

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

Business and Labor Committee
February 07, 2011

[LB397 LB482 LB555 LB564 LB619 LB623 LB624 LB664 LR29CA]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 7, 2011, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB397, LB482, LB555, LB564, LB623, LB624, LB619, LB664, and LR29CA. Senators present: Steve Lathrop, Chairperson; Tanya Cook, Vice Chairperson; Brad Ashford; Tom Carlson; Burke Harr; Jim Smith; and Norm Wallman. Senators absent: None.

SENATOR LATHROP: Good afternoon. My name is Steve Lathrop. I'm the Chair of the Business and Labor Committee, and we're here today to hear a series of bills and they generally relate to the subject matter of the Commission on Industrial Relations. We're still waiting on two members to get here and so I'll take this opportunity to tell you a few of the ground rules that they're very familiar with. And hopefully by the time I get done with this, they'll be here and then I can introduce everyone before we start. As the Chair of the committee, I have a number of responsibilities, and one of them, and it's very basic and fundamental, is to keep the hearing moving to make sure that the information that we're getting is new from one testifier to the next and that we're not caught up in a great deal of repetition; the other is to make sure that we're out of here at a decent hour and to make sure that those senators who are going to introduce bills today do not have to wait until 11:00 tonight to do that. So in order to move the process along, I'd like to kind of cover some of the ground rules. And to explain to those of you who have not participated in a hearing in the Legislature before, I'll start with some pretty basic stuff. When we have a bill that's up, we'll take them in the order that they are listed outside on the sheet, which would be to begin with LB397, which is my bill. We'll take these bills in order, and the process is the introducer, the state senator, will introduce the bill; then we will hear from the proponents or those people that favor the measure; we'll hear from opponents; and then we will hear from those who are to testify in a neutral capacity. That's the process. Then the state senator that's introduced the bill is permitted an opportunity to close, which means they get the last word and can have some final remarks. It's also important that we maintain a level of decorum through these proceedings and so I want to talk to you about that as well. If you have a cell phone, I'll ask you to turn it off or at least to turn it to the vibrate mode. It's also important and I don't know if anybody intends to do this but there's no signs. You don't hold up signs or express your approval by applauding or cheering or your disapproval by booing or anything of the sort. It's important that we maintain decorum through these proceedings. If you are testifying on a bill, I will ask you to fill out a sign-in sheet and they are on the back table. It's important that the record properly reflect who was here, so to get your spelling right and make sure we know where you're from and that sort of thing, fill out the sheet. Put it into the wood basket here so that my committee clerk can begin the process of making a good record. We have a light system here, and you can look around the room. I will tell you we have a room, an overflow room, with a good number of people that also have an interest in the bills today, so when that happens it's not

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

Business and Labor Committee
February 07, 2011

uncommon and it's certainly the practice in the Business and Labor Committee to use the light system. Let me tell you what that means. On the table there is a panel with three lights. When you sit down we will begin the stopwatch, or Kate does that--I don't do that but Kate does. She'll begin the stopwatch. You get three minutes to testify. Please understand that's not some bit of disrespectfulness on our part to put you on a timer but only to make sure that the hearing moves along. Our experience is to give everybody an opportunity to testify we have to limit you. You will get a green light. After you're down to one minute, you'll get a yellow light. That should be your indication to yourself to start wrapping up or to summarize what you have left of testimony. When the red light comes on, please stop. Okay? Now I've had people that ignore the red light and sometimes we kind of allow some latitude. Today we simply have too many people here for folks to speak through the red light, and so please don't make me interrupt you and ask you to stop. As I indicated before, we have a good number of people here and it is my intention to limit the testimony, at least initially, on each one of the bills, if it becomes repetitive especially. And by that I mean, we may take, for example, on LB482, Senator Utter's bill, we may hear testimony for an hour, a half hour each side, and then basically say after an hour we're going on to the next bill. If you want to stay around, when we are done with Nelson's LR29CA, we will have essentially an open mike (laugh), and that's a little unusual, but what we'll do is afford you an opportunity, if you did not have an opportunity to testify on a bill, to come up and say, you know, my name is Joe Smith and I want to talk about my opposition to LB623, for example. And so you'll all have an opportunity to be heard. The one thing I will ask is that if someone has already expressed your point of view, that you not come up and repeat it. All right? You are welcome to, if you are uncomfortable testifying or if someone has already expressed your point of view, then you can fill out one of the sheets and turn it in to Kate and we will note your opposition or support of a particular bill. It is...I know there's a lot of rules but I want this to run smoothly and so it takes a little bit at the front end. There are nine bills today. Not everybody is going to be able to come up on every bill, okay, and not every bill probably deals with what you're concerned with. So please, the first bill that we'll actually hear testimony on is Senator Utter's LB482. If you have something to say about Senator Utter's bill, for or against, please come up and we'll try to take care of you. If you want to see the CIR eliminated, that is Senator Nelson's bill. Please wait until that bill so that we are not interfering with the opportunity that people that have something to say about Senator Utter's bill, for example, so that they're afforded the opportunity to be heard on that bill and we don't clog up the system with people testifying about something that really doesn't have that much to do with a particular bill. I think I'm getting near the end of the rules. I think that's it. Let me introduce my colleagues that are here today. I'm going to sit down, I think, at this point. To my right is Senator Carlson, who's from Holdrege; then we have Senator Burke Harr from Omaha; as well as Senator Ashford; my committee clerk, Molly Burton--pardon me, committee counsel. Sorry. Molly has done a great deal of work on these issues and so I apologize for that mistake. We have my committee clerk, Kate Wolfe, at the other far end; Senator Smith from Papillion; Norm Wallman; and Senator Tanya Cook from

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

Business and Labor Committee
February 07, 2011

Omaha. And my name, again, is Steve Lathrop. And with that, I think that brings us to LB397, which is my own bill.

SENATOR LATHROP: (Exhibits 1, 2, 3, 4, and 5) Good afternoon, members of the Business and Labor Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I am the state senator from District 12 in Omaha and Ralston. I'm here today to introduce LB397. And as the members of the committee understand, LB397 is essentially a shell bill, and by that we mean that the bill has been introduced as a vehicle for an amendment and we expect to amend into LB397 the solution that we reach as a committee to the issues that will be expressed in the nine bills that we'll hear today. I would expect that we would not take testimony on LB397. I'm introducing it first because I would, rather than take testimony on a bill that really has no particular provisions in it at this point in time, we're going to use this opportunity for lawyers who have been working with Senator Ashford and I on our working group to come up and provide background, not just to the committee but to those in attendance today, about the CIR. Let me explain a little bit of the background that led us to where we're at today. Over the past four years or so, members from the League of Municipalities and different mayors have contacted the Business and Labor Committee, and me in particular, to express concern about the Commission on Industrial Relations, what they regard as the need for some changes and for additional predictability in the process. After the last session ended, Senator Ashford and I met with the League of Municipalities, representing the cities across the state of Nebraska, to talk to them about their concerns, to talk to them about changes that they would like to see made in the Commission on Industrial Relations. That meeting led to establishment of a working group. That working group has met over the last six months, and more recently, every single week while we've been in session for the purpose of identifying the concerns the cities and other political subdivisions have to the CIR process and to discuss possible solutions to those concerns. That working group has included not only myself, Senator Ashford, who is a former member of the CIR back when it was a court and he brings a special background and special perspective as a member of this body. We have also included in that group the League of Municipalities and then lawyers who represent both sides. And I want to express my appreciation to the lawyers that have worked in this working group. We have Bill Harding, who represents the views of the cities. He happens to be a member of the chamber of commerce, which is also helpful. He brings a tremendous expertise in the area of labor negotiations and trials before the CIR from the perspective of an employer or a city, and he has been an integral part of our working group in formulating not only the concerns of the cities but the possible solutions to the concerns as well. And in addition to Mr. Harding, we have had at these meetings John Corrigan and Dalton Tietjen, two fine lawyers, members of the bar who practice in the area of...the same area, except they typically represent labor unions. And I must say that as we have worked through the concerns and started to develop solutions, I have been very, very impressed with the work of these fine members of the bar who have been selfless with their time and their expertise in this subject matter. And rather than take testimony on

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

Business and Labor Committee
February 07, 2011

this bill, I'm going to ask these gentlemen to come up one at a time and provide this committee and those who would be watching today, to our proceedings, to give us sort of the background on the CIR: What does the CIR do? What's its social function? Why is it important to the citizens of the state of Nebraska? And I think we'll have the information, after they're done, that will provide us with the basics for understanding the proposals that we'll hear which will follow. So again, my appreciation to those who have worked on this working group, including Senator Ashford and Senator Utter, if I have neglected to mention that. And thank you for your attention. [LB397]

SENATOR COOK: Thank you, Senator Lathrop. Let's first hear from John Corrigan, if you will step to the microphone. Thank you, sir. If you would please say your name and spell it and then begin your testimony, we would appreciate that, sir. [LB397]

JOHN CORRIGAN: Okay. Good afternoon, members of the committee. My name is John Corrigan, C-o-r-r-i-g-a-n, and I'm an attorney with the law firm of Dowd, Howard and Corrigan in Omaha, and I have been participating in the committee working group, I guess that it's been referenced as, as a representative of the Nebraska AFL-CIO, as well as several groups that I represent and our office represents who are covered by the Commission of Industrial Relations. And this is an obvious break in the union time-honored principle of seniority, because Mr. Tietjen and Mr. Harding have a lot more experience in these areas than I do, but I'll go first just because I was asked to. The CIR is a body that, as we see it, essentially allows for the orderly and peaceful resolution of labor disputes, industrial disputes between employers and public sector employees. And the commission is unique in many ways in the way that it deals with these disputes as opposed to some other states and some other dispute processes, but its rules and its legal principles are very much in line with the National Labor Relations Act and the National Labor Relations Board. And so there's a lot of guidance for the commission not only to decide the scope of those bargaining disputes but also to decide the scope of the bargaining units. And ultimately, the body of law that the commission has created as a result of the Legislature's passage of Nebraska Revised Statute Section 48-818 is something that we all have to live by. That body of law and the decisions essentially have told the parties what the bounds are in negotiations. And there's been a lot of concern that we've heard, well, the CIR lacks predictability, and we have concerns in that regard as well in the sense that the CIR, from the perspective of the labor movement, is an expensive and oftentimes harsh process. The market, as it is imposed upon the parties by the CIR's decisions, sometimes lacks little relation to the status quo as it has been enjoyed or understood by the parties, and I could tell you that I've been involved in cases where there's just great movements upward in wages for one guy, and somebody who works right next to that individual, they experience a great reduction in their wages because of the market that's selected. However, these are predictable results because, as we look at how the courts and the commission has followed the legislative guidance to reach the wages that are prevalent within the marketplace, it's fairly simple. We take that employer and we look at the work that those employers are

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

Business and Labor Committee
February 07, 2011

doing and then we look at whether that work can be...you can find comparable employment entities around that employment. And sometimes you have to go a long way, but the fact is everybody knows where to look. There's usually just one or two, maybe three or four fights about what an appropriate array is, but we tie that to the population initially and then we look at the working conditions, if the working conditions match up. The commission generally likes to have six to eight employers in municipal cases, sometimes more in education cases, but by looking at that you can arrive at a market of comparable employments, and then it's simply a math exercise. And certainly there's a lot of disputes about the math and what the appropriate array is, but the commission offers the people of the state of Nebraska, and the working people who are engaged in that professional service on behalf of the people of the state of Nebraska, a certain and simple resolution to their disputes. Now it is a difficult and probably an oversimplification to say that that's how the CIR makes those decisions, but it is simply the fact that the commission will decide your disputes and it is not very costly for the people. It is costly for the parties, and that is one area that we think we'd like to address, and the discussions that we've been having certainly is trying to make the process more efficient. And the fact is, from the labor standpoint, they don't want to go to the CIR. The CIR is not a place where we see all the answers to our problems. It is an entity that is a place to go when you can't come to an agreement. And just as people sit on city councils or county boards or other political bodies, they may say no to an agreement and the memberships of unions may say no to an agreement, and when that happens you have to have a way to resolve it, and the commission allows that to happen. So I thank Senator Lathrop for giving us this opportunity and for you all for bringing these matters to this hearing today, and I please just ask of you to trust in this process because there are people of goodwill on both sides of these disputes trying to resolve the differences that exist, and there is room for a resolution. And with that, I'd answer any questions. I'd like to let Mr. Harding get started. [LB397]

SENATOR LATHROP: I see no...oh, I'm sorry. [LB397]

SENATOR COOK: Oh. How are we doing this? [LB397]

SENATOR LATHROP: Go ahead. That's fine. [LB397]

SENATOR COOK: All right. Thank you, Mr. Corrigan. Mr. Harding, please. [LB397]

BILL HARDING: I'll let Dalton go first, Madam Chair. [LB397]

SENATOR COOK: All right. Mr. Tietjen. [LB397]

DALTON TIETJEN: Thank you. Good afternoon, Mr. Chairman and members of the committee. My name is Dalton Tietjen, T-i-e-t-j-e-n, and I'm here as an attorney who has represented labor union members for my entire career, for over 25 years now, and it's

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

Business and Labor Committee
February 07, 2011

been...by far the vast majority of that work has been in the public sector labor law area. I've been working with the CIR on and off throughout that entire time, more on in the last 15 years than off. I guess I'll do everything I can to avoid replicating what Mr. Corrigan just pointed out. I would like to point out that the CIR originally was instituted as a strike substitute. It was authorized by the Nebraska Constitution, by the Constitutional Convention in 1920. It's specifically in our constitution in Article XV, Section 9, that we can have a Commission of Industrial Relations to resolve these type of disputes. So it's been recognized since at least 1920 by the people of Nebraska that it's necessary to have a means to take care of these problems. It started out, first of all, being used for public utility workers in the 1940s, but then it spread to all public employees. Now why, you say, was that seen as an important thing to address? Well, that's because, obviously, I think we can all see that strikes are not a desirable occurrence, anyplace, anytime. They result in suffering for everybody: for the employees, for the employers, and for everybody that relies on the employees. But that's especially true with public sector workers. We all want constant police protection, fire protection. We want our water to be running, our lights to be on. We want street repairs and we want teachers in our schools. Strikes would interfere with all of those services and it could potentially be disastrous. So we had to have some way to resolve disputes when various groups would come together and try to get an agreement as to what the wages and terms and conditions of employment were going to be. The CIR was set up as a last resort decision maker. The CIR is only invoked when parties cannot agree. We often hear lately that wages are set by the CIR for all public employees. That's not true. They are only set by the CIR when negotiations have failed, the parties are at impasse, and they have to have some way to get an answer. The public employees cannot go on strike, they don't want to go on strike, but they want a fair shake. So we then go to the Commission of Industrial Relations. The Commission of Industrial Relations then has to determine what is comparable; that is, what are the terms and conditions that workers doing same or similar work under same or similar conditions, what are they getting. And whatever they are getting, that's what this group that is in front of the CIR will get. That seems absolutely fair, to my mind, that these people should be getting what is comparable to what everybody else that's doing this type of work is getting. The CIR is staffed with...used to be called judges, now they're called commissioners, five of them. They're appointed by the Governor for six-year terms. Those appointments are made with the advice and consent of the Nebraska Legislature, so these aren't just nameless, faceless bureaucrats who are pulling strings behind the curtain. These are people that the Governor has vetted and deemed appropriate and that the Legislature has then approved. They are chosen because they have some level of expertise in these areas, and then after they spend some time on the commission, I can guarantee to you that they get a very considerable level of expertise. It's a very complicated area for them, I'm sure. I know that it took me a significant period of time to actually understand the workings of the CIR. I would have to say that in the vast majority of cases the CIR has worked exactly as it was intended to do. It is used only as a last resort. We have bargaining units throughout this state. I have worked with them myself, all the way from

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

Business and Labor Committee
February 07, 2011

Alliance to Falls City, from Valentine to Hastings. They're all over and yet I don't know the actual numbers. We have some representatives from the commission here; they may know the numbers. But I can assure you that there is nowhere near the number of cases in any year that there are bargaining units. It's a miniscule number of cases that end up in impasse and end up at the commission. Instead, the employees arrive at voluntary agreements with the employers and it's only used as a last resort. Now there's been a few complaints from both sides, especially the cost factor that Mr. Corrigan mentioned. It is very expensive to go to the CIR because of the high level of integrity of the evidence that's required. But generally, the complaints have been addressed. Lately, there have been more and more complaints about predictability and I think that that is mostly because of people not knowing for sure exactly what group is going to be compared to. That's something that we've been working on in this working group with Senator Lathrop. We've been trying to ensure that predictability by coming up with some more definite definitions, some more definite guidelines for the CIR to go by in making its determinations. This working group has been working, as Senator Lathrop said, since last summer. It's been slow going but I have seen steady progress. I'm confident that we will reach some sort of an agreement. I believe that once we get that agreement and put it into LB397, that will be the proper way to address the complaints and the problems in the commission because it will represent agreement between labor and management. It will not be either side's piece of cake that they want to eat and let the other people walk away. There are a lot of bills here that you're going to see today. My clients would urge that we don't act on those bills but we instead wait for the results of this working group so that we can have this consensus that will meet the needs of both sides. With that, I have no further comments. If you have any questions, I'd be happy to try to answer them. [LB397]

SENATOR COOK: Any questions? Senator, I'm sorry. Senator Smith. [LB397]

SENATOR SMITH: Thank you, Senator Cook, appreciate it. Were you a part of that working group that had been meeting since last summer? [LB397]

DALTON TIETJEN: Yes, I am. [LB397]

SENATOR SMITH: Okay. And thank you so much. I think it's great to have that diversity of thought and ideas and bring different parties together. Can you tell me to what extent was business or some of the public sector management involved in those meetings? [LB397]

DALTON TIETJEN: Well, we have the League of Nebraska Municipalities represented; Lynn Rex, the director is there. Bill Harding is there as an attorney who has represented management interests for as long as I've been practicing. He has a great level of expertise there and many connections, and as pointed out by Senator Lathrop, is a member of the chamber of commerce himself. And we also had Walt Cavanaugh (sic),

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

Business and Labor Committee
February 07, 2011

who operates as a lobbyist for those interests in the working group. [LB397]

SENATOR SMITH: Okay. Thank you. [LB397]

DALTON TIETJEN: You're welcome. [LB397]

SENATOR COOK: All right. Thank you very much, Mr. Tietjen. [LB397]

DALTON TIETJEN: You're welcome. [LB397]

SENATOR COOK: Mr. Harding. Thank you, sir. [LB397]

BILL HARDING: Senator Cook, Senator Lathrop, members of the committee, my name is Bill Harding, H-a-r-d-i-n-g. I'm a Lincoln attorney. I have represented municipalities in the CIR since the first case after Senator...and this will take some of us back a while, since Senator Carpenter's LB15 in 1969. That was case number 24. A case that Mr. Corrigan and I are working on now is case number 1241, so a little water has passed under that bridge. I even represented a county against Senator Ashford's client, when he was practicing in the area. I would be remiss if I didn't start my comments by adding to Senator Lathrop's comments about those who participated. And, by the way, it was Walt Radcliffe, not Walt Cavanaugh, who was there as the lobbyist. They're easy to confuse. The other people who participated in the working committee: a former partner of mine, Tom Dowd, and his son Mike Dowd who is here today, representing organized labor as well, and they brought about many good comments as well, and so I should start by saying there were others; though Tom was not there all the time, Mike was there most of the time, but John and Dalton were primarily there representing organized labor. I should also mention that four municipalities...I serve as labor and employment law counsel for the league and I was there in that capacity and there's been some mention made of my working with the State Chamber. Since 1983, I've been the chairman of the State Chamber's labor and relations council, so I have kept them informed on what we're talking about. But I should start by saying what we did not talk about. Mr. Corrigan mentioned that the CIR is a lot like the NLRB. So they conduct elections. We didn't talk about the statutes dealing with conducting elections when setting bargaining units. The NLRB has unfair labor practice proceedings. The CIR has prohibitive practice proceedings. We didn't talk about those. We talked instead about the impasse resolution procedure found in 48-818 which both Mr. Corrigan and Mr. Tietjen referred to. That was it. That was our focus, and I'll come back to that in just a minute. We also did not talk about doing away with the CIR. The League of Municipalities has for years suggested to this body that changes be made in the process and that we improve what we have, because as both John and Dalton said, the trade-off for the right to strike, and I have represented and have represented since 1969 employers in the private sector from Fresno to Hartford, and so that is a process where employees have the right to strike and you deal with the issues that come with that. But

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

Business and Labor Committee
February 07, 2011

in Nebraska, in the public sector, the trade-off has been you can't strike. So how to resolve then if you have an impasse? Sometimes you get a deal at the bargaining table. I've signed...I've negotiated and signed many of those. Sometimes you don't. I've told my clients I normally know when you're at impasse because that's when your opposite number says some very pejorative things about your ancestors and that means that you're not going to get any further. And so in the private sector often you find yourself dealing with the administrative agency that investigates unfair labor practice charges--the NLRB. In Nebraska, you might get a prohibitive practice case to be litigated, but, most often, people cut to the chase and they say, well, let's deal with comparability. Now on the municipal side, just as perspective, about 30-some percent of the employees of municipalities in Nebraska are in a bargaining unit and represented by organized labor; the rest are not. But comparability is an unfunded mandate for all public sector employers because it does not require a union for employees to go to the CIR. They can hire a lawyer and go, and they have. So it is an unfunded mandate and those who don't have a bargaining unit must keep their ears open as to what is going on and being paid on total compensation, not just wages, but wages and benefits--total compensation--so that they know that they are complying with state law. So most of the time that's what happens: you go to the CIR. And that is the nub of the problem. You are familiar, all of you, with how the Bill Drafters Office comes to you with the draft of the statute. And most of the time, in a regulatory scheme, you have a section on definitions. There's one here; it's Section 48-801. It doesn't cover a lot. So this bill, when it was...this law, when it was first passed in 1947, was a little meager on defining terms. And then 48-818 itself, which references comparability, doesn't go on to define the various terms it uses, and tells people, go out and comply with this law. And some would say, well, easy for you to say, but there aren't definitions in the places you'd normally expect to find them. So we shouldn't vilify the commissioners of the CIR. They're not the problem. They're well-meaning, well-intentioned folks who are trying to comply and enforce a flawed system. The statute is incomplete. And so our study group has talked about ways to make the statute complete, not do away with the CIR, but to make the system understandable, predictable, and better. Now when I talk to you about LB482, I'll talk to you a little bit more about some of the changes that you might conclude do that. But the purpose of our study group was to explore those issues, see what agreement we could obtain--and we did on a number of issues. I will tell you that I think on some of the fundamental issues we have a ways to go. But we talked about some concepts, and we didn't get all the way to the end of those concepts but I'll talk to you about some of them in LB482, because I do agree that progress was made and I do agree that good effort and good intentions were prevalent around the table--well, maybe with a couple of exceptions. And so we were moving forward and I think that there is still is still a possibility that we can reach an agreement. LB397 might be the vehicle. LB482 might be the vehicle. There are several ways that we could deal with this issue. Now let me tell you about two other areas we did not discuss. We didn't talk about the state. The state has its own statute. It's excluded from the CIR Act. You look at the CIR Act, look at the last section: It says you don't deal with state employees under this act. They have

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

Business and Labor Committee
February 07, 2011

their own. So we took that admonition. There's a bill, LB555, dealing with state employees. The Governor and his advisors and you may all come together and decide what should be done for state employees, but we didn't talk about that. We also didn't talk about teachers. Teachers have their own process with a Special Master that is different than the way all other public sector employers in Nebraska do it, so we didn't talk about teachers. Now when we talk about expanding LB397 or LB482, as we could, I will tell you that the nonteaching employees of school districts could very well be covered by the things we've been talking about, because we've been talking about fundamental issues relating to size of the array, job match, etcetera, all of which would apply when you're talking about support staff in a school system. I will close by mentioning to you that we did talk about a couple of 900-pound gorillas. You've heard of them; you might have even met them: health insurance and retirement benefits. Now in Nebraska, except for Lincoln and Omaha, municipalities switched in the '80s to defined contribution plans. It's a lot easier to deal with your budget when you have a defined contribution plan. Anybody who has not lived in a cave for the last decade has read about the Teamster Central States plan. You know the problems that come about with a defined contribution plan. It's just the way...or defined benefit plan. That's just the way it is. On health insurance, many times, many times over the last 10 to 15 to 20 years, that has been the single biggest subject at the bargaining table. It's not wages, it's not sick leave, it's health insurance because people are very interested in that. The federal government has now invited themselves to the table. What they are saying or whether they will be allowed to say it is still in dispute, but it is a big area. The problem that we've had in litigating is that the CIR is supposed to look at total compensation. That's what the statute says. That is the law. Easier said than done, because you're supposed to value what is being received in health insurance or retirement and adjust wages accordingly. That's the concept. Well, that's been difficult. In fact, I was involved in one case for the state where the judge, the then-judge, now commissioner, I had first met when he was representing unions in the CIR, and Judge Cullan took the parties aside and said, you know, I am concerned about the cost of bringing expert witnesses into this venue and talking about some very detailed areas, health insurance and retirement among them; it's very expensive, is it not? And we all agreed it was. So we've been trying to figure out a way to reduce the cost. Mr. Tietjen and Mr. Corrigan talked about that. I think we're of a mind that that is a goal. And Dr. Deming, whom I'm sure you've all read the writings of when it comes to management and how to do it right, has said that, you know, the problem isn't the people; the problem is the system. Design a system which will allow the people to be successful, and the people will be successful. So one of the things we've talked about in our study committee is we need to design a system for the CIR to help them value health insurance and retirement benefits, and we've been talking about the model that you may be acquainted with under the worker comp statutes, and we'll talk more about that. But the point is this. We've been trying to improve the process by changing the system and we're still talking. I'll stop at this point and see if there are any questions. [LB397]

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

Business and Labor Committee
February 07, 2011

SENATOR COOK: Thank you, Mr. Harding. Are there questions of the committee?
Senator Carlson. [LB397]

SENATOR CARLSON: Thank you, Senator Cook. Mr. Harding, Mr. Tietjen said that...kind of suggested that as we go through all these bills today, we don't act on any of them. Is that your thought as well? [LB397]

BILL HARDING: No, Senator, it's not. Mr. Tietjen and I sometimes agree and sometimes we don't. I'm going to be suggesting to you that you advance LB482. I believe it makes substantial changes. I believe that the citizens of Nebraska are ready for a substantial change and I'm going to suggest to you why that would be the right bill. [LB397]

SENATOR CARLSON: Thank you. [LB397]

SENATOR COOK: All right. Other questions? [LB397]

SENATOR ASHFORD: Well, I just...I just very briefly... [LB397]

SENATOR COOK: Senator Ashford. [LB397]

SENATOR ASHFORD: I've been working with Bill Harding since 1977 in this area. [LB397]

BILL HARDING: Seems like just yesterday. [LB397]

SENATOR ASHFORD: Yeah, and it was a while ago, but I commend his work and the other lawyers in this process. It has been a long process. We've met 10 or 12 times, I don't know how many times, and continue to meet. And I do appreciate Senator Utter's involvement and his staff and Steve's, obviously, in bringing us together. I think we are making great progress, as you've suggested, and we are dealing with pensions and health insurance in a very real way, based on, you know, kind of the how to. And so I just want to give my little introduction and to commend your efforts and your long years of experience, and thank you for your involvement. Thanks, Mr. Chairman. [LB397]

SENATOR COOK: Any other questions from committee members? [LB397]

BILL HARDING: Thank you. [LB397]

SENATOR COOK: Thank you very much. [LB397]

SENATOR LATHROP: Thanks, Bill. That will close our hearing on LB397 and we'll go to LB482, and that brings us to our friend Senator Utter. [LB397]

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

Business and Labor Committee
February 07, 2011

SENATOR UTTER: Thank you very much, Senator Lathrop and colleagues on the Business and Labor Committee. This is my first appearance before you. I just hope I'm not one of those 900-pound gorillas that Mr. Harding was referring to, and I will tell you, Senator Lathrop, you didn't have to invite all these people here on my behalf. (Laughter) Let me just say at the outset of introducing this bill that as I've traveled across the state of Nebraska and there's widespread interest in the CIR and what needs to be done with the CIR, and I hear an awful lot of the time that, well, we just need to abolish the CIR. And let me tell you that as I have looked at this, there may have been a time when I would have agreed with that until I actually really worked and took a look at the situation. And I will tell you that I think that the cities and the people that work for cities need a forum, a forum where they can go and resolve their differences with regard to labor issues. And so from that standpoint, I think the CIR is important and provides an important service. Now that's not to say that it doesn't need to be improved. To start off with, I would like to just talk generally about the issue of the CIR. I, just like all of you on this committee, have heard from your constituents that changes should be made to the CIR. I agree with the premise that changes should be made and I believe they need to be made by this legislative body in a substantial but reasonable way. Because if we don't make these changes now, there could be attempts made by groups outside of the Legislature that are unreasonable and the citizens of Nebraska will not be better served by those changes. Given that, I introduced LB482 to provide predictability and consistency in the rulings of the Commission on Industrial Relations involving municipalities. Predictability and consistency in CIR decisions would encourage resolution of disputes at the bargaining table for those municipalities with unions. LB482 would also assist the overwhelming number of municipalities without unions by setting clear guidelines for municipal employers to follow when determining comparable wages and benefits for municipal employees. I want to emphasize that the changes proposed in LB482 would only apply when the CIR issues a ruling on a municipal case. Municipal officials are frustrated that the CIR has been inconsistent in applying its guidelines when deciding cases. In short, our current statutes do not contain enough definitions to clearly guide the CIR when deciding municipal cases. LB482 would provide clear guidance to the CIR in several areas when issuing decisions involving municipalities. First, with respect to the area of job match, LB482 would direct the CIR to use local job matches from both the public and the private sector within the state of Nebraska. LB482 would provide that all public and private sector employees within the state of Nebraska are presumed to have the same or similar working conditions. If job matches from outside the state of Nebraska are used, LB482 would require that an adjustment be made for economic variables based upon median family income. When comparing to other municipalities, LB482 would establish municipal population requirements, as well as population requirements for MSAs. The cost of litigation is another area of concern for municipalities as well as for municipal employees. LB482 would significantly reduce these costs by instructing the CIR to operate more as an administrative agency than a court. Health insurance and retirement benefits are two of the biggest cost items for

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

Business and Labor Committee
February 07, 2011

municipalities. The CIR has not properly analyzed these benefits. Usually, the CIR does not provide municipalities with any offset for health insurance or retirement. LB482 would make substantial changes in these two areas. LB482 would also require each party to submit its economic analysis to the other party at the time it presents its economic proposal. This would also encourage the resolution of disputes at the bargaining table. In summary, LB482 is extremely important for municipalities. Municipal employers as well deserve consistency and predictability in CIR decisions. LB482 would accomplish this by taking standards which are only guidelines and placing these standards into state law to provide clear direction to the CIR. Bill Harding will be offering a few amendments to LB482. I support these amendments. If you have any technical or legal questions about LB482, Bill is available to respond. I appreciate your time and consideration of this important bill. It's a bill, my friends, that I think is important for all of Nebraska. Thank you. [LB482]

SENATOR LATHROP: Senator Utter, thank you for that introduction and your remarks, and, of course, this committee greatly appreciates your work with the working group on these issues and a thoughtful bill. Is there anyone here that has questions for Senator Utter? [LB482]

SENATOR ASHFORD: I agree. Thank you, Senator Utter. [LB482]

SENATOR LATHROP: Yeah. Yeah. I see no questions and I... [LB482]

SENATOR UTTER: That's music to my ears. Thank you. [LB482]

SENATOR LATHROP: ...and I trust you want to stay and close. [LB482]

SENATOR UTTER: I do, yes. [LB482]

SENATOR LATHROP: Okay. It would be my intention, because this is what I would regard as one of the primary bills we will hear today, to probably take a half hour of testimony on each side. After a half hour, we'll move on to the next bill, but that will not necessarily preclude you from coming back at the end of the day and expressing your support or opposition. And with that, we'll go to Mr. Harding. [LB482]

BILL HARDING: Senator Lathrop, members of the committee, I am here today speaking on behalf of LB482 at the behest of the League of Nebraska Municipalities and the Nebraska Chamber of Commerce and Industry. I would first draw your attention to the introducer's statement of intent. If you did not have that on your nightstand over the weekend to read it, I will tell you that if you look on page 1 and the top of page 2 you'll get the essence of LB482. The essence of LB482 is to codify what Presiding Judge Gradwohl said in one case involving Douglas County and what Chief Justice Krivosha said in another case involving Douglas County. The first case was when Presiding

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

Business and Labor Committee
February 07, 2011

Judge Gradwohl said that it is difficult to sometimes understand the statute because of the lack of definition, and he said, "Although at times the abbreviated form of the language used to express our role may appear to compare employers, the essence of the statutory test established by Section 48-818 is one of work comparability." That's where LB482 starts. LB482 seeks to compare the work of Nebraska workers. That is where this statute was before LB15 offered by Senator Carpenter in 1969. At that time, all comparability cases were limited to the state of Nebraska. That limitation was removed in 1969. LB482 seeks to promote the comparison of public and private sector employees and their job match locally. At the top of page 2 of the introducer's statement of intent, Chief Justice Krivosha reversed the CIR when they would not accept evidence relating to job matches locally within the city of Omaha and the Omaha metro area, and said, "Whenever there is another employer in the same market hiring employees to perform same or similar skills, the salaries paid to those employees must be considered by the CIR unless evidence establishes that there are substantial differences which cause the work or conditions of employment to be dissimilar." In other words, just do it. And what we are talking about in LB482 is to have...by the way, Senator Lathrop, do I have three minutes or five minutes? I've been given different time lines. [LB482]

SENATOR LATHROP: Three. [LB482]

BILL HARDING: Okay. [LB482]

SENATOR LATHROP: We might let you spill over because of your involvement with the working group,... [LB482]

BILL HARDING: Okay. [LB482]

SENATOR LATHROP: ...but then as soon as I make an exception I'm going to have a problem. [LB482]

BILL HARDING: (Exhibit 6) I'll try to speak rapidly. So that is the essence of LB482. Now I have some amendments and your committee counsel has distributed them, I believe. The changes I will cover very briefly because some of this involves items we're still talking about in the working group. On page 1, the job match requirement is being suggested to be reduced from 80 percent to 70 percent, because that will allow for an easier comparison of jobs in the private sector. A statement of public policy incorporating the two base concepts that I mentioned is found on page 2, in addition to Section 48-802. In Section 48-809, the first section, there was a problem in communication with the Bill Drafters Office, so the last line, "not following the rules of evidence" was intended, because this is an administrative agency not unlike the NEOC. And then I'll move forward to page 4, the permissive subjects of bargaining, the two identified--health insurance and retirement benefits--are added. Minimum staffing is the concept added which Judge McGinn just last fall said is indeed a management

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

Business and Labor Committee
February 07, 2011

prerogative. And then we add minimum staffing to the 48-818 definitions, but what I want to draw your attention to is the concept from the workers' comp statute, if I may. If you look at the worker comp statutes, 48-134.01, and you look at the worker comp commission rules, 62 through 67, you'll find the concept of the independent medical examiner. That's exactly what the last two sections deal with here, (j) and (k). And what they're saying is the Department of Insurance will establish the criteria for experts on health insurance, and the Nebraska Public Employee Retirement System will establish the criteria for experts on retirement. And then when you come to the CIR, an expert will be selected. They will be instructed to give the CIR a dollars-and-cents analysis so they can adjust wages. We're changing the system for the CIR. And the expense of the expert will be borne equally by the parties. So that is the concept we're trying to deal with. Maybe it should be amended as a different concept, but, frankly, the model of the Worker Comp Court is not a bad one. The two final things I'll say, then move on: First, if you look on page 4, we've added "outstate" to the MSA and municipal population comparisons to make it clear that you stay inside the state of Nebraska. You only need five in your array; only if you can't find five do you go outside the state. But then you have to meet the MSA filter, you have to meet the municipal population filter. If you do that then you have to show same or similar working conditions at a high level. And then if you get through all of that, you have to apply economic variables based on median family income. So the idea is stay in Nebraska, stay local. That's what the Nebraska citizens wanted. We've strayed from that. The intent of LB482 is to bring it back. The final thing I'll say is to reference to you what I said in my earlier remarks. We didn't talk about the state in this bill. They've got their own statute. We didn't talk about teachers in this bill. They've got their own statute. But every other public sector employer in Nebraska could be covered by the concepts of LB482 and it would be significant, useful, relevant change. We could even cover the nonteaching staff of schools. Because when you compare the support staff, the same concepts that apply at the municipalities would work. So I will stop and see if there are any questions. [LB482]

SENATOR LATHROP: Very good. Thanks, Bill. Senator Harr. [LB482]

SENATOR HARR: I just have a quick question. Section 3(1) that you changed from 80 percent to 70 percent as far as job match? [LB482]

BILL HARDING: Correct. [LB482]

SENATOR HARR: What is it currently in the statute? [LB482]

BILL HARDING: Eighty-five percent is used by some experts; eighty percent is the standard in the OPPD case when you're doing job classification, key classification methods. So both 80 and 85 are used by the experts, and we're saying if you're going to include the private sector, as we believe we should, then let's reduce it down to 70 percent. That still is going to give you a pretty close match. If you look at the Fair Labor

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

Business and Labor Committee
February 07, 2011

Standards Act on wage and hour exemptions, it's 50 percent. So 70 percent is still a good number. [LB482]

SENATOR HARR: Thank you. [LB482]

SENATOR LATHROP: Any other questions? Senator Smith. [LB482]

SENATOR SMITH: Thank you, Senator Lathrop. Mr. Harding, can you kind of give me a thumbnail as to why you think the state and the teachers would not work well under this model that's been presented in LB482? [LB482]

BILL HARDING: Yes. Number one, I don't want to speak for the Governor. He said he wants significant amendments, and I don't know, other than LB555 saying let's get rid of the Special Master concept, which I agree is a good idea, he hasn't told us the other things. The end of LB555 lists a few things for the CIR to consider but doesn't go into as much detail as LB482. It may be that by looking at LB482 the Governor and his advisors say, well, yeah, we could do that; that would work for us. But we didn't mean to speak for the Governor so that's one reason we didn't talk about it. As to teachers, teachers are treated in a different light in the CIR, and by that I mean two things. First, they don't use job match because they say a teacher is a teacher is a teacher. So the issues in LB482 of what is your job match aren't considered. Now, of course, you could draw from that experience and apply it to certain...say the uniformed services in municipalities. You could follow the same approach so you wouldn't have job match, but that, they do that different. And the second thing is they don't compare precise job matches and have a minimum and a maximum salary for each job. Both Mr. Corrigan and Mr. Tietjen referenced that you can have differences, because that's the way 818 was set up. It's job specific. But in the teacher cases, they take their index salary schedule and value it. And so they do it differently, so the economics are treated a little differently. We didn't want to speak for the state school board association or the NSEA in what they think would work, but it's true, they could take a look at some of the things in LB482, and it's very easy, it's as easy as opening the refrigerator door and having the light go on, to say it would apply to nonteaching staff. That's a given. It could. But they might go further, Senator Smith, and say, you know, there's some good concepts we could use for teachers, but we didn't want to speak for them. And since this body has always held the two of those groups separate, we thought, well, maybe you do want to keep doing that. [LB482]

SENATOR SMITH: Thank you, Mr. Harding. [LB482]

SENATOR LATHROP: I see no other...oh, I'm sorry. Senator Carlson. [LB482]

SENATOR CARLSON: Thank you, Senator Lathrop. This LB482 is specifically to municipalities, and we'll find out if there's opposition to this bill, but it sounds like in your

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

Business and Labor Committee
February 07, 2011

working together that there's been some agreement on both sides as to what should go into LB482 applying to municipalities. Is there legitimate criticism that would say, well, we shouldn't move ahead on anything until we get state employees and school employees ready to go as well or in this far along as 842 is, or do you think 482 by itself can set a precedent and be an example? [LB482]

BILL HARDING: Well, Senator, you asked two questions and I'll try to answer both of them. Number one, do I think we ought to wait? The answer is no. You know that writer's block is a problem for some. That's not a malady I've suffered from, but it appears that if you look at LB555 and the bill offered on behalf of schools, it doesn't go into nearly as much detail in terms of codification and predictability as does LB482. So I don't think we ought to wait. I think we ought to move forward. As to the second question, if LB482 was enacted and applied to everybody but the state and teachers, could it serve as a model? Certainly, because I believe if it worked...for example, in schools one of the big issues is valuation of benefits when somebody steps out of the normal mode. Alliance had a case recently where they didn't pay for health insurance; they put it on the salary. And they couldn't get that value taken care of. We've talked about a valuation model in LB482 that could have some application to the schools. So, yes, I think it could lead the way. [LB482]

SENATOR CARLSON: Thank you. [LB482]

SENATOR LATHROP: I think that's it. Bill, once again, thank you for your testimony today and all you've done to educate me, in particular, and to participate in our working group. [LB482]

BILL HARDING: Glad to participate. Thank you. [LB482]

SENATOR LATHROP: Mayor Beutler. [LB482]

CHRIS BEUTLER: Yes, sir. Good afternoon, Senators. [LB482]

SENATOR LATHROP: I assume you're here in support. (Laugh) [LB482]

CHRIS BEUTLER: Pardon me? [LB482]

SENATOR LATHROP: I said I assume you're here in support. [LB482]

CHRIS BEUTLER: I am here in support. [LB482]

SENATOR LATHROP: Okay. [LB482]

CHRIS BEUTLER: And the name is spelled B-e-u-t-l-e-r. I want to begin by thanking

Senator Utter for bringing the bill. He's brought a ton of work onto himself and I appreciate that. I also want to very much thank you, Mr. Chairman and Senator Ashford, for the time you're putting in on this. I've been here. I know you're not going to get credit for the enormous work you're putting into it, for the intellect you're putting into it, for the creativity you're putting into it. And, frankly, Senator Lathrop, I feel sorrier for you than I do for Senator Ashford because he's been here before and he should know. (Laughter) In any regard, I'm keeping my testimony short, as I must here, and I will focus on just one aspect of LB482 because I think that it illustrates the frustrations and problems of some of the managers of the cities in this state. LB482, as it currently stands, provides among other things with respect to cities that both health insurance and retirement benefits will be permissive subjects of bargaining, not mandatory subjects of bargaining. It also provides that the CIR cannot issue an order on health insurance or retirement benefits unless both the city and the union agree. Let me tell you why this is so important to Lincoln. Four of our six city unions in Lincoln have a defined contribution retirement plan. For those four unions...for four unions, the city basically contributes \$2 for every \$1 an employee contributes, up to a certain level. We call that our 2-to-1 match. As the city faced year after year of difficult budgets, it was clear that this 2-for-1 match was unsustainable. It was also clear that a vast majority of Lincolniters who...do not enjoy similar benefits in the private sector. We heard the message from our community loud and clear: We need to reduce that match. I was advised, however, that unilaterally reducing the 2-for-1 match for current employees simply was not a legal option. I was also advised that although we could not unilaterally reduce the city's match for new employees, it was for different legal reasons. In other words, we could do it but we had to go to the unions and ask for their assistance, and that's what we did. Last spring and summer we worked with the unions to reduce the match. We were successful with three of the four because of their voluntary cooperation. With respect to those agreements, the city now contributes far less to the retirement plan of the new employees. The fourth union refused to compromise. When the city moved forward with an ordinance to reduce the match, this union filed a case with the CIR. Shortly thereafter, in conjunction with the filing, the CIR issued a status quo order. As its name implies, this order essentially directed the parties to maintain the status quo, and that included the 2-for-1 match. We are now in litigation at the CIR with this union. The status quo order is still in effect, meaning that we have not been able to reduce the match and will not be able to reduce the match. More importantly, I am told that the CIR has repeatedly indicated that it will not order a structural change to a retirement plan. In other words, it won't order changes to the contribution rates. The union was, in effect, able to unilaterally stop any efforts to adjust the match. This was baffling to me as an administrator. It is really unacceptable, I believe. It's fair to say that a majority of our citizens find it unacceptable. And so to shorten up things here, I see my time is out,... [LB482]

SENATOR LATHROP: It is. [LB482]

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

Business and Labor Committee
February 07, 2011

CHRIS BEUTLER: ...suffice it to say, Mr. Chairman, that we would like to see and really need some change in this area. [LB482]

SENATOR LATHROP: Okay. Thank you, Mayor. Any questions for Mayor Beutler? I don't see any. Appreciate your testimony and thanks for coming down today. [LB482]

CHRIS BEUTLER: Okay. Thank you. [LB482]

JAY VAVRICEK: Good afternoon. A pleasure to address Senator Lathrop and the committee once again. My name is Jay Vavricek, spelled V-a-v-r-i-c-e-k, representing the people of Grand Island and the city of Grand Island as mayor, and very much appreciate the opportunity to weigh in and give you a glimpse of what we're facing in our community. Maybe it's symbolic of what is obviously being felt throughout Nebraska. But at this point, LB482, we are a proponent of that legislation. We think the amendments are sound. And when you look at the process, and also understand, in Grand Island's case, about 71 percent of the costs of our general fund are within the work force. Of that majority, 74 percent is unionized labor, but also we're probably like every other city. We have general fund requirements of labor. We also have revenue that comes from enterprise funds which also has a collective bargaining, and then we have also nonunion individuals. So we have a mixture, and I think this legislation allows the opportunity for comparability. So I'm proposing that, indeed, while there may be strong sentiment to abolish the CIR, I think there are strong measures to reform and also would urge you that now is the best time to look at that. And we're probably having that discussion because of the financial stress that is here as opposed to maybe 42 years later or 42 years ago in 1969. I was asked also, while I was on my way here, well, why are you coming? Well, once again I indicated that we're physically sound, we'll manage, but the majority of our work force comprises our costs. We're trying to contain that. But I also know, while I've been in business 35 years and a mayor for my second time, that an organization is only as good as the people you have working for you. And when you try to find effective services, we need to go ahead and fairly compensate individuals, but also this measure. And in the next eight months we need to go ahead and negotiate with seven union agreements and four unions. So when you look at the process, if you can streamline it, make it less costly, and I can't tell you the hundreds of thousands of dollars that maybe have been invested over the course of time in litigation and processing, so I think that is a good measure for public policy. The other part, and I hear this on main street, if you lose a secretary in a legal department that goes to work at city hall because they're more compensated, higher, or have benefits, I think there needs to be that element where you have the comparisons in public and private, to where you have a blend. And I think that also needs to be pointed out. And then lastly in the time that I have, because I'm also...just recognize Senator Utter and the introduction of this legislation. I'll also remark any specific questions, I have asked Brenda Sutherland, our human resources director, to also address any specifics because she's dealt with a lot of those different activities. But when you look at the in-state comparisons, I think it

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

Business and Labor Committee
February 07, 2011

makes sense for Nebraska, because, indeed, we're all operating under the same court of laws, same economic conditions. And I think there are a filtering process that makes good sense in the legislation of LB482 if out-of-state comparisons are necessary. So with that, once again I just appreciate your leadership and the opportunity to address you on behalf of the people of Grand Island. [LB482]

SENATOR LATHROP: Thank you, Mayor. We appreciate you coming down again. I think that's two weeks in a row, isn't it? [LB482]

JAY VAVRICEK: It is two weeks but it's always a pleasure. [LB482]

SENATOR LATHROP: Good. Yeah. Well, we're glad to have you here. Any members have any questions for the mayor? Senator Carlson. [LB482]

SENATOR CARLSON: Thank you, Senator Lathrop. Jay, thanks for being here. [LB482]

JAY VAVRICEK: Thank you. [LB482]

SENATOR CARLSON: And you, in talking about LB482 and then you mentioned early a bill that brings up a complete repeal, if you were king for the day and today you make the decision, would you repeal it or would you vote for LB482? [LB482]

JAY VAVRICEK: I would support LB482. I think when you look at the institutional knowledge, the ability to go ahead and run a city effectively, trying to go ahead and compensate that, but trying to have a blend of where we've come in 40 years versus where we need to go, I think the amendments introduced and the overall intent of LB482 would allow that to be an operable bill, with your leadership and hopefully consideration by the full body. [LB482]

SENATOR CARLSON: Thank you. And last week I complimented you and the community of Grand Island on the State Fair, and you had much to do with that, but I left out Mayor Hornady and I don't want to do that today for the record, because she was a yeoman of effort on that endeavor. [LB482]

JAY VAVRICEK: Well, I appreciate that sentiment and I know Mayor Hornady does as well. And I could look at each one of you and many people in the Legislature and the state that could enumerate that as well. But thank you. I appreciate the continued opportunity to build on the tradition of 140 years of the Nebraska State Fair. [LB482]

SENATOR CARLSON: Thank you. [LB482]

SENATOR LATHROP: Thanks, Mayor. [LB482]

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

Business and Labor Committee
February 07, 2011

JAY VAVRICEK: Thank you. [LB482]

SENATOR LATHROP: I'm going to ask Mr. Mach to come up next from the Lincoln Business Association who asked me if he might be one of the chosen people, and while he's coming up, can you raise your hand if you wish to testify in favor of this bill? [LB482]

COBY MACH: Senator, might I defer to the opposition side? [LB482]

SENATOR LATHROP: Well, I'm not ready for the opposition yet. [LB482]

COBY MACH: Then can I defer? [LB482]

SENATOR LATHROP: Sure, if you want to. [LB482]

COBY MACH: Okay. [LB482]

SENATOR LATHROP: Okay. Anybody else care to testify in support? And while Steve is coming up, is there anybody else or is this our last witness in support? Oh, okay, very good. [LB482]

STEVE OLTMANS: Senator Lathrop, I'm Steve Oltmans, chief of staff for Mayor Suttle, and I appear here, and fellow members, in favor of LB482 on behalf of the city of Omaha and the Suttle administration. The aspect of this has been very apparent to me since we've been in office. The mayor has asked me to sit in many of the negotiations on the union efforts. Our choice is that we negotiate contracts without going to the CIR, and we've worked very hard to do that. We've succeeded largely in that arena. We have one major contract to finish and I am confident that we will and that's the fire union contract. In fact, we're negotiating tomorrow in a serious effort to do so. We think that LB482 would be beneficial in helping to define the activities within the Court of Industrial Relations, and therefore we will continue as an administration to do everything we can not to utilize the Court of Industrial Relations, which we've succeeded largely in doing, as I said. But in consequences that we're not able to do that, we think some of the improvements proposed in LB482 are favorable to the taxpayers in the city of Omaha. [LB482]

SENATOR LATHROP: Very good. We appreciate your testimony today. Any questions for Mr. Oltmans. [LB482]

STEVE OLTMANS: Thank you for the opportunity. [LB482]

SENATOR LATHROP: Senator Smith. Hang on just a second if you wouldn't mind, Steve. [LB482]

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

Business and Labor Committee
February 07, 2011

STEVE OLTMANS: The gentleman from Papillion. [LB482]

SENATOR LATHROP: Our friend from Papillion. [LB482]

SENATOR SMITH: Thank you, Senator Lathrop. Mr. Oltmans, good to see you. [LB482]

STEVE OLTMANS: Thank you. [LB482]

SENATOR SMITH: And could you elaborate a little bit on this as to what kind of impact you think that LB482, if it had been in effect over the last couple of years or so, what kind of impact would you have seen in the current conditions in Omaha? [LB482]

STEVE OLTMANS: Well, I think it could have been helpful in the two large areas that everybody that's testified here today talked about, and that's health insurance and pension. As you know, the CIR does consider health insurance comparability but it does not consider pensions, at least historically. And we really think that that might be helpful, although we have achieved a great deal of that as well. Once we complete the negotiations for the fire, we will have solidified, actuarially sound, our pension plan, which is a major concern for the taxpayers in the city of Omaha. And I'm confident that we're going to achieve that. Now if we're not, then, of course, if the CIR would consider pension, that would probably be helpful. [LB482]

SENATOR SMITH: Thank you. [LB482]

SENATOR LATHROP: I see no other questions. Thanks for coming down, Steve. [LB482]

STEVE OLTMANS: Thank you. [LB482]

SENATOR LATHROP: Our regards to the city of Omaha. Welcome. [LB482]

BRENDA SUTHERLAND: Hi, Senator Lathrop, state Senators. My name is Brenda Sutherland, that's spelled S-u-t-h-e-r-l-a-n-d, and I'm the human resources director for the city of Grand Island. I am here to support LB482. As someone who's been at the bargaining table with all of our unions at the city of Grand Island, I have particular interest in this bill. As Mayor Vavricek stated earlier, the city of Grand Island has four labor unions with seven labor contracts. All seven of those labor contracts are ready to be negotiated again for the upcoming year. I believe that cities and organized labor both need a clear understanding of the rules that apply to the CIR process. The city of Grand Island has been to the CIR numerous times over the past several years and we've been there two times in the last ten years. Now a trip to the CIR can easily run in excess of \$100,000, and I looked at those numbers just this morning to verify that number in my

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

Business and Labor Committee
February 07, 2011

head, and those numbers come from attorney's fees and expert witnesses and surveys and all of the things that it takes to make a trip to the CIR. That figure doesn't include the numerous hours spent by staff and the disharmony that happens amongst the employees of the city. It's much easier to navigate around a sometimes tenuous process if we do have rules that are clear and adhered to. And what we found is that we have gone in the past and one time it goes this direction and another time it maybe veers away from that, so there has been a little bit of inconsistency. The more the process can be streamlined, the easier it will be for both parties to navigate. I believe that LB482 does attempt to do this. Now I've heard the talk in our communities as well about people who say we need to get rid of the CIR, let's just be done with it, and I don't believe that that's a viable solution. I think we do need a forum to take our labor disputes to be handled in. As the Legislature evaluates things that are impacting our revenue streams, and last week we were here and we heard the conversations about occupation taxes, it's critical that this conversation also includes measures to help with cost containment. Now that being said, I think there is a fine line between cost containment and fair and equitable pay and benefits for employees. More than 70 percent of our general fund budget, as Mayor Vavricek said, is spent on employee expenses. That's wages and benefits. As revenue streams are threatened, cost containment becomes very critical to us. The city of Grand Island has been dealing with budget shortcomings for the past year. Now this last year we tried a new program called program prioritization, but through that process we eliminated 32 positions. This year our nonunion employees were frozen, our firefighters' wages were frozen, but those folks who had contracts in place, we did have to respect those contracts. Those were anywhere from 2.06 percent to 3.75 percent. Again, I applaud Senator Utter's attention to this problem, as well as to the other senators who have come forward with bills to address this issue. I would answer any questions. [LB482]

SENATOR LATHROP: Thank you, Brenda. You did point out an important thing that I think Senator Utter's bill does address, a concern that Senator Ashford and I heard early from the cities, and that is the lack of clear direction in terms of not having definitions in the CIR statute that define how to construct an array, and that with more definitions we'd have better predictability, right? [LB482]

BRENDA SUTHERLAND: Yes, absolutely. [LB482]

SENATOR LATHROP: Okay. [LB482]

BRENDA SUTHERLAND: Thank you. [LB482]

SENATOR LATHROP: Any other questions or comments? I see none. Thanks for your testimony today. I think that was our last supporter and so now we'll go to opposition, and that would bring us to Mr. Mike Dowd. [LB482]

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

Business and Labor Committee
February 07, 2011

MIKE DOWD: Good afternoon, Chairman Lathrop, other distinguished members of the Business and Labor Committee. My name is Mike Dowd, D-o-w-d, part of the working group that's been meeting over the course of the last six months to discuss possible changes to the CIR. I am speaking in opposition to LB482 for a number of reasons. When we first met and discussed the concept and the concerns that existed regarding the CIR, there seemed to be certain themes that continued to pop up. There wanted to be a simplification of the system, a reduction of the costs of the system, and hopefully a reduction in terms of the amount of litigation. Labor stands acutely aware of these concerns and has prepared, as we have over the last six months, to strive toward some resolution. But that compromise will not jeopardize a system that's been built to go ahead and assure fairness and average salaries for professional services. When we look at this particular bill, we have agreed in part to the concepts of codification. And simply, over the course of years and years, there's been decision after decision and there is guidance that's been given as to what the CIR should consider and what they should look at, and we're simply trying to go through codification to try to put down in writing what that means. But there are differences in terms of presumptions. We feel that the most recent case law supports certain findings, whereas, at times we're finding that the opposite is being proposed. So I still am encouraged as to our progress in terms of the working committee, but as written in LB482 we believe is not an accurate reflection of the current state of the law. In terms of reducing the costs to the court system, we agree with that portion of the bill. We feel that making this into more of administrative determinations will help reduce the costs of the system. The reduction in litigation I think has to be put in context. This morning the NSEA gave a statistic that of the 200 contracts that they go ahead and look at, negotiating each year, over the last three years one case has been brought before the CIR. So I think we have to keep that in context. If I may add, there's one other matter that I think we need to address and that is the permissive versus mandatory subjects of bargaining, and this particular bill is definitely concerning with respect to the concept of making the health and pension systems only a permissive subject of bargaining. What that means, simply, is that the cities could come back and say, we don't want to talk about it, and if we don't want to talk about it then we're going to go ahead and make a unilateral change. If we make a unilateral change then what we are able to accomplish in Omaha with the Omaha Police Officers' Association and working through an unfunded pension liability of \$600 million will not occur. We can't risk that. We have to be able to go ahead and work through those issues and that is a very dangerous aspect of this bill, and we speak in opposition of it. [LB482]

SENATOR LATHROP: Mike, before you leave,... [LB482]

MIKE DOWD: Yes. [LB482]

SENATOR LATHROP: ...we're going to see if anybody has any questions. But I do want to acknowledge and I maybe unfairly failed to acknowledge the work that you've done

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

Business and Labor Committee
February 07, 2011

on that working group. It has been very, very helpful, as well as your father's help.
[LB482]

MIKE DOWD: Thank you. [LB482]

SENATOR LATHROP: And on behalf of the committee and the people of the state, I appreciate what you've done for...to help Senator Ashford and I work through that process. And with that, are there any questions? Senator Carlson. [LB482]

SENATOR CARLSON: Thank you, Senator Lathrop. So you were instrumental and had input into this process but you would rather have nothing be done than this bill passed?
[LB482]

MIKE DOWD: In terms of nothing be done, I would not agree with that. I think we've made great efforts towards reaching certain compromises in terms of the codification of language. And I think you had made mention of, is there any benefit to the current state employee system and what can we...you know, do we go ahead and shell that system and adopt this as a new standard. And I think we could actually, as part of our discussions, bar from the state system with last best offer, for example, where the parties are looking at the last best offer, each presenting that issue to the CIR, and making a determination as to what is management's last best offer, what is the union's last best offer. And it forces a situation and a system of reasonableness. It forces a system of predictability. When you're at your last best offer, you know what the consequences are. You know it's going to be one or the other. So I think there are parts of the state system that can be used. I don't think it's a situation where anybody is walking away saying no change is the best result here. I think we stand ready to go ahead and look at compromise but it's going to have to be a fair system. [LB482]

SENATOR CARLSON: Are you opposed to the comparability being in Nebraska if at all possible? [LB482]

MIKE DOWD: I think comparability, the essence of comparability, if you look at the cases--and again if we're being consistent with the case law, we're looking at the working conditions--are we in fact going ahead and having a fair comparison of working conditions? If we're to take the Omaha Police and compare them with Grand Island, I think everybody here would agree that that wouldn't be a fair comparison given the level of gang activity that these officers have to address, risking their lives and protecting the safety of the citizens of Omaha. So if we have to go outside of the state, it's to allow for fairness to exist. If we compare to a city or a municipality that provides similar working conditions, sure, compare to that particular group. And you're always going to look at that and you're always going to try to strive for the closest comparison, but that comparison has to be a fair comparison. [LB482]

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

Business and Labor Committee
February 07, 2011

SENATOR CARLSON: Thank you. And one other question: Are you opposed to...and I lost my thought here. (Laugh) [LB482]

MIKE DOWD: That's all right. [LB482]

SENATOR CARLSON: I've lost it so I'll ask the next one. [LB482]

SENATOR LATHROP: That's okay. Senator Carlson, it happens to me too. [LB482]

MIKE DOWD: That's fine. [LB482]

SENATOR LATHROP: Any other questions? I see none. Thanks, Mike. [LB482]

MIKE DOWD: Thank you. [LB482]

SENATOR LATHROP: Appreciate your testimony and all the work you've done. Mr. Tietjen. [LB482]

DALTON TIETJEN: Once again, Senator Lathrop, members of the committee, my name is Dalton Tietjen, T-i-e-t-j-e-n, and I'm here representing various union groups that would be impacted by this legislation. I would like to start off with saying that I'm very gratified to hear the proponents of the bill say that they would rather see changes than the abolition of the current system. I think that it is very important that we maintain the system, obviously. I am, however, here to testify in opposition to the bill, and really the only reason for that is that I think that this bill presents, in terms of its changes, probably about half of those changes are changes that we have discussed and arrived at agreement upon in our working group. The other half of those changes, though, are changes that we're still working on. And as I stated before, I'm quite confident that we're going to come to an agreement on those, but at this point we don't have an agreement. And I don't think that it would be nearly as desirable for us to pass this bill, which would not have the full support of all of the players, as opposed to passing a bill which does have the full support of labor and management. I think that's the best way to achieve a sense of fairness for the employees and the public sector employers in Nebraska, and I think that that is extremely important. I also, though, would like to thank Senator Utter for his efforts in this and for sitting in on the working group. He's been there for several of our meetings now and I know that it's not the most edifying discussions that we have. It's pretty arcane stuff that we're talking about. But he's been very patient and I appreciate all that he's done. [LB482]

SENATOR LATHROP: Very good. Thanks, Dalton. Any questions? Senator Carlson. [LB482]

SENATOR CARLSON: Thank you, Senator Lathrop. I got my thought back, so

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

Business and Labor Committee
February 07, 2011

(laughter). Are you opposed to...I'm going to phrase this differently because a lot of times you hear about ability to pay. Are you opposed to considering the inability to pay? [LB482]

DALTON TIETJEN: I don't know how you'd do that, quite frankly, when you're dealing with a public entity. That's my problem in trying to address that particular issue. And this bill does not deal with that issue at all. And I think that's probably why because there is no effective way to do it without getting into making policy decisions for the governmental body that's involved. [LB482]

SENATOR CARLSON: Then you have to accept the premise, don't you, that the CIR, whatever they determine, regardless of who it is in a sense, there isn't a limit because everybody has the ability to pay. [LB482]

DALTON TIETJEN: Well, I don't know that we can say that everybody has the ability to pay. But what the CIR does is establish what the rates of pay and the conditions of employment need to be in order to meet comparability. The city then has an obligation to either follow through...well, it does have an obligation to follow through with that order for all of its employees. However, it has to make the hard choice of, can we and do we continue to provide the same level of services? If we can't do that, then we have...that's where you get into the policy, where do we do the cutting of services if we can't afford to pay? [LB482]

SENATOR CARLSON: Okay, thank you. [LB482]

DALTON TIETJEN: Thank you. [LB482]

SENATOR LATHROP: I think that's it. Once again, thanks, Dalton, for all your work and help. [LB482]

SHAYNA RAY: (Exhibit 7) Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. My name is Lieutenant Shayna Ray and I'm testifying in opposition of LB482. I've served on the Omaha Police Department for 17 years and I am an elected representative of the Omaha Police Officers' Association's executive board. I speak on behalf of nearly 800 professional men and women who make up the Omaha Police Department. One of the most important challenges facing Omaha today is the scourge of gangs and gang violence. Omaha's police officers have been working diligently with the community, both in law enforcement and prevention efforts, to keep the citizens of Omaha safe from gangs and dangerous criminals. The gang and crime challenges facing Omaha's citizens and police officers are no different than those experienced by comparable large cities such as Denver, Fort Worth, and Cincinnati. As a result, police officers face a similar risk in Omaha in danger as officers in those similar large cities. At the core of the Commission of Industrial Relations is the issue of labor,

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

Business and Labor Committee
February 07, 2011

stability, and professionalism. Currently, a police officer does not receive the highest nor the lowest wages and benefits but rather the average paid wage to police officers working in similar cities with a similar size, crime, and risk level. By ensuring that a fair and average wage will be paid to Omaha's law enforcement professionals, the state of Nebraska is simultaneously ensuring that its communities, both large and small, will continue to attract and retain highly qualified police officers who will in turn continue to provide the citizens of this state with first-class police protection and service. The men and women of the Omaha Police Officers' Association support the Business and Labor Committee's efforts to identify fair and equitable solutions to the current debate over the Commission of Industrial Relations. Chairman Lathrop and committee, I know that your time is valuable. I will also be submitting written testimony in opposition to LB564, LB664, and LR29CA. Thank you. [LB482]

SENATOR LATHROP: Thank you, Lieutenant Ray. Are there any questions? I see none. Appreciate your testimony and your thoughts on the subject. [LB482]

STEVEN YOUNG: Chairman Lathrop, Papillion Senator Smith, Senator Utter, thank you for the opportunity to come and talk. My name is Steven Young. I'm a sergeant with the Papillion Police Department and I have been... [LB482]

SENATOR LATHROP: Can you spell your last name for us, please. [LB482]

STEVEN YOUNG: Young, Y-o-u-n-g. I'm sorry. [LB482]

SENATOR LATHROP: Very good. [LB482]

STEVEN YOUNG: (Exhibit 8) I have been so employed for 30 years. I'm also the second vice president for the Fraternal Order of Police here in Nebraska, an organization that represents 2,900 law enforcement officers in over 43 different agencies. Real quick, in 1982, I had the occasion to write a gentleman for speeding as was often the case back then. I appeared before a county court judge, several weeks later, to testify to the facts surrounding the traffic stop. After what seemed like a 1,000-question pop quiz administered by the prosecutor about my knowledge and certification of the radar unit, the defendant only asked me two questions: First, where was the second officer's cruiser in relationship to mine? Does the fact that the two radar units facing each other affect the radar? There was no question in my mind the gentleman was speeding, but the honest answer was, no, I didn't know with 100 percent certainty whether the radar units facing each other were affected. And with that one degree of uncertainty, the judge had no choice but to dismiss the case. Was I disappointed? Sure I was. Did I scream the system was broken and needs to be changed? No. Neither I nor the gentleman that received the citation could have asked for a better resolution to our dispute than to have it reviewed by a neutral third party. In our line of work where public service meets with the changing political agenda, written

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

Business and Labor Committee
February 07, 2011

agreements are mandatory. These written agreements provide a standard and an exception to service from both the employee and employer. If these expectations should conflict, our neutral and third party is the Commission of Industrial Relations. Our organization represents 43 law enforcement organizations. We represent corrections officers, deputies, game and wildlife officers, and police officers. Despite what certain people would like you to believe, with all these law enforcement agencies involved only a handful will ever have a hearing before the commission. Of those, a majority will be for issues concerning unfair labor practice. Senator Lathrop, committee, you have heard a lot about the CIR in the media and your constituents standing on both sides of a very complex issue. Some feel the CIR needs to be modified to address certain issues and then there are some who want it to be eliminated. We feel the CIR serves as a fair and neutral format to settle labor disputes. However, we are willing to work with employers to do whatever is best for both our members and the citizens that we serve. On behalf of the thousands of men and women who work with law enforcement agencies all over the state of Nebraska, provide them at a minimum the resolution process equal to that afforded to the ones that we are sworn to protect. Thank you very much for the opportunity to speak today. [LB482]

SENATOR LATHROP: Very good. Thank you, Mr. Young. I appreciate your testimony. Any questions? I see none. Thank you. Mr. Mach, I guess you're in opposition and I had you on the wrong side of this one. [LB482]

COBY MACH: That's all right, Senator. My apologies. [LB482]

SENATOR LATHROP: All right. Welcome to the Business and Labor Committee. [LB482]

COBY MACH: Thank you. Mr. Chairman and members of the committee, thank you for your time. I will be brief. My name is Coby Mach, M-a-c-h, representing the Lincoln Independent Business Association. We appear before you today opposed to LB482. We understand...the reason that we originally are opposed was because it did not include counties or schools. We understand amendments have been made. We would like some more time to review those amendments. I believe our opposition, though, still remains because we don't feel that the MSA provisions are completely fixed. Very briefly, I think that most of you are aware the city of Lincoln has an MSA, metro area of about 285,000. Our city population is 250,000, the MSA is 285,000. We are compared and have been compared to Minneapolis which has a metro area of 3.5 million. In this bill there is...it does attempt to address MSA; however, it also does still contain a loophole for like and similar work, which actually could perhaps take us back to comparing again with Minneapolis, Minnesota. Very briefly, I'd like to take you back to 1969 when the CIR was expanded, the jurisdiction was expanded from public utilities to include all public sector employees. In 1969, Senator Clifton Batchelder said, "I feel this bill undermines the authority of such bodies as city council. What this bill means is an

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

Business and Labor Committee
February 07, 2011

organization under the common command of the city council can go to the council, ask for a raise, and the city council can tell them, in all fairness and accuracy, that they just don't have the funds. By this bill they can bypass them and go onto a duly appointed body appointed by the Governor to whom they can ask the same question. What we're getting into is a situation where nobody can say no to any organization asking for more money than is available." Also on the floor in 1969, Senator Marvel was talking about his concern over the state controlling their budget. And he said, if this is allowed, then we have lost control of the budget. He was referencing the Nebraska Legislature. Thank you very much for your time. [LB482]

SENATOR LATHROP: Thank you, Mr. Mach. Any questions for the witness? Senator Smith. [LB482]

SENATOR SMITH: Thank you, Senator Lathrop, and thank you, Mr. Mach. So, Mr. Mach, from your opinion...and you represent LIBA, right? [LB482]

COBY MACH: Correct. [LB482]

SENATOR SMITH: Your opposition to this bill is really tied down to the like and similar work component and that it does not include state and teachers? [LB482]

COBY MACH: Correct. [LB482]

SENATOR SMITH: Okay, all right. [LB482]

COBY MACH: And the MSA component of like and similar work, when you get to a city that...it specifically addresses now more than twice the size of the municipality. All right? [LB482]

SENATOR SMITH: Okay. Thank you very much. [LB482]

SENATOR LATHROP: Good. [LB482]

COBY MACH: Thank you. [LB482]

SENATOR LATHROP: Oh, I'm sorry. Senator Carlson has a question for you. [LB482]

SENATOR CARLSON: Thank you, Senator Lathrop. Your opposition to the MSA and how that's applied, I know the basic rule. How can that happen? How can Lincoln be compared to Minneapolis? [LB482]

COBY MACH: The CIR has ruled that in no greater than double, no less than half, that the city of Minneapolis proper is no greater than double. However, we believe an MSA

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

Business and Labor Committee
February 07, 2011

filter should be applied. At times over the years, the CIR has used an MSA filter. However, there are also times where it has not. [LB482]

SENATOR CARLSON: And certainly you believe that it should. [LB482]

COBY MACH: We believe it should, yes. [LB482]

SENATOR CARLSON: Okay. Thank you. [LB482]

COBY MACH: Thank you, Senator. [LB482]

SENATOR LATHROP: Very good. Thanks, Mr. Mach. [LB482]

COBY MACH: Thank you. [LB482]

SENATOR LATHROP: Other opponents. [LB482]

JOHN CORRIGAN: Thank you, members of the committee. John Corrigan, C-o-r-r-i-g-a-n, on behalf of the AFL-CIO. And briefly, I do want to give our opposition to this bill. And I'd just like to address the issue of the MSA concept, because the CIR very clearly said in the Lincoln firefighters case, which 14 years ago was decided and remains an issue of contention with the Lincoln Independent Business Association, but I can tell you at least with respect to the Lincoln firefighters we are not comparing to the city of Minneapolis anymore, although they do compare to the city of St. Paul, Minnesota. But the CIR very clearly said, based on expert testimony, that they don't compare MSA to MSA because an MSA is a geographic area. It can encompass a large area that has both urban and rural areas within that geographic area. The question is, what are the working conditions in that particular city? And for firefighting or police work it becomes very important because you're looking at contiguous structures, you're looking at high-rises, you're looking at population density. That is what controls working conditions in the public safety area. And to have a situation where, based on this proposal, we're now going to exclude Omaha from comparing to Lincoln, or we're going to exclude Grand Island from comparing to Salina, Kansas--that's silly. It's going to make it harder to find decent comparables. It certainly will result in the reversal of a lot of cases that perhaps people would like to see reversed because it didn't work out as well as they thought. But from labor's perspective you need to look at the work that's being done within a particular city or county. And the MSA issue is simply too broad of a definition in order to determine whether it has an impact on working conditions. The commission got it right in saying just that the placement within the MSA itself has to be supported by a difference in evidence of working conditions in order to make it an exclusionary principle. And so I would join with the comments of Mr. Dowd and Mr. Tietjen that there are some concepts that are in this bill that are concepts we have discussed. There is not an agreement on several of the other concepts, and we want to

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

Business and Labor Committee
February 07, 2011

give this opportunity or give the committee and the working group the opportunity in order to resolve those, through negotiations, so that there is a bill that is supported by all the concerned rather than a radical change that is in some of these areas going to result in some unintended consequences. Thank you. [LB482]

SENATOR LATHROP: Thanks, John. You can agree that the bill, LB482, actually kind of represents a list of the things that we're talking about though in the committee. [LB482]

JOHN CORRIGAN: Well, certainly some of them are things that we've talked about. [LB482]

SENATOR LATHROP: Yeah. [LB482]

JOHN CORRIGAN: And I haven't had a chance to review the amendments. Those are also things that we're discussing. And I think the bill represents one side of the view. I think that also parts of the bill represent things that we share and concerns that we think we can come to a resolution on. [LB482]

SENATOR LATHROP: Very good. I don't think this...and we should be clear about one thing. I don't think our...the introduction of these bills is going to stop the group that you're participating in from continuing to meet and to try to work through the concerns the cities have and labor has and come up with a solution. [LB482]

JOHN CORRIGAN: Certainly not from my perspective or the perspective of labor, as I've been instructed. [LB482]

SENATOR LATHROP: Good. Any other questions for Mr. Corrigan? I see none. Thanks again for all you're doing in this process, John. Anyone else here in opposition? Anyone here in a neutral capacity? And besides these two witnesses, is anyone else here in a neutral capacity? I'm just trying to kind of manage the process. Okay. Thank you. Mr. McGuire, welcome to the Business and Labor Committee. [LB482]

MARK MCGUIRE: (Exhibit 9) Thank you, Senator Lathrop, members of the committee. My name is Mark McGuire, M-c-G-u-i-r-e, general counsel and lobbyist for the Nebraska State Education Association. I appear here in a neutral capacity. And I wasn't sure when I was going to exercise the neutral card. I decided now because a number of questions have popped up during the prior discussion of the position of the teachers or the position of the NSEA on some issue. And I thought, well, maybe now is just as good a time as any to try and get...I know you, Senator Smith, had a couple of questions and hopefully I can get to those. Our position with respect to all these bills is simple--just leave us out. We have a system that works well; we don't want any changes. We understand, and I think your testimony here has been great, that business...or, excuse

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

Business and Labor Committee
February 07, 2011

me, the municipalities have issues. They're working diligently to try and resolve those. You have five--six, I guess--really talented people working on that, and hopefully they'll come up with something that we can all live with. We want to not be included in any change. We have achieved the very high level of predictability in our teacher negotiations. And so you can understand how we're set up. We have 250 or so locals that bargain collectively. I have a little handout here if we can get to it. Thank you. We have had, in the last eight years, nine CIR wage cases involving K-12 education. During that same time frame there were 2,688 negotiations that resolved themselves by agreement. So it's pretty clear a couple of things: (a) We don't need anything changed if we're having that high of a success ratio. And you get that number of 2,688 is how many school districts there were where they bargained collectively. And the numbers drop here on the left hand portion of that little box. That's when Class I's basically went out of business. And you see now, 254 school districts. I present that simply as the number and the predictability. And, yes, as various witnesses have testified, we are treated somewhat differently but that's because we're somewhat different. That is, and we've established through a number of cases, that a teacher is a teacher is a teacher. That is pretty factually true. It's not true that a fireman is a fireman is a fireman. They have different duties and so forth. As set forth in the Lincoln case, to which you referred to, Senator Carlson, a distinguishing feature for the inclusion of Minneapolis was the emergency medical services that were provided in Minneapolis, and therefore they could be in the array. And so it was decided on the work that the people did as compared to the geography of where they did it. It's important to remember that the CIR is set up and designed as a collective bargaining impasse mechanism. I've got one more sentence. [LB482]

SENATOR LATHROP: All right. [LB482]

MARK McGUIRE: And what the CIR does is resolve industrial disputes and these are the characteristics that are involved: a clearly identified single employer; a one bargaining unit group of people; an impasse in collective bargaining; the determination by the CIR of comparable terms and conditions of employment as set forth in 48-818 is the fourth element; and the fifth is the CIR enters an order establishing those terms and conditions of employment for one year. So that's what we're talking about in the midst of all this discussion. It is a one-year decision by the CIR based upon 48-818, which is in accordance with the directives reaching back to the Constitutional Convention in 1920 as the statutes... [LB482]

SENATOR LATHROP: That's probably going back farther than we need to go. But we appreciate your testimony as always... [LB482]

MARK McGUIRE: Thank you. [LB482]

SENATOR LATHROP: ...and your help and your counsel from time to time, in my case.

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

Business and Labor Committee
February 07, 2011

Is there anyone else who has questions for Mr. McGuire? Very good. [LB482]

MARK McGUIRE: Great, thank you. [LB482]

SENATOR LATHROP: Teachers are neutral. Got it. Next, please. [LB482]

MARK SCHORR: Thank you, Senator Lathrop and members of the committee. My name is Mark Schorr, S-c-h-o-r-r. I'm a partner in the Erickson and Sederstrom law firm and I have specialized in labor and employment law for in excess of 28 years, including representing clients before the CIR. I've had a lot of experience in labor law and collective bargaining. And I also want to add how much respect I have for all of my colleagues who have been here already today to testify and who are working on this bill. I am here today on behalf of the Lincoln Chamber of Commerce. We believe that the CIR is a one-of-a-kind system nationally. And if you look state by state, there is no one else who has a similar act like ours. And we believe it is in serious need of reform and fixing. And, as an example, in the community consensus focus groups for the Lincoln Chamber of Commerce--we held 14 of them. Twelve of the 14 listed as the top one or two legislative priorities, the issue of CIR reform. We also don't believe that the issue of CIR reform is leveled at unions. As Mr. Harding testified, the CIR act does not just apply to unions and collective bargaining. It literally does apply by its very language and in the court decisions to all public employees in Nebraska. And so I think we need to keep that in mind as we move through here because a lot of public bodies, including clients of mine, are constantly looking at comparability in terms of all of their employees. And also I'd like to call attention to the studies that have been frequently published in the Lincoln Journal Star and editorialized that point out that a serious problem we have is that compensation of public employees in this geographic area has now gotten to the point where it exceeds considerably compensation of similarly situated private employees. As I said, the Lincoln Chamber of Commerce is neutral on this bill. We believe it is an excellent start, but we have some concerns with it, and we believe there are ways that this bill can be improved. I have seen some amendments that were handed to me just before this hearing, but the main thing that we believe is that any CIR reform must be comprehensive. It should not just apply to cities. We should not have separate entities carved out. It should apply to all public bodies currently under the jurisdiction of the CIR. As Mr. Harding pointed out, we have a separate system for the state and a separate system for teachers. Anything that is passed or advanced out of this committee, in our view, ought to include all groups. It should also include some comparison to private sector where appropriate and where available. I understand in the amendments that that concern of ours may be addressed. I'll make one comment about the metropolitan statistical areas. It is not just the similarity of the duties performed, but in these metropolitan statistical areas you have to look at the cost of living and compensation rates in general. It doesn't take a rocket scientist to know that a lot of people in Minneapolis or Kansas City or St. Louis or Chicago are compensated at a much higher level than their counterparts in this locale, no matter what profession they're in. But in

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

Business and Labor Committee
February 07, 2011

summary, we are neutral on the bill. We are glad to see the amendments, and we'll watch it closely. [LB482]

SENATOR LATHROP: Very good. Thank you, Mr. Schorr. Any questions? Senator Smith. [LB482]

SENATOR SMITH: Thank you, Senator Lathrop. Mr. Schorr, recap again the things you see lacking in this bill is the lack of a comprehensive nature and what else? [LB482]

MARK SCHORR: Well, we want to see a more comprehensive nature. I believe one of the amendments does go a long way towards addressing some of our concerns on MSAs and having a requirement that Nebraska comparables be utilized whenever possible. Again, I was just handed the amendments prior to the testimony today. [LB482]

SENATOR SMITH: Okay, thank you. [LB482]

SENATOR LATHROP: (Exhibits 10-16) Thank you, Mr. Schorr. That will close our hearing...no, I'm sorry, we've got to hear from Senator Utter, who's going to close. And before or as you come to the table, we have some letters from different groups that we're going to enter into the record. We have a letter in opposition to LB482, dated February 7, 2011 from Change to Win and signed by Jim Sheard; Local 554 opposes LB482 and that letter will also be entered into the record; opposition from the International Brotherhood of Electrical Workers, signed by Mr. Richard Michel; opposition from the business manager at International Brotherhood of Electrical Workers in opposition; also opposition from Mark Salerno, president and business manager of the IBEW Local 1483; and opposition from the International Brotherhood of Electrical Workers and Charles Perkins; and finally, the IBEW Local 1536 has a letter in opposition as well. And those will be entered into the record. The record will reflect the opposition of those organizations. Senator Utter to close. [LB482]

SENATOR UTTER: Thank you, Senator Lathrop. Let me just say in closing that I want to express my sincere appreciation, particularly to you, Senator Lathrop, and to you, Senator Ashford, for the hard work that both of you have put in, in the formation of this working group, and your long months of work on this issue. Your input was valuable and certainly appreciated. I want to emphasize in closing that LB482 was not introduced because of the number of CIR cases involving cities. One of the main problems has been the lack of consistency in applying the guidelines from one municipal case to the next. LB482 would result in predictability by placing guidelines into state statute. All cities, union and nonunion, need to have clear rules in order to meet the state mandate of paying comparable wages and benefits. I want to reiterate just how important this piece of legislation is. It is imperative that we reform the CIR for the state of Nebraska, for municipalities, for people who are employed by municipalities, and for the citizens of

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

Business and Labor Committee
February 07, 2011

Nebraska. Failure to reform the CIR will have damaging implications. Without meaningful changes to our CIR, our state and municipal governments will continue to struggle and our taxpayers will continue to carry a heavier burden than they deserve. I urge you to give thoughtful consideration to LB482 and to advance the bill to the floor. Again, thank you for your courtesies and your time. [LB482]

SENATOR LATHROP: Absolutely. Great having you here, Senator Utter. Are there any questions? I see none. Very good. That will close our hearing on LB482 and bring us to LB555 and Senator John Harms from Scottsbluff. John, we may have you wait just a second while folks move in and out. [LB482]

SENATOR HARMS: That's fine. That will be fine. [LB482]

SENATOR LATHROP: Okay, if you would return to your seat and we'll ask you to stop the side conversations while we listen to Senator Harms introduce LB555. And welcome to the Business and Labor Committee, Senator. [LB482]

SENATOR HARMS: Thank you, Senator Lathrop. Senator Lathrop, my name is John N. Harms, H-a-r-m-s, I represent the 48th Legislative District. First, Senator Lathrop, thank you for giving me the opportunity to come here and talk to you about LB555. This bill would simply streamline the CIR process. It would update the present law. It would take out some of the obsolete provisions that we have in it, changes procedures, appeals provisions. It would provide an operative date and it actually repeals some of the sections that are just simply out of date which I really believe are important. Senator Lathrop, probably the easiest way to do this and the quickest way for me to get through this is to kind of take the bill through sections and have that discussion for you. And I'd be happy to stop anywhere along that line if you want to talk about them. What has caused the recommended changes in LB555 have been the response to cases heard by the Special Master and the CIR for about the last four or five years. So it's fairly current with the issues and concerns that we have. The aim is to codify these standards for the most part that the CIR has traditionally used over the years but seems to have abandoned those in recent years. These changes would add more predictability to CIR decisions, and therefore could cause the parties, I think, to reach agreement without going through a very expensive process of an impasse. Currently, cases involving the state and the state colleges and the university have to go the Special Master first. The Special Master standards in making a decision is based on reasonability. In other words, which of the parties offer on each of the issues is the most reasonable. A Special Master has wide latitude in regard to making these decisions because reasonability is not defined, which is a problem for us. All of the public employees proceed directly from an impasse to the CIR where the standard is comparability, which I think you heard in the previous bill some discussion. In other words, it's an attempt to...is made to determine what the comparable practice is among similar employers. The CIR simply reviews the Special Master's decision but must show significant differences to it and

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

Business and Labor Committee
February 07, 2011

only can set it aside if there is evidence that it is significantly different from rates of pay or conditions of employment as determined by the commission. Therefore, the same standard is not applied to the three state employer entities as applied to all the other public employers. In addition, the Special Master process has simply failed to resolve most of the cases going to them in recent years. The majority of the cases are being appealed to the CIR so the Special Master has ceased to his or her purpose is now an additional costly, time-consuming step in the resolution of an impasse and expensive. Section 6 of the bill simply modifies 81-1387 (3) to indicate the dates of 1382 and 1383 are jurisdictional. In the case, Code Agencies Teachers Association, a case two years ago, this association missed the dates to submit a final offer. But the Special Master, the CIR, and the Supreme Court indicated that this date set out in the statute is not jurisdictional. An earlier Nebraska Supreme Court case involving the same educational association had indicated that at least the date for commencing bargaining was jurisdictional. That's the problem. Given two different court rulings, the parties do not know if any of the dates in the act are considered jurisdictional. And if they are not jurisdictional, then they can be ignored; they're meaningless--but they don't know. This change adds to provide clarity and certainty to both the unions and to management so they are aware of the duties that are in this act. It clarifies it for them. Section 9 of the bill modifies 81-1382, which is (2), to provide that "No party shall submit an issue to the commission that has not been subject to negotiations." This simply would prevent either the union or the employer from being surprised by an issue that was raised for the first time in the final offer. Again, it gives it a little more direction. Senator Lathrop, probably Section 10 is where the biggest changes really occur on the bill and modifies 81-1383. What it does, it sets mandatory standards in the statutes for the CIR to use in evaluating the final offers of the parties. Currently, no standards were set in the statute as factors to be used in determining comparability. Members of the CIR have noted that since there is no statutory guidance from the Legislature, it has informal guidelines, and there is not necessarily any significant value to its prior rulings. Traditionally, geographic proximity and size, which I think you heard in the last bill some discussion, of employers have been factors the CIR has used in making decisions. However, in recent years these standards have not been strictly followed, as again in the education association case where Lincoln and Omaha Public Schools were used as comparison to a state school that only 877 students. The Nebraska State College System, the University of Nebraska have been involved in cases where comparabilities were far distant from Nebraska. Therefore, including factors such as geographic proximity and size of employer is an attempt to require the CIR to follow standards that it has traditionally used in cases, but they've deviated from that. The CIR's size standard is from half as large to twice as large, and the new standard would be half as large to 1.5 times as large, which begins to narrow it down. Section 10 also introduces a new factor that the CIR has not traditionally considered, and that's simply what we refer to as the ability to pay. Currently, the CIR does not have to consider the employer's budget for operation and personnel when choosing one or two final offers. States with similar laws, like Delaware and Iowa, do. And in their laws it simply brings it about, causes the parties to

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

Business and Labor Committee
February 07, 2011

consider the financial situation of the employer so that the wages and benefits increase would not be ordered in situations where the agencies could not pay for them, such as raising taxes, fees, tuitions, or laying off employees. Section 10 also contains a criteria that will be used to choose peer institutions when the employees of the Board of Regents of the University of Nebraska or the employees of the Board of Trustees of Nebraska State Colleges are involved in an impasse. These sections require the use of peer institutions with similar enrollments, similar education admissions, which may exclude land grand institutions or institutions that have medical centers or hospitals. This text also requires that the peer institutions offer a similar program including levels of degrees or level of degrees offered. This section responds to difficulties the State College System experienced several years ago involving what the union and a Special Master thought were peer institutions, which they weren't...were not. The university also faces similar problems and this does not necessarily change the factors that should be considered but it codifies them so that the CIR is required to follow them. Senator Lathrop, that pretty much outlines the bill. [LB555]

SENATOR LATHROP: Very good. [LB555]

SENATOR HARMS: There are other points in there, but I think those are the important points that I wanted to bring out for consideration. I want to first say and make sure that everyone understands that I support the CIR. I support collective bargaining because I think it is extremely important in fairness for employees and in fairness for employers. But in the process, I think it has to be streamlined. Things are antiquated, things have not worked as well. And I had the experience many, many years ago to go through this process. So I've had that experience, I understand it. And I can understand how expensive that it is. And the important thing about this process is it needs to be quick, clean, and get through as quickly as possible, because what it does to you in a small organization, it stirs your staff up, it keeps it unsettled, makes it very difficult for you to carry on business like you should. So, Senator Lathrop, that completes my comments. I'd like to be able to close if I can. There are people who will follow me that I'm sure might have some of the answers to your questions, but I'd be happy to answer any questions you might have so. [LB555]

SENATOR LATHROP: Senator Harms, if I can start with one just as sort of a general statement. If we look at Senator Utter's bill as sort of the answer to the cities' problems, this is in effect the answer to the state's problems. Can you tell me the extent to which you worked with the Governor's Office or the Policy Research Office on this? [LB555]

SENATOR HARMS: I worked just a little bit with their Policy Research Office. I came into the picture rather late. And I have had a discussion with them on several occasions. But I feel that coming out of the world of education and coming out of the world of seeing collective bargaining, I think these components are necessary. Actