

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

COMMITTEE ON BUSINESS AND LABOR
May 10, 2005
CONFIRMATION HEARING

The Committee on Business and Labor met at 1:00 p.m. on Tuesday, May 10, 2005, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on Confirmations. Senators present: Doug Cunningham, Chairperson; Jeanne Combs, Vice Chairperson; Carroll Burling; Bob Kremer; and Don Preister. Senators absent: Ernie Chambers and DiAnna Schimek.

SENATOR CUNNINGHAM: Okay, I think we're going to get started. Welcome to the Business and Labor Committee. We have a couple of gubernatorial appointments today, and for your benefit, I will introduce the members of the committee and staff that are here today. We have Senator Burling from Kenesaw; Senator Preister from Omaha; to my right is Grace Honeywell, the legal counsel for the committee; to the far left is Senator Kremer from Aurora; and to my immediate left is Kendra Papenhausen, the clerk of the committee; and I'm Senator Cunningham, and we have a new page, Kyle. You're not our normal page, Kyle. We don't have to be very formal, but I would just ask if you do have a cell phone on, to turn the cell phone off, so it doesn't interrupt the transcribing. And as I said, we have two appointments and we'll start with the first one, Charles Cole, for the Boiler Safety Code Advisory Board. You can come up and tell us a little bit about yourself and your appointment.

CONFIRMATION HEARING ON
CHARLES COLE TO THE
BOILER SAFETY CODE ADVISORY BOARD

CHARLES COLE: Is it all right if I sit down?

SENATOR CUNNINGHAM: Yep.

CHARLES COLE: Thank you.

SENATOR CUNNINGHAM: That would be the place. And we need you to spell your name, state your name and spell it for the record.

CHARLES COLE: My first name is Charles, C-h-a-r-l-e-s, my last name is Cole, C-o-l-e. I was born and raised in Omaha,

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

Committee on Business and Labor
May 10, 2005
Page 2

Nebraska. I moved from there four years ago, built a new home in Syracuse, Nebraska, but my business that I own and operate is actually in Omaha. I serve the entire state of Nebraska and the western half of Iowa, as a manufacturer's rep, selling boilers and chillers. So I'm familiar with hydronic heating and cooling equipment. As far as experience, I enlisted in the United States Navy in 1977, and did my first enlistment from 1977 to 1981, and my first introduction to boilers was actually in the United States Navy. I worked with boilers briefly, then got out of the service, moved back home to Omaha, Nebraska, started school at Metro Tech, went there for a few semesters and then enlisted back in the Navy. Stayed in the Navy from 1983 till 1987, got out of the active side of the Navy, enlisted in the United States Naval Reserve, here in Lincoln, stayed there until about 3 years ago, and actually retired with 23 years total service in the United States Navy and the Naval Reserves. I attended Southeast Community College, have an associate's degree in refrigeration. As far as experience, I've been working with boilers since...in the public sector, since 1988. I was a partner in another company called B.G. Peterson Company, which is over a hundred years of business in Nebraska and Iowa, working with boilers. I've served on several rep councils, with some of the different manufacturers that I work with, so I have a fair amount of experience with boilers and with the codes that apply. I work with consulting engineers, I help them in their designs, helping them apply the right equipment for the right job, and also make sure that they try to stay aware of all the current codes and requirements in the state of Nebraska, and also in Iowa. So it's kind of a hard job, to try to keep up with both, because Nebraska and Iowa are a little different. Iowa is a little bit tougher than over here, so. Any...

SENATOR CUNNINGHAM: Okay. Well, thank you, Mr. Cole. Do we have any questions? And I would, before we start, I would say that just arriving is Senator Combs, and she's the Vice Chair of this committee. Senator Burling.

SENATOR BURLING: Thank you, Mr. Cole. How long have you been on the advisory board?

CHARLES COLE: I'm just new at it. This is my first time.

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

Committee on Business and Labor
May 10, 2005
Page 3

SENATOR BURLING: This is your first year, your first appointment?

CHARLES COLE: Yes, sir.

SENATOR BURLING: Okay. Thank you very much.

SENATOR CUNNINGHAM: Senator Preister.

SENATOR PREISTER: Well, what type of boilers do you manufacture?

CHARLES COLE: Several. We deal with everything from high-efficiency, which is Erico. They build the most efficient on the market. A lot of our school districts are going that way, where we deal with lead money. When I mean high-efficiency, that means that you get more bang for your buck. You pay more up front for it, but as far as life cycle costs and energy savings, they outweigh the old boilers like Kewanee, which I used to sell, and that's no longer in business. But I sell another company called Hurst Boiler Company, which is the second largest boiler company in the world, so. They're actually located in Coolidge, Georgia. The state actually has quite a few of our boilers; the Hastings Regional Center has several. I work with Fred Hiatt, just across the street, and Jim Stofer. And then I sell everything from high-efficiency to high-pressure steam to low-pressure steam to basic copper fin, hot water boilers. So just about every boiler that's on the market, I'm pretty familiar with it, or at one time had some kind of exposure to it. And I try to keep current on the competitors, both Canadian and European.

SENATOR PREISTER: So you actually manufacture some, but you also sell others from other manufacturers?

CHARLES COLE: I'm actually a...I'm sorry, I didn't mean to interrupt. I'm actually a manufacturer's rep. What that means is that I have contracts with those various companies,...

SENATOR PREISTER: Oh, okay.

CHARLES COLE: ...and there are competitors out there that, selling me too, like us, and they have similar contracts.

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

Committee on Business and Labor
May 10, 2005
Page 4

But as far as...in our business there are a lot of people that really don't want to sell boilers today. They want to do the...they're into computers, they're into...and it's kind of a, it takes a special person, because you have to not only be able to sell the equipment, but when you sell it to an owner, they want you to actually go in and tell them what's wrong with it, when it doesn't work. Whether it be strictly the boiler, which is actually the heart of the system, or the piping, and that's kind of my expertise. And I've got several younger people that work for me that I've tried to train, and sometimes it's hard to beat it into them, so.

SENATOR PREISTER: I didn't hear the rep manufacturer, then the rep, now I understand. I just hadn't heard that when you initially made your comments. Could you also tell me how you came to be before us today? Was this an interest of yours, were you recruited, how...

CHARLES COLE: I think I was recruited. Somebody recommended me, one of the contractors or the engineers that I work with. And I think somebody came to them and asked, you know, we need somebody with boiler knowledge and, you know, boiler safety code knowledge, and my name got brought up. And I'm honored, to be honest with you. I see a lot of things out there that, you know, if I ever had a chance to change, I would. Public safety is important for me and I try to push that because, not only for me, I sell that equipment and the last thing I'd want to do is sell something to somebody and then it get put into the wrong application, and then somebody loses their life for it. Because a boiler is actually a time bomb, in a way. It's a high pressured vessel that if it's not treated right or maintained properly, can cause damage and that's why we have codes.

SENATOR PREISTER: And we've recently modified those, so we would certainly be open to things as you see them, as you come to serve, that you see may help improve those safety issues. And I appreciate your willingness to serve. Last question to you, do...you've recently moved. Do you know who your state senator is, by chance?

CHARLES COLE: No. I remember you; you actually knocked on my door, when you first got started in south Omaha.

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

Committee on Business and Labor
May 10, 2005
Page 5

SENATOR PREISTER: You must have lived in the area at that time.

CHARLES COLE: Yes, I did. And I voted for you several times, at that...(Laughter)

SENATOR PREISTER: Move for approval.

SENATOR CUNNINGHAM: This turned controversial all of a sudden. Senator Kremer.

SENATOR KREMER: Yeah, Charles, have you met with the advisory board already now, or you just...have you been attending some of the meetings or...

CHARLES COLE: No. This is my first meeting.

SENATOR KREMER: Are you very familiar with the work and what all they do within the advisory board, or you're just ready to learn?

CHARLES COLE: I'm just ready to go.

SENATOR KREMER: Okay. So you aren't going to have any agenda or things that you'd like to see done, so you're just trying to figure out what's going on.

CHARLES COLE: I want to kind of go into it, do a lot of listening, not so much talking, like I am today. And then, go from there, so.

SENATOR KREMER: Thank you.

SENATOR CUNNINGHAM: Thank you. Any other questions? I would just finish up. Do you know how many are on the board?

CHARLES COLE: No.

SENATOR CUNNINGHAM: So you, as Senator Kremer asked, you've not been to any meetings, yet, so that's all going to be a new experience and I'm sure you will do great. No other questions? Seeing that, thank you, Mr. Cole. We appreciate that.

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

Committee on Business and Labor
May 10, 2005
Page 6

CHARLES COLE: Thank you.

SENATOR CUNNINGHAM: And we will open with the next appointment, Jeffrey Orr, for the Commission of Industrial Relations.

CONFIRMATION HEARING ON
JEFFREY ORR TO THE
COMMISSION OF INDUSTRIAL RELATIONS

JEFFREY ORR: Senators, my name is Jeffrey Lee Orr, J-e-f-f-r-e-y O-r-r, I'm from Kearney, Nebraska, grew up in North Platte, Nebraska. Double graduate from UNL, undergraduate degree in business, and a law degree. Been practicing attorney in Kearney, Nebraska, since 1967. Was first appointed to the Commission of Industrial Relations--at that time it was known as the Court of Industrial Relations--by Governor Tiemann, and survived until Governor Nelson's first term, and then was reappointed by him in his second term. And I've been there since. Dean Kratz, from Omaha, who maybe some of you know, was the longest serving member of the commission, and I've now, with your approval today, will have surpassed his. I think generally, I'm received by both labor and management as a reasonably fair person. Sometimes that's kind of in the eye of the beholder, but over the period of time, I've enjoyed my experience on being on the commission. It's a diversion from my business practice. And when I was younger and did a lot of trial work, it gave me great appreciation for the intolerances of judges, when the attorneys were not prepared and didn't have their...so I think my early experience made me a far better trial attorney than I had been before. And it certainly made me more tolerant of the judges. And when I was asked by several people that practice before the commission if I would consider serving again, and after giving it some thought, said that I would, and advised Governor Heineman that I would be available if he so chose. The commission if...I don't know how familiar any of you are with the commission, but basically the commission settles public sector labor disputes. And over the years, with some refined legislation from the Legislature, the commission has become reasonably predictable. There are far less lawsuits than there used to be, even with expanded jurisdiction in

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

Committee on Business and Labor
May 10, 2005
Page 7

the prohibited practices which the Legislature gave to the commission a few years ago, which if we subtracted that out, there would be very few wage cases anymore. Which I think is, for to pat ourselves on the back, we would pat ourselves on the back by being known as somewhat predictable. We serve one other function, and sometimes that's a political function, in that the school board or the county board or the city council, upon the advice of their advisors, knows exactly where the wages and fringe benefits need to fit, but it's politically better for us to make the decision and enter the order, than it is for them, when they're in a tight budget situation, so even though we're kind of a quiet commission with a very small budget, I think the service which we perform is very important. I'll step off the soapbox now.

SENATOR CUNNINGHAM: Thank you, Mr. Orr. Do we have any questions? Senator Kremer.

SENATOR KREMER: Do you meet on a regular basis or just whenever there's a dispute to discuss?

JEFFREY ORR: We meet as a group of judges in executive session about eight times a year, on a regular basis. And then the hearings, I'm presently the presiding judge and have been a number of different times. When a new case is filed, I'll appoint a hearing judge and two other members of our five-member panel, to hear that case. Generally, the hearing judge hears it and prepares a draft opinion, his two cohorts sign off on it, then it's usually circulated to the other...all of the judges, but we don't meet on an individual case, unless it's of something of great import, and then we would all meet, so...but I think it's important, that we do meet and exchange views, at least on that type of a regular basis.

SENATOR CUNNINGHAM: Senator Preister.

SENATOR PREISTER: Since you answered my first question, judge, about assignment, the other one that I would ask, when the assignment is made to the judges for the case, are those all heard here in Lincoln, or are they in different locations around the state?

JEFFREY ORR: Ninety-nine point, ninety-nine percent are

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

Committee on Business and Labor
May 10, 2005
Page 8

heard, and the CIR has an actual hearing room, across the way, if I've got my directions right. And we...earlier on we tried taking it on the road for the convenience, and went to Omaha--no offense to Omaha--but in a period of...it was an MUD case, and we were moved five times in three days. So it tended to look like a kangaroo court, bouncing around the courthouse. These cases, some of these cases are very expensive, and they're also very important. And we know that we can maintain the decorum in our own courtroom, and so for the most part, we have it here in Lincoln, which means all but one of the judges have to travel for the hearing, also.

SENATOR PREISTER: Thank you.

SENATOR CUNNINGHAM: Any other questions? Could you tell me where are the rest of the judges from?

JEFFREY ORR: Dave Cullan, who is the newest appointee, which is actually a reappointee from a number of years ago, is from Omaha; Loren Lindahl is from Wahoo; Bill Blake is from Lincoln; Peter Burger is from McCook and I'm from Kearney.

SENATOR CUNNINGHAM: Okay. Thank you.

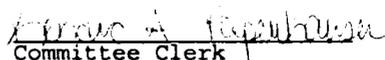
JEFFREY ORR: And the political mix is about as close to 50/50 as you can get with 5.

SENATOR CUNNINGHAM: Okay. Thank you. When you see Judge Lindahl, tell him hello for me. He's from my community, as is Governor Tiemann, so got to put the plug in for Wausa when I can. (Laughter) Do you have any other questions? Seeing none, thank you.

JEFFREY ORR: Thank you, appreciate your taking the time.

SENATOR CUNNINGHAM: Thank you. This will end the hearing on the gubernatorial appointments. Do I see a motion?


Chairperson


Committee Clerk