at the...from some guidance from the state, but mostly taken at the local levels. Those independent workforce investment boards make those decisions on how the money is spent in their local jurisdiction areas. [LB210]

SENATOR CHAMBERS: Do you think, and I'm asking for your opinion, my question is not meant to be pejorative, that with the statute requiring--and I presume it's reflecting a federal requirement--that a majority of the members be from the business community, that you could rely on the business community to make decisions that are going to be in the best interests of the recipients or beneficiaries of this program? [LB210]

FERNANDO "BUTCH" LECUONA, III: The way...I would answer this questions this way. The way that it is currently set up through Nebraska, Nebraska is touted as one of the leaders with regards to how local business participation has made a difference in governing these types of programs in the United States because they take an active participative role in this process. They sit on committees. They actually report out as a regular board would. Staff are there, whether they're state staff or local staff. They provide administrative support to those folks. [LB210]

SENATOR CHAMBERS: And what is their incentive to do that? [LB210]

FERNANDO "BUTCH" LECUONA, III: Because we negotiate performance standards with the federal government on these types of programs, if they surpass those goals, we are in line as a state for incentive funds that the federal government gives out. And Nebraska has been able to do that three times over the four-year cycle of the program for incentive bonuses to the tune of \$750,000 each of those three years. [LB210]

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SENATOR CHAMBERS: Okay. Thank you. That's all I would have. [LB210]

FERNANDO "BUTCH" LECUONA, III: Any questions? [LB210]

SENATOR CORNETT: Seeing none, are there any other proponents? [LB210]

FERNANDO "BUTCH" LECUONA, III: Thank you. [LB210]

SENATOR CORNETT: Opponents? Neutral testimony? That closes the hearing on LB210. The next item is LB57, provide for fair share representation contributions for certain labor representation. Is Senator Preister here? Matt, could you please call Senator Preister's office and see if you can locate him? Why don't we take a five-minute recess until we locate Senator Preister, and everyone be back here at ten minutes till, please. [LB210]

BREAK []

SENATOR CORNETT: All right. I think everyone is back, except for legal counsel. We don't need her to start. The next bill is LB57, with Senator Preister to introduce. [LB57]

SENATOR PREISTER: Thank you, Senator Cornett, Chair of the Business and Labor Committee, distinguished members. I'm Don Preister, I am the primary introducer of LB57. I represent the 5th Legislative District. This legislation permits the labor organization and employer to enter into an agreement requiring represented employees of the employer, who are not paying membership dues to the labor organization, to pay a fair share representation contribution. However, the employer may not be forced into agreeing with this provision. LB57 does not repeal Nebraska's right to work laws. It does not force any Nebraska worker to join a union, nor does it prevent any worker from resigning membership in a labor organization. It does not allow any Nebraska workers to be refused a job or discharged from a job because the worker either belongs to a labor organization or does not belong to a labor organization. It does not apply to unorganized employers. It does not require an employer to agree to a fair share representation contribution agreement, and it does apply to labor organizations that are recognized as certified, exclusive collective bargaining representatives. The fair share representation contribution cannot exceed the amount regularly paid for labor organization membership. Failure of a represented employee to pay his or her fair share representation contribution gives the labor organization the right to bring action in court for payment with reasonable attorney fees and court costs. I introduced LB57 out of a sense of fairness. I believe it is reasonable to ask nonunion employees to contribute a fair share for the benefits they derive from union-negotiated collective bargaining agreements. Currently, union employees are essentially subsidizing benefits which accrue to all employees. My bill is not intended to force employees to join unions or to

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unionize all work environments. LB57 provides a tool which can be used if both the union and employer agree to address the disparity of benefits received by nonunion employees. I would just add, I don't normally say what a bill is not or does not do as I did in this opening. But I felt compelled to after you had received, all of us had received, National Right to Work Committee information. And I would just ask you to consider, we received that information and contrast that with what we received from the Nebraska Chamber of Commerce in Industry. The state chamber sent information and it said, "LB57 would mandate fair share representation contribution," exact language that I used, "for labor representation by labor organizations. Failure of a nonmember employee to pay the fair share representation contribution gives the labor organization a right to bring court action." An accurate description. If you look at...and I think in Nebraska we tend to either like and agree on something or disagree on something and that's part of the process. But just as the chamber did, they report it accurately, they give their view, and they do it in an agreeable fashion, even though we may not agree. The National Right to Work sent out....and this letter is dated January 18, which is, in this bill, from its number you can tell, was one of the first bills introduced. So the bill had been out, it had been referenced, and it was certainly identifiable on the web which is accessible all over. But the letter that we received from them dated January 18 says, "fee for grievance schemes." It talks about last year it was LB230. And I expect it to be introduced, as in the future tense, again very soon. It goes on to talk about monopoly bargaining contracts, fee for grievance schemes, the union bosses extract fees, union-controlled grievance process, big labor union bosses control, whole schemes. It goes on and on with labels that I think are inappropriate. Certainly you can have a different view, but I think the tone is one that shows that they didn't fully do their homework. And I simply point that out because I accept different views, I accept disagreement, but I would rather that people did it in a more agreeable fashion. And so when you get the tone but you also get wording that obviously isn't in the bill, they may not have even read the description before that information went out. So I leave that with you and I would entertain any questions that you may have. [LB57]

SENATOR CORNETT: Thank you, Senator Preister. Senator Chambers. [LB57]

SENATOR CHAMBERS: I can't resist. In the same way that you feel they made those characterizations because they hadn't read the language of the bill, I feel the comments you made about my provision to reorganize OPS, your saying that it causes segregation, is as distasteful to me as that is to you, because there is nothing in my proposal that does it. But what you said reflected and mirrored what a lot of other people have said. And then there was one of the new senators who dragged along behind you, like a tin can tied on the tail of a puppy dog and run down the street. But I just thought I'd call this to your attention so you would see that those people are not the only ones who on occasion will not read the language, will accept what they hear, or they have a position that they want to articulate, and I feel that is what I was a victim of. But since I'm not as weak as any labor union or the Legislature as a whole, and my skin

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is thicker than the shell of a tortoise, I can take it and thrive. But I just thought I'd do that. I don't really have any questions. [LB57]

SENATOR PREISTER: Thank you, Senator Chambers. [LB57]

SENATOR CORNETT: Any other questions from the committee? Yes, Senator Lathrop. [LB57]

SENATOR LATHROP: Yeah. Senator Preister, maybe just so that the record reflects what this bill does or what you expect it to do, is the point of the bill with respect to we have businesses that are organized and the work is done by, and the rate of pay is negotiated by, the labor unions. Is that right? [LB57]

SENATOR PREISTER: There is a discussion, there is an agreement between...the labor union does the negotiating for the employees with the employer. [LB57]

SENATOR LATHROP: And the rate, let's just talk about it in terms of the hourly rate. The rate that they come up with is the rate that will be paid to all employees, regardless of whether those employees have joined the union or not. Is that the case? [LB57]

SENATOR PREISTER: That's correct. [LB57]

SENATOR LATHROP: So a nonunion member will have the benefit of a negotiated wage rate or other benefits without ever having paid dues. [LB57]

SENATOR PREISTER: That is correct. [LB57]

SENATOR LATHROP: And the purpose of this bill, as I understand it, is to require that the nonunion members pay something, maybe not the full amount that a full union member would pay, but contribute something to the cost of negotiating that. [LB57]

SENATOR PREISTER: That is correct. [LB57]

SENATOR LATHROP: There are, and I'm going to make a number up, I don't have any idea what the union dues are, but if they are \$35 a month, is all \$35 of that spent on negotiating? Or is some of that money spent on things other than negotiating the wage rate and benefits for the employees? [LB57]

SENATOR PREISTER: As I understand it, the dues can be used for various federally approved projects, programs or purposes, and that money goes to those. It doesn't all go to negotiating the contract or dealing with disputes in contracts. So that portion that would go to those other areas is separate. The portion that the person who would be a part of the bargaining unit but not an employee, but not...an employee who is not a

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member of the union, would only pay a proportionate portion of what it cost to actually negotiate the contract. And those guidelines are pretty distinct and established by federal programs through the, I believe, the union folks can tell you that, through the National Labor Relations Board. They have reporting requirements they have to give accurate accountings of. So a formula is already established and wouldn't be done necessarily individually by each union. I think there's an overall national formula that they would have to follow in determining what that actual fee is, and it could never be more than the actual dues to belong to the union. [LB57]

SENATOR LATHROP: The LB57 actually provides that it will never be more than a union due... [LB57]

SENATOR PREISTER: Right. [LB57]

SENATOR LATHROP: ...but, in fact, if the cost of negotiating the contract and performing those functions is only a fraction of the union dues, then it will necessarily always be less than the amount of a member's monthly due. [LB57]

SENATOR PREISTER: Correct. [LB57]

SENATOR LATHROP: Probably...well, we don't know for sure, but it's always going to be something less... [LB57]

SENATOR PREISTER: Correct. [LB57]

SENATOR LATHROP: ...and represent nothing more than the cost...that person's proportionate share of the cost of negotiating the benefits. [LB57]

SENATOR PREISTER: Correct. [LB57]

SENATOR LATHROP: Okay. Thank you. [LB57]

SENATOR CORNETT: Senator White. [LB57]

SENATOR WHITE: Senator, often nonunion members also take advantage of union representation and grievance process, other things. Is the union able to recoup the cost of providing those services through this bill? [LB57]

SENATOR PREISTER: Currently, under current practice, they are not, but they would be able to under this bill? [LB57]

SENATOR WHITE: Now I know as I read this bill, am I correct in reading it, that at no time would a nonmember be charged for any kind of money spent on a political or social

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purpose by the union? In other words, if they didn't agree with it, their money is not being used for that. Is that correct? [LB57]

SENATOR PREISTER: That's correct. It could only be for those, essentially those two purposes,... [LB57]

SENATOR WHITE: So... [LB57]

SENATOR PREISTER: ...not for any social...(RECORDER MALFUNCTION--SOME TESTIMONY LOST) (See Exhibits 3, 4, 5, 6, and 7.) [LB57]

MARK SCHORR: ...and the complete Preemption Doctrine simply says if an issue at the state level, you know, the state can pass a law, the state can have Supreme Court decisions that create a wrongful discharge claim as an exception to the Employment at Will Doctrine, but any state provision to the extent that it tries to intrude on collective bargaining, the process of collective bargaining, or collective bargaining agreements, it is completely preempted because that is strictly governed by the scheme created under the federal labor laws. And, you know, if you look into it, you will find numerous, numerous U.S. Supreme Court cases that hit on this concept. This bill, LB57, ties everything to, well, if there's an agreement, if the employer and the union agree in the collective bargaining process, that they are going to put this in the agreement and require that all employees, if they are going to take benefit of the contract, pay their fair share that involves the collective bargaining agreement. So let's assume that this bill is passed and then we go on down the road and somebody files a legal claim to try and collect the fee or, you know, and to enforce what the employer and the union agreed to. Ladies and gentlemen, that suit would be immediately removed to federal court under the Complete Preemption Doctrine and it would be subject to dismissal because of the Complete Preemption Doctrine that has been repeatedly recognized by the United States Supreme Court. I want to make two last points. I believe LB57 would unnecessarily and inappropriately put employers in the middle, potentially, of disputes between employees and unions because the way this bill is set up, it could put employers in the position of being told by the union, well, you know, we have this agreement, this person won't pay. You know, the employer could be asked to get in the middle of unions' relations with members or members of the bargaining unit who are not members, and we do not believe that employers should be put in the middle of this relationship. The same federal law that I've been talking about here today governs relationships between unions and employees in the bargaining unit, both members and nonmembers. And there is a whole separate part of the act that governs these relationships between unions and employees. We do not believe that employers should be put in the middle as we believe would happen with LB57. Finally, I think LB57 takes individual rights away from Nebraska employees. We believe that the individual workers in this state should be left to decide whether or not they want their hard-earned dollars to be paid over to the union and whether they want to be forced to be a member of the

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union even though it is not forced membership. There's been similar statutes proposed in other states. The state of Arizona just struck one down there within the last few weeks. Similar provisions, provisions similar to this have not fared well in the courts, in my opinion. And I appreciate the opportunity to point out what I see are some real obstacles to this and I think they bear noting, because federal preemption is real, folks, and there's already federal laws that preempt the field. And with that, I'd open it up for any questions. Yes, Senator Chambers. [LB57]

SENATOR CORNETT: Senator Chambers. [LB57]

SENATOR CHAMBERS: Mr. Schorr, I don't think there's anybody with even a nodding acquaintance of the law who would deny that, where federal preemption exists, that anything the state does that is preempted by the federal government cannot stand. But the litigation results from determining whether or not preemption applies in a given situation to a given state enactment or a Supreme Court decision in the state that might move in the direction that you said could be preempted. So if your conclusions...let me be sure that I understand first. Are you saying categorically that federal preemption would make this bill, if were enacted into law, unconstitutional? [LB57]

MARK SCHORR: I did not say unconstitutional, Senator. What I said is if a claim were brought under this law to the extent that this law brings collective bargaining agreements into play, because what this law would propose, that employers and employees...employers and unions agree, in the collective bargaining context, to put such a provision in the collective bargaining agreement. What the U.S. Supreme Court has repeatedly held is, if an issue or a dispute under a state law or a state provision requires any examination of the collective bargaining agreement or application of language or a term in the collective bargaining agreement, then federal law, under the National Labor Relations Act, as amended by the LMRA, completely preempts the field. And... [LB57]

SENATOR CHAMBERS: Mr. Schorr, you are as sharp as a Gillette razor blade that hasn't been used, so you have read federal cases, I'm sure, where courts... [LB57]

MARK SCHORR: Senator, I've been involved in numerous cases that I've removed to federal court and had dismissed under the Complete Preemption Doctrine. [LB57]

SENATOR CHAMBERS: But you also know that if a court is of a mind to interpret and construe a fact-specific circumstance, it can give a decision that seems as though it ought not to have been given, if preemption is going to be applied according to the way you understand preemption to operate. Isn't that true? [LB57]

MARK SCHORR: Well, Senator... [LB57]

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SENATOR CHAMBERS: Could you tell me that if this law were passed and an attempt was made to collect this amount of money from a recalcitrant employee, that a federal court, any federal court, would say, that law runs afoul of federal preemption? You're saying that's what the court would do, you know that. [LB57]

MARK SCHORR: I'm not saying that, Senator. What I am saying is if that lawsuit were brought by a union to collect that money from an employee, the suit would be based presumably on a collective bargaining agreement between an employer and a union where the employer had agreed to this and put it in the collective bargaining agreement. To the extent the collective bargaining agreement is in any way involved, federal law preempts the field. That suit would be removed to federal court and the state provision would be inoperable, essentially. [LB57]

SENATOR CHAMBERS: You think that that's what would happen. [LB57]

MARK SCHORR: I know that's what would happen, Senator, with all due respect. [LB57]

SENATOR CHAMBERS: So then you are one of these lawyers who can guarantee your client the outcome in a case. [LB57]

MARK SCHORR: Senator, my point here... [LB57]

SENATOR CHAMBERS: No, I'm just asking you, that's what you're saying, isn't it? [LB57]

MARK SCHORR: No. My point here today, Senator, is to tell you... [LB57]

SENATOR CHAMBERS: But, Mr. Schorr, let's deal with what you said. You just said, that's not what I think, that's what I know will happen. [LB57]

MARK SCHORR: No, I never guarantee, you can never guarantee a client anything, Senator, but what I... [LB57]

SENATOR CHAMBERS: So then you don't really know that it would happen, do you? [LB57]

MARK SCHORR: Well, from 20 years of experience dealing with these cases, I believe that is what would happen. [LB57]

SENATOR CHAMBERS: Well, saying I believe is different from saying I know. And you're...that's why I say you're sharp and I listen to sharp people to see what they're saying because they choose their words carefully, but they don't expect me to listen

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carefully. Any lawyer can only say, I expect, I believe our chances are good, but you don't know what a court is going to do, do you? [LB57]

MARK SCHORR: Well, I have never seen a court not be consistent with the longstanding pronouncements over 40 or 50 years of the United States Supreme Court. [LB57]

SENATOR CHAMBERS: Have you ever seen a case where the U.S. Supreme Court overruled a previous Supreme Court decision? [LB57]

MARK SCHORR: Yes. [LB57]

SENATOR CHAMBERS: So, until that overruling came, you could say, based on all the decisions the Supreme Court has laid down, I believe it's going to rule our way on this. Then you go there and the court reverses. How can a court reverse what you as a lawyer know the court is not going to do? [LB57]

MARK SCHORR: What I'm telling you, Senator, is that from over 20 years of experience I believe the statute would be preempted. [LB57]

SENATOR CHAMBERS: When you say you believe, that's different. You're just giving your opinion like I'm giving mine. [LB57]

MARK SCHORR: Well, but I'm backing it up with U.S. Supreme Court authority. [LB57]

SENATOR CHAMBERS: Well, I could give you Supreme Court decisions that were reversed and there's more than one. [LB57]

MARK SCHORR: Yeah. [LB57]

SENATOR CHAMBERS: Don't get so upset. [LB57]

MARK SCHORR: Oh, I'm not... [LB57]

SENATOR CHAMBERS: I didn't reverse the decisions. [LB57]

MARK SCHORR: ...I mean, do you want me to get out all the decisions and do we want to sit here and read, quotes of... [LB57]

SENATOR CHAMBERS: If I wanted to do that, I would ask you to do it. [LB57]

MARK SCHORR: Okay, I appreciate that. [LB57]

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SENATOR CHAMBERS: You are speaking too pedantically, too absolutely, and all you are here today is as a lobbyist for the chamber of commerce. [LB57]

MARK SCHORR: No, Senator, I am not a lobbyist. [LB57]

SENATOR CHAMBERS: I thought you said you were representing the chamber of commerce. [LB57]

MARK SCHORR: No, I am just a member of the Labor Relations Council, I am not a lobbyist. [LB57]

SENATOR CHAMBERS: Did they ask you to come here? [LB57]

MARK SCHORR: What? [LB57]

SENATOR CHAMBERS: Did the chamber ask you to come here and speak for them? [LB57]

MARK SCHORR: Well, members of the chamber come speak lots. [LB57]

SENATOR CHAMBERS: No, I'm not asking about other members. I'm asking you... [LB57]

MARK SCHORR: Yes. [LB57]

SENATOR CHAMBERS: ...Mr. "Gillette razor-blade mind." (Laughter) Are you here speaking for the chamber because they... [LB57]

MARK SCHORR: Yes, the Labor Relations Council of the state chamber, yes. [LB57]

SENATOR CHAMBERS: ...requested you to come? [LB57]

MARK SCHORR: And we believe these are very important points. [LB57]

SENATOR CHAMBERS: If a person appears to speak in favor of or against the passage of legislation...have you read the definition of lobbying in Nebraska? [LB57]

MARK SCHORR: Yes, I'm generally familiar with it, but I am not here as a lobbyist. [LB57]

SENATOR CHAMBERS: Did what I say constitute the definition of lobbying? [LB57]

MARK SCHORR: No. [LB57]

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SENATOR CHAMBERS: Why not? [LB57]

MARK SCHORR: I am not here as a registered lobbyist. [LB57]

SENATOR CHAMBERS: Just look it up and see...registered lobbyist. Then you could be lobbying without being registered though, couldn't you? [LB57]

MARK SCHORR: I'm also here... [LB57]

SENATOR CHAMBERS: I'm not accusing you of that. I want to find out just what it is, what role you're playing here. I heard you say you're not just speaking for the chamber, you're speaking for yourself. You said a number of things like that. But when you tell us with such certitude what's going to happen to this bill, are you giving that to represent the position of the chamber of commerce, your personal view, or the interests of these people who would be made to pay this money and may not want to pay it? [LB57]

MARK SCHORR: All of the above. [LB57]

SENATOR CHAMBERS: Now, have you talked to any of these people who would have to pay this money and don't want to? In other words, they are working in a place where there is a union. The union is representing them in collective bargaining if they have a grievance, but they don't belong to the union, they don't contribute anything. Have you talked to people in that position who requested that you represent their views here today? [LB57]

MARK SCHORR: No, I have not, Senator. [LB57]

SENATOR CHAMBERS: Okay, that's what I'm trying to find out. [LB57]

MARK SCHORR: No, I have not. [LB57]

SENATOR CHAMBERS: Okay, so the ones you have talked to are the chamber of commerce, the chamber of commerce people... [LB57]

MARK SCHORR: Well, and I've talked to a number of my colleagues in the labor and employment bar who specialize... [LB57]

SENATOR CHAMBERS: ...and for the law firm you represent...did they want you to come here too? [LB57]

MARK SCHORR: Oh, no, Senator. [LB57]

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SENATOR CHAMBERS: But that was just for purposes of identification... [LB57]

MARK SCHORR: Yes. [LB57]

SENATOR CHAMBERS: ...that you mentioned where you work. Do they handle a lot of cases for businesses...Sederstrom and "Shoelace?" [LB57]

MARK SCHORR: Yeah, we represent businesses, yes. We also represent individuals. [LB57]

SENATOR CHAMBERS: Have you ever represented a union worker against a company? [LB57]

MARK SCHORR: Yes, I've represented unions before, Senator. [LB57]

SENATOR CHAMBERS: Have you represented a union worker, an employee, against a company, who was filing a complaint against a company? An employee against the company, has your firm ever done that, that you are aware of? [LB57]

MARK SCHORR: Not in the union context but, yes, I've represented employees in legal matters against companies. [LB57]

SENATOR CHAMBERS: Have you won? [LB57]

MARK SCHORR: Well, how do you define winning? You know, some cases are settled. [LB57]

SENATOR CHAMBERS: Well, the case goes your way. Your client prevails in court. [LB57]

MARK SCHORR: Yes, I have represented employees, yes. [LB57]

SENATOR CHAMBERS: Have you had cases of employees who did not prevail pursuant to your representation? [LB57]

MARK SCHORR: I'd have to go back and look through... [LB57]

SENATOR CHAMBERS: Does your law firm win every case that it undertakes? And by "winning," I mean prevail. [LB57]

MARK SCHORR: No, we do not, Senator. [LB57]

SENATOR CHAMBERS: But when you take a case, do you take it because the person

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pays you and says I want you to take this case, or you tell these people, the only cases we'll take are the ones we believe we'll win? Is that what your firm tells people? [LB57]

MARK SCHORR: No. [LB57]

SENATOR CHAMBERS: So even if you think you may not win, you'll take the case if they will pay you to take it, won't you? [LB57]

MARK SCHORR: Well, Senator, there's a lot of... [LB57]

SENATOR CHAMBERS: There's nothing wrong with that. That's lawyers do. [LB57]

MARK SCHORR: Yeah, but we also do not get paid on a lot of cases. But this hearing is not about my law firm, Senator. [LB57]

SENATOR CHAMBERS: You're so...you brought them up. (Laughter) [LB57]

MARK SCHORR: Well, I thought I should identify myself. [LB57]

SENATOR CHAMBERS: Not to me. Okay. Okay. [LB57]

MARK SCHORR: Okay, I'm sorry. [LB57]

SENATOR CHAMBERS: Okay. [LB57]

MARK SCHORR: Thank you, Senator. [LB57]

SENATOR CORNETT: Senator Wallman. [LB57]

SENATOR WALLMAN: Senator Cornett. [LB57]

SENATOR CHAMBERS: You are awfully touchy and thin-skinned. [LB57]

MARK SCHORR: Yes, Senator Wallman. [LB57]

SENATOR WALLMAN: Yeah, and I am also a member of the chamber and it disturbs me that they spend money against something that used my dues, you know? I didn't okay anything, you know, but I accept what the chamber does. And they spent political action money for somebody that I didn't support. So you do support things, I mean, you're not necessarily for the people, you know. I don't agree with everything the chamber does, everything the union does, but they represent the people. [LB57]

MARK SCHORR: Um-hum. [LB57]

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SENATOR WALLMAN: And it's fair. I think all they're doing is asking their fair share and if we want this state to be a closed shop, it's going to go that way eventually if the people are smart. I honestly feel that, you know? That's all. [LB57]

SENATOR CORNETT: Senator White. Sorry. Senator Chambers. No...Senator White. [LB57]

MARK SCHORR: Yes, Senator White. [LB57]

SENATOR WHITE: May I? Thank you, Senator. Mr. Schorr, let me ask you a series of questions. First, I want to thank you for your courtesy. Now you do agree that the state could pass a closed shop law. I mean, it's within the realm of federal law. It's permissible, correct? [LB57]

MARK SCHORR: Right. [LB57]

SENATOR WHITE: All right. So we have no disagreement that the state has the power to close a shop. Whether you agree or not, I just...as lawyers, we agree that grant is there, correct? [LB57]

MARK SCHORR: Potentially. There's a lot of issues there. [LB57]

SENATOR WHITE: Well, there are states that have closed shop laws that have been challenged and upheld, correct? [LB57]

MARK SCHORR: I believe so... [LB57]

SENATOR WHITE: Come on, counsel. (Laughter) [LB57]

MARK SCHORR: I believe so. [LB57]

SENATOR WHITE: All right. All right. Now, so is it your testimony that the state of Nebraska cannot have a right to work law that is tempered in different ways that differs from other states? Because if we have the grant right to close the shop, don't we have a right to have a right to work state with different restrictions than other states might? [LB57]

MARK SCHORR: I testified that I don't believe that this provision would repeal our right to work law. My testimony was I see more problems due to conflicting with employee Section 7 rights that preempt the field. [LB57]

SENATOR WHITE: And we're going to get there. I just want to see where we do agree.

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So you do agree that insofar as how we have right to work, we can do it in different ways if it doesn't come into conflict with other aspects of federal law. Is that fair? [LB57]

MARK SCHORR: Yes, but I also said that a provision similar to this one has been struck down in an number of states. [LB57]

SENATOR WHITE: We're going to get there. We're going to get there. So what your position is, if I understand it, federal law preempts any terms of the collective bargaining agreement and this law, in your opinion, is fatally flawed because it rests the right of enforcement against the employee by reference to an agreement with the employer that is entered into in a collective bargaining agreement, and you believe federal law prohibits such provisions. Is that correct? [LB57]

MARK SCHORR: I didn't say it prohibits such provisions. I said if a claim were to be filed under a state provision where reference to the collective bargaining agreement is necessary, that that claim would be preempted by federal law and subject to immediate removal to federal court and potential dismissal. [LB57]

SENATOR WHITE: Well, what you're saying is, because it refers to it, you can pull it up to federal court and that's your belief. [LB57]

MARK SCHORR: And actually there is case law, including in the United States Court of Appeals for the Eighth Circuit, that any issue involved in collective bargaining is preempted. [LB57]

SENATOR WHITE: But removal to federal court is not at all the same as saying the court will find that provision of state law to be unenforceable, don't you agree? [LB57]

MARK SCHORR: No, because Section 301 of the Labor Management Relations Act in the federal law preempts the field. [LB57]

SENATOR WHITE: So what you're saying is, the state, for instance, cannot provide this, even if it was consistent with federal law in this area. Is that what you're saying? [LB57]

MARK SCHORR: I'm saying that I believe this bill and this language would be subject to preemption and the overriding influence of the federal labor law. [LB57]

SENATOR WHITE: I understand what you're saying, but let's make it clear to the audience, all right? The state can pass a law consistent with federal law and it will still be enforceable even if the federal law has preempted the field. Isn't that true? [LB57]

MARK SCHORR: No, I don't believe that is true. [LB57]

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SENATOR WHITE: Okay, so you're saying we can't even refer to collective bargaining agreements in any way and that's your interpretation of federal law. [LB57]

MARK SCHORR: No, that's not what I said. What I'm saying is the law...ingrained into the law is that the Labor Management Relations Act, which amends the National Labor Relations Act, preempts this field. It's no different than when states pass wage and hour laws, but the Fair Labor Standards Act at the federal level pretty much preempts it. [LB57]

SENATOR WHITE: Counsel, I've litigated preemption... [LB57]

MARK SCHORR: I understand. [LB57]

SENATOR WHITE: ...and written opinions for the Eighth Circuit when I was clerking there on this issue. I'm familiar... [LB57]

MARK SCHORR: I understand. [LB57]

SENATOR WHITE: ...and...but so you say the feds will preempt this field and they will strike down this provision and, therefore, the whole law. That's your opinion. [LB57]

MARK SCHORR: I didn't say they would strike down the provision. I said it would be very difficult for one to bring a claim under this provision. [LB57]

SENATOR WHITE: Okay. Well, then let's make it simpler. Do you agree, sir, if instead of the provision that says the employer must agree and put it in the collective bargaining agreement, we just direct all employers, as a matter of state law, that they shall respect the fair share, that that would avoid the problem entirely? Because we are not referring now to any collective bargaining agreement. We're just telling them, as a matter of state law, you shall do this. It's not a matter of bargaining anymore. Would you agree that would meet your objection and solve the potential problem? [LB57]

MARK SCHORR: Senator White, with all due respect, that provision would be in conflict with notions of federal law, federal labor law and could very likely be deemed to infringe on the Section 7 rights of Nebraska employees. [LB57]

SENATOR WHITE: So what you're saying then is there is no way that you can have a fair share law passed and yet we know there are fair share laws that have been upheld, correct? Do we not, Counselor? [LB57]

MARK SCHORR: Some of those are, and some have been struck down. [LB57]

SENATOR WHITE: But we know some have been upheld, so there certainly are ways

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that these can be drafted and upheld by the courts, correct? [LB57]

MARK SCHORR: Well, I must say Senator White, I haven't read every fair share law in the United States. My goal here today was to point out four concerns that this committee ought to take a good strong look at. [LB57]

SENATOR WHITE: And I respect that, and I respect that and I appreciate it. I'm trying to treat your thoughts with the respect they deserve. [LB57]

MARK SCHORR: I understand. [LB57]

SENATOR WHITE: And if we wanted to craft this bill, clearly, don't you think if we want to meet your objection we just order all employers that if you have a union situation you will respect the fair share law, and the union shall have the right to sue the employee, without regard to any kind of collective bargaining agreement? [LB57]

MARK SCHORR: Well, unions have the right to sue their members under certain circumstances now, but again, Senator White, I think you would have to be very careful about enacting such a provision in terms of whether it would violate the Section 7 rights of employees. Federal law is very clear that the only form of compulsory union membership is very limited. [LB57]

SENATOR WHITE: You do agree that there is hundreds of years of history in quantum meruit that even if there is not a contract, but if benefit is conferred to a person, that that person can be held responsible under the law to pay the provider of that benefit a reasonable fee for that benefit. [LB57]

MARK SCHORR: Absolutely. [LB57]

SENATOR WHITE: And, in fact, that's what this law seeks to do, does it not? [LB57]

MARK SCHORR: I couldn't argue with you on that. [LB57]

SENATOR WHITE: Thank you for your courtesy. [LB57]

MARK SCHORR: Thank you. [LB57]

SENATOR WHITE: And by the way, I knew your father. He was a fine man. [LB57]

MARK SCHORR: I know that. [LB57]

SENATOR CORNETT: Senator Chambers. [LB57]

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MARK SCHORR: Senator Chambers. [LB57]

SENATOR CHAMBERS: Mr. Schorr, I don't know why in the world my colleague, Senator White, was talking all this talk about courtesy unless he's suggesting something about me. You haven't been discourteous at all. But I am sure he thinks I have been... [LB57]

SENATOR WHITE: No, not at all. (Inaudible) would have said so. (Laughter) [LB57]

MARK SCHORR: You've been very courteous, Senator Chambers. [LB57]

SENATOR CHAMBERS: ...because I'm not trained in the way of lawyers where I have to do all this tap-dancing because we are in a legislative forum where we have to try to get at... [LB57]

MARK SCHORR: I understand. [LB57]

SENATOR CHAMBERS: ...the facts the way we get at them. Mr. Schorr, do you believe in the right to work? [LB57]

MARK SCHORR: Yes, I do. [LB57]

SENATOR CHAMBERS: Are you a lawyer? [LB57]

MARK SCHORR: Yes. [LB57]

SENATOR CHAMBERS: In Nebraska? [LB57]

MARK SCHORR: Yes. [LB57]

SENATOR CHAMBERS: Do you belong to the bar association? [LB57]

MARK SCHORR: Yes, I do. [LB57]

SENATOR CHAMBERS: Could you be a lawyer and practice without belonging to the bar association? [LB57]

MARK SCHORR: No, your... [LB57]

SENATOR CHAMBERS: Did you go to an accredited law school? [LB57]

MARK SCHORR: Yes, I did, Senator. [LB57]

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SENATOR CHAMBERS: And it was recognized by the Nebraska Supreme Court as being accredited? [LB57]

MARK SCHORR: Yes. [LB57]

SENATOR CHAMBERS: And to be accredited it had to meet certain standards as far as the library, the equipping of the library,... [LB57]

MARK SCHORR: Right. [LB57]

SENATOR CHAMBERS: ...the quality of the instructors and the instruction, the types of courses that are given, the integrity of the presentation of the law curriculum itself. Those things go into whether or not a law school is deemed accredited and you graduated from such a law school. [LB57]

MARK SCHORR: Yes, the University of Nebraska. [LB57]

SENATOR CHAMBERS: Oh, maybe I ought to back off of all that I said. (Laughter) But anyway, you could not practice without belonging to the bar association, could you? [LB57]

MARK SCHORR: I guess not, Senator. [LB57]

SENATOR CHAMBERS: And you have to pay dues or you will have your license to practice suspended, and if you are recalcitrant long enough they might lift your license to practice. Is that true? [LB57]

MARK SCHORR: I suppose that's possible. [LB57]

SENATOR CHAMBERS: We know they'll suspend it, though, if you don't pay your dues. Isn't that true? [LB57]

MARK SCHORR: Yeah, and I have no problem paying my dues. [LB57]

SENATOR CHAMBERS: Now they do things with those dues that you may disagree with, don't they? Do you agree with every position that the bar association comes over here and lobbies on,... [LB57]

MARK SCHORR: No, Senator. [LB57]

SENATOR CHAMBERS: ...when they send Larry Ruth and Bill Mueller? But your dues underwrite that, don't they? [LB57]

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MARK SCHORR: Yes, they do. [LB57]

SENATOR CHAMBERS: Well, why are you going to do that if you don't? I mean, you believe in the right to work, you say, but you belong to an organization that denies you that right, don't you? [LB57]

MARK SCHORR: Well, I guess I do. [LB57]

SENATOR CHAMBERS: Name me another... [LB57]

MARK SCHORR: And those are the rules of the Nebraska Supreme Court. [LB57]

SENATOR CHAMBERS: Name me another organization, a profession I'm talking about, where you cannot practice that profession unless you are a dues-paying member of that organization. You don't have to belong to the ABA to be a doctor, do you? I meant the... [LB57]

MARK SCHORR: AMA. [LB57]

SENATOR CHAMBERS: ...AMA. You don't have to belong to that to be a doctor, do you? [LB57]

MARK SCHORR: No, but I think you have to be licensed. [LB57]

SENATOR CHAMBERS: But a part of the license doesn't include belonging to the AMA and paying them dues, does it? [LB57]

MARK SCHORR: No. [LB57]

SENATOR CHAMBERS: Can you be an architect without being a dues-paying member of some architect... [LB57]

MARK SCHORR: Senator, I don't know the answer to that. [LB57]

SENATOR CHAMBERS: But you know that you can't practice law without being a member of the bar association. [LB57]

MARK SCHORR: Okay. [LB57]

SENATOR CHAMBERS: I believe that I'm as well-trained in the law as anybody who has graduated from law school in Nebraska, but I won't take the bar because I still couldn't practice unless I joined the bar association and I have refused to join the bar association. I will not consent to paying for the right to practice a profession for which I

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am as highly trained as anybody. I went to the school, Creighton, that they said I had to go to, passed all the exams, passed all the courses, and I've even won cases before the Nebraska Supreme Court. Yet, I can't practice, in the sense of representing somebody else, because I won't pay dues to an organization with which I disagree. Do you see an inconsistency between your being here articulating the position you do and the way you conduct your own professional life? [LB57]

MARK SCHORR: No, I don't, Senator. [LB57]

SENATOR CHAMBERS: So it's all right for them to make you pay... [LB57]

MARK SCHORR: I've never had a problem with that. My comments here today were based upon the labor laws. [LB57]

SENATOR CHAMBERS: Well, why shouldn't we be able to make people pay to work, do certain kind of work? Why shouldn't we be able to make them pay; join a union the way you have to belong to a union? Why can't we make others do that? [LB57]

MARK SCHORR: Well, I guess, Senator, I'm relying on Section 7 of the National Labor Relations Act and the clear and well-defined right of employees to decline to pay dues and to decline to be a member of a union. [LB57]

SENATOR CHAMBERS: But this is somewhat an uncomfortable discussion for you, isn't it? It ought to be, based on what you're representing. If you mean what you say, you should not be compelled to belong to a union in order to work. You couldn't work... [LB57]

MARK SCHORR: I have never been uncomfortable with my bar dues, Senator. [LB57]

SENATOR CHAMBERS: You're compelled to belong to the union. Will you fight for my right to practice law without belonging to your union? Are you willing to do that? [LB57]

MARK SCHORR: It's a matter of the rules of the Supreme Court, I mean...I, Senator, I have great respect for you and I... [LB57]

SENATOR CHAMBERS: Will you...which...which is the higher, quote, law: the Nebraska Supreme Court or federal law? [LB57]

MARK SCHORR: In what respect? [LB57]

SENATOR CHAMBERS: Does federal law prevail anything in a state law or constitution notwithstanding? Does the federal law prevail? [LB57]

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MARK SCHORR: No, Senator. [LB57]

SENATOR CHAMBERS: It doesn't? [LB57]

MARK SCHORR: Not in all instances. [LB57]

SENATOR CHAMBERS: Name me a state enactment that trumps the federal law. You just talked about preemption. If the federal government has acted in that area, the state law is trumped. [LB57]

MARK SCHORR: Senator, I am here today to talk about federal preemption under the labor laws. [LB57]

SENATOR CHAMBERS: But in other areas, it doesn't obtain? [LB57]

MARK SCHORR: Well, I think we may have some laws in Nebraska where there is no federal law. For example, we... [LB57]

SENATOR CHAMBERS: I said where the federal law has acted. Now here's what I'm getting at. If a federal court said that a person cannot be compelled to join the bar association before he or she can practice law in a state, will that overrule what a state court's rules declare? In other words, will the state court's rules trump a federal decision that goes contrary to those rules? Let me give you another example. Have there been state courts that put rules in place that said lawyers cannot advertise and then a federal court said, yes they can? So the court rule went by the boards. Are you aware of that happening? [LB57]

MARK SCHORR: Not right offhand, Senator. [LB57]

SENATOR WHITE: Bates v. Arizona. [LB57]

MARK SCHORR: Yeah. [LB57]

SENATOR CHAMBERS: Counsel is assisting me here. (Laughter) [LB57]

MARK SCHORR: And please understand, Senator, I've spent my entire career specializing in labor and employment law. (Laughter) [LB57]

SENATOR CHAMBERS: Okay, so these other things are beyond what you...your ken. [LB57]

MARK SCHORR: Well... [LB57]

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SENATOR CHAMBERS: Are you familiar with First Amendment constitutional issues and cases? [LB57]

MARK SCHORR: Yes. [LB57]

SENATOR CHAMBERS: Would the First Amendment be implicated in anything that I've said in any way about these activities, being able to practice; being able to do certain other things, such as advertise; our speech perhaps infringed by too rigid court rules at the state level? [LB57]

MARK SCHORR: It's possible. It's possible. [LB57]

SENATOR CHAMBERS: Are you willing to handle a case for me in federal court to challenge the Nebraska rule that I can't practice law unless I belong to the bar association? Would your firm take a case like that? [LB57]

MARK SCHORR: I don't know, Senator. I probably wouldn't be qualified because I specialize in labor and employment law. [LB57]

SENATOR CHAMBERS: Did you hear me say your firm? There are more people in your firm than you, aren't there? [LB57]

MARK SCHORR: That's correct. [LB57]

SENATOR CHAMBERS: Do you think they would take a case like that? Or from your experience with them, that probably is not a case they would take, is it? [LB57]

MARK SCHORR: I do not know, Senator. [LB57]

SENATOR CHAMBERS: Okay, that's all I would ask. But thank you. [LB57]

SENATOR CORNETT: Senator Lathrop. [LB57]

SENATOR LATHROP: I just have one short question. [LB57]

MARK SCHORR: Yes, Senator Lathrop. [LB57]

SENATOR LATHROP: And that really goes back to what Senator White was asking you. Do you have this bill in front of you? [LB57]

MARK SCHORR: Yes, I do. [LB57]

SENATOR LATHROP: Can you pull it out? I want to ask you a specific question. Do you

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see page 2? [LB57]

MARK SCHORR: Yes. [LB57]

SENATOR LATHROP: And go down to line 27 for me, if you would. [LB57]

MARK SCHORR: Yes. [LB57]

SENATOR LATHROP: You made mention of this conflict, or the problem we would have with federal preemption because we would be talking about something that's in the collective bargaining agreement. [LB57]

MARK SCHORR: Or the collective bargaining process, yes. [LB57]

SENATOR LATHROP: Okay. Down to page 2, line 27, where we start at "and," right before we have (2), in parentheses, do you see that? [LB57]

MARK SCHORR: Yes. [LB57]

SENATOR LATHROP: And it says: and the labor organization and the employer have entered into an agreement requiring representation...requiring represented employees of the employer, who are not paying membership dues to the labor organization, to pay their fair share representation contribution. If we take that part out, does that become less of a problem? And is it the fact that one of the steps here is we passed the law and then these labor folks have to go out and negotiate this and it then becomes a term of their contract? [LB57]

MARK SCHORR: I think there still could be problems, Senator, because it involves the whole bargaining unit and it would be an issue in the private sector. Maybe I didn't make it clear. You know, we can have all kinds of state laws on public sector bargaining. Everything I've said today about federal Section 7 rights and federal preemption would only apply to the private sector. [LB57]

SENATOR LATHROP: Okay, but if...let me go back to the question. I appreciate you clarifying that for me. But do we improve the chances that we will not run afoul of federal preemption if we take the section I just referred to out of this bill? [LB57]

MARK SCHORR: I still think there would be issues because, especially in this jurisdiction, because the Eighth Circuit Court of Appeals has repeatedly held that the preemptive effect of the federal law goes beyond just the collective bargaining agreement, and goes to all issues which involve the collective bargaining process. [LB57]

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SENATOR LATHROP: Okay. [LB57]

MARK SCHORR: So obviously, if you are going to take it out of the bargaining unit issue or the bargaining unit process, that may change it. [LB57]

SENATOR LATHROP: And let me go back to my question because maybe you didn't understand it or you got sidetracked in your answer. My question was, do we improve the chances that this does not run afoul of the federal preemption if we take that referred to language out of this bill? [LB57]

MARK SCHORR: It might change it slightly, but I still think there are federal preemption issues. [LB57]

SENATOR LATHROP: I know you think there's still federal preemption issues. Does it improve the likelihood that it will pass muster, with respect to the federal preemption issues, if we take out the referenced language? [LB57]

MARK SCHORR: I'd want to look at that more carefully, Senator. [LB57]

SENATOR LATHROP: Thank you. [LB57]

SENATOR CORNETT: Any further questions from committee? Thank you very much, sir. [LB57]

MARK SCHORR: Thank you. [LB57]

SENATOR CORNETT: Next opponent? Again, because of the length of time of the hearing, the committee would appreciate if you keep your comments brief. We'll open it up for questions afterwards. [LB57]

ROBERT KLOTZ: My name is Robert Klotz, K-l-o-t-z. I represent myself. It is really trickery to replace closed shop with the words "contribution or fair share representation contribution." However, a closed shop by any other name is still a closed shop, since employees will be forced to pay one way or another. If this bill passes, an individual would be forced to support the union where they will either not get a job when trying to hire on, or be dragged into court if presently an employee. The union, which I am familiar with, has, with full knowledge and foresight, entered into a monopoly agreement with the state of Nebraska to: number one, exclusively represent a bargaining unit; two, to represent the bargaining unit on the funds given by employees after convincing employees the union will benefit them and it is to their advantage to join the union; three, to give legal support to union members and nonmembers under disciplinary conditions. Now if the union fails to give members this freeloading, these freeloaders would argue that the union needs to: one, represent the bargaining unit in such a way

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that does not cause members to leave in disgust, as happened to a number of union members--in short, start doing the job that they are hired to do; number two, treat groups equally and not show favoritism to groups resulting in those in the same pay grade being paid different wages--some being paid more, some being paid less; three, if the union is...I've changed this so many times, I can hardly read what I've got down here...okay, if the union is not able to make it in a field in which they are the only competitor, then maybe they should get out, get another union. No one, to including the union, deserves a free lunch by riding on the backs of those who have been alienated from the union. Now as your mentor, Senator Chambers, has indicated, you need to set the example regardless of your personal views. The constitution says, no closed shop, so no closed shop needs to remain. Now having said all this, there needs to be fairness. Representing individuals legally for grievances and things like that does cost money. I believe the unions should represent, or at least offer to represent, all members in that union, or all members who are under the union, but I think it should be in the same way that the court system has. Everybody is entitled to a lawyer; the court will supply one. If you are entitled to a free one, you can get a free one. If you are not entitled to a free one, you still can use that one, but you're going to have to pay for it. Or you can go get your own lawyer and pay a little bit more. The only difference is if you used the one presented by the court, instead of paying the \$100 or \$120 an hour, you only have to pay them \$50 an hour or whatever the going rate is at this time. And I think it would only be fair if those who are not members, if they want to use union representatives, to pay for it, not at the high rate, but at somewhat of a lower rate. And with that, I'll open it up to questions, if you have any. [LB57]

SENATOR ROBERT: Thank you. Any questions from the committee? Seeing none, thank you. [LB57]

JERRY STILMOCK: (Exhibit 8) Good afternoon, senators. My name is Jerry Stilmock. J-e-r-r-y Stilmock, S-t-i-l-m-o-c-k. I am one of the lobbyists for the National Federation of Independent Business. I have written testimony that I wish to submit in opposition to LB57 and voice the NFIB's position in opposition. Thank you. I'm not going to read through my testimony, given the comments and the length of time. [LB57]

SENATOR ROBERT: Okay. Any comments, questions from the committee? Thanks, Jerry. [LB57]

JERRY STILMOCK: Thank you. [LB57]

DICK JOHNSON: Good evening. I'm Dick Johnson and the last name is spelled J-o-h-n-s-o-n. I'm here today representing Associated Builders and Contractors, a statewide group of commercial industrial contractors. There's nothing I can add to what's been said before, legal precedents and legal cases; simply to state at this point, as LB57 is written, we are opposed because, number one, the legal costs that we think

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that our companies will be involved in, those that currently do have union contracts, in trying to defend this if this is passed. So, if there's any questions, I'll be happy to answer. If not, I'll be on the road. [LB57]

SENATOR LATHROP: I do. Just generally, did you just say that your opposition comes from the fact that your members would have to hire lawyers to defend this act? [LB57]

DICK JOHNSON: Possibly, yes. About ten... [LB57]

SENATOR LATHROP: Other than that, are you okay with it? [LB57]

DICK JOHNSON: No. No, because we think...we think... [LB57]

SENATOR LATHROP: No? No, so the problem is a little deeper than that. [LB57]

DICK JOHNSON: Yes. But I can reiterate what the attorneys before me, you know, have said about the preemptions and... [LB57]

SENATOR LATHROP: Sure, I appreciate that and you don't need to because I think we got the lesson and the point. [LB57]

DICK JOHNSON: Yeah, and more than anything, I'm here so that you know that there is more than just one or two groups out there that's opposed to it and also when the record goes to the whole senate, then we will be one of the players, or if there's negotiations or discussion on this after the fact. I congratulate Senator Preister for having the tenacious ability to keep reintroducing this bill year after year, after year. (Laughter) [LB57]

SENATOR CORNETT: Are there any further questions from the committee? Thank you very much for your testimony. Other opponents? Neutral testimony? I have two letters of opposition that I'm entering into the record, one from Kathy Siefken and another one from Justin Williamson, as an individual. Seeing no further testifiers, Senator Preister waives closing. The next bill that we will hear is LB543, Senator Synowiecki. [LB57 LB543]

SENATOR CHAMBERS: John, you sure know how to clear a room. (Laughter) [LB543]

SENATOR SYNOWIECKI: I know. Hope that isn't anything to do with me. Good afternoon, Senator Cornett, members of the committee, I am John Synowiecki. I represent District 7 in the Legislature. Today I am introducing LB543. LB543 represents a cleanup measure on the Conveyance Safety Act. As the committee may be aware, last year we enacted the Conveyance Safety Act as part of another bill in the closing days of the session. The Conveyance Safety Act is Nebraska's answer to a national movement to modernize elevator and escalator safety, and was enacted after several

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years of negotiation by both management and labor. There are several changes to the Conveyance Safety Act that are made under this legislation. First, Section 2 of LB543 would provide the Commissioner of Labor more discretion in who can be appointed as state elevator inspector. Currently, an individual is required under law to have five years experience as a journeyman in order to be appointed state elevator inspector. Under this bill, one could have this experience or five years experience in the installation, maintenance and repair of conveyance, or certification as a qualified elevator inspector by the American Society of Mechanical Engineers. In addition, LB543 clarifies that the Social Security number of the applicants for the position of elevator inspector shall not be made part of the public record. This amendment was requested last session by Senator Pam Brown, but was advertently left off the Conveyance Safety Act amendment on day fifty-eight of last session. Section 3 of the bill adds clarifying language to ensure that the state elevator inspector is part of the conveyance advisory committee. In Section 4, the bill transfers all funds in the Elevator Inspection Fund into the Conveyance Inspection Fund and allows for the current inspection fees to stand unless changed by the commissioner. In Section 5, the bill eliminates the applicability of the act to the design of conveyances. This is a change that is being made at the national level at the request of architects. Under current Nebraska law an individual has to be certified under this act, when it goes into effect on January 1 of 2008, in order to design a conveyance. With this change they would no longer have to be certified even though those who install the conveyance must be licensed. Section 5 clarifies current provisions stating that the inspections are required on the construction of conveyances in private residences only at the time of installation and that these conveyances shall not be subject to periodic inspections. In other words, an elevator in a private home must be inspected at the time of installation only, like plumbing or electricity. Section 6 and Section 7 clarifies that the act does not apply to conveyances in residences located in counties with less than 100,000 inhabitants and that the act is applicable only to conveyances in counties containing more than 100,000 people. Again, I view this as a cleanup measure to LB489, as enacted by the Legislature in 2006. Senator Cornett, members of the committee, I appreciate your attention to the bill and hope that we can work on it and get it advanced out of the committee. [LB543]

SENATOR CORNETT: Thank you, Senator Synowiecki. Any questions from committee? Senator Chambers. [LB543]

SENATOR CHAMBERS: Just one, Senator Synowiecki. What difference does it make...is this a safety measure? [LB543]

SENATOR SYNOWIECKI: I view it as a safety... [LB543]

SENATOR CHAMBERS: Why then would it be restricted to counties of a certain population? [LB543]

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SENATOR SYNOWIECKI: Senator Chambers, that was a part of kind of a political...response to political concerns, quite frankly. I would have liked to have seen it...the original version of the bill applied to all 93 counties. [LB543]

SENATOR CHAMBERS: But you're willing to at least look at that and discuss it some? [LB543]

SENATOR SYNOWIECKI: Yes. [LB543]

SENATOR CHAMBERS: Okay. [LB543]

SENATOR SYNOWIECKI: Yes. [LB543]

SENATOR CHAMBERS: Okay, that's all I would have. [LB543]

SENATOR SYNOWIECKI: Thank you. [LB543]

SENATOR CORNETT: Further questions? [LB543]

SENATOR LATHROP: Maybe just one. I see that we are taking the conveyance safety measures, which are the annual inspections, out of the residential elevators. Is there something about them that they don't need to be inspected? Or why would we exempt them? [LB543]

SENATOR SYNOWIECKI: The Department of Labor is here and will speak, I believe, neutral to the bill. [LB543]

SENATOR LATHROP: Okay. [LB543]

SENATOR SYNOWIECKI: They can answer that more specifically if you don't mind, Steve. [LB543]

SENATOR LATHROP: Okay. I don't know anything about the residential ones, which is why I asked. [LB543]

SENATOR CORNETT: The chairlifts are also included in that. [LB543]

SENATOR SYNOWIECKI: The chairlifts are excluded. [LB543]

SENATOR CORNETT: Well, that's what I mean,... [LB543]

SENATOR SYNOWIECKI: Yeah. [LB543]

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SENATOR CORNETT: ...excluded in that, so that's what...I said the wrong thing. No further questions? Proponents? Are you staying for closing? [LB543]

SENATOR SYNOWIECKI: I'll reserve my opportunity to, thank you. [LB543]

SENATOR CORNETT: Okay. [LB543]

JOE KOHOUT: Chairwoman Cornett, members of the committee, Joe Kohout, K-o-h-o-u-t, appearing today on behalf of the Elevator Industry Work Preservation Fund. As Senator Synowiecki noted, this measure is a result of what I would call a conversation after the passage of LB489. We reexamined and came up with some changes that were either not clear in the original LB489, or were also inadvertently left off, as Senator Synowiecki mentioned. And so, in an effort at compromise, we are coming back. Senator Lathrop, to answer your question as regards to private residences, it was the intent in the legislation through, shall we say, over several months of compromise to come to the conclusion between those who were at the table that those conveyances that were located in private residences should be inspected when they are installed, but then not again during that period, or after they are installed. And by conveyances, we are really talking about elevators that move from floor to floor because really, under this act, chairlifts and platform lifts are exempted. So that is the reason why that exemption exists and why in those certain circumstances. And then also, Senator Chambers, to answer your question, again, compromise over the period of time led us to the 100,000. We are obviously willing to talk about it, but that was one of the major hurdles towards the end of the 2006 Session we had to address. [LB543]

SENATOR CHAMBERS: Does this, when we talk about one of these conveyances being inspected only at the time of installation, does that apply to these churches and these other facilities... [LB543]

JOE KOHOUT: No. [LB543]

SENATOR CHAMBERS: ...and okay, just homes. [LB543]

JOE KOHOUT: Just private residences, Senator. [LB543]

SENATOR CHAMBERS: Okay. [LB543]

SENATOR CORNETT: Any further questions? Seeing none, any other proponents? Opponents? Neutral testimony? [LB543]

SENATOR LATHROP: Does the Department of Labor have any... [LB543]

SENATOR CORNETT: I was just going to say, was the Department of Labor going to

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Speak to this? [LB543]

FERNANDO "BUTCH" LECUONA, III: Hadn't planned to. If you want to ask some questions, I'd come up. [LB543]

SENATOR SYNOWIECKI: I'm sorry, I thought he was...I thought... [LB543]

SENATOR LATHROP: No, that's all right. I'm okay. I've heard enough. (Laughter) [LB543]

SENATOR CHAMBERS: When you put it like that, me too. (Laughter) [LB543]

SENATOR CORNETT: That concludes today's hearing. [LB543]

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Disposition of Bills:

LB57 - Advanced to General File.
LB210 - Advanced to General File, as amended.
LB472 - Advanced to General File.
LB543 - Advanced to General File, as amended.

Chairperson

Committee Clerk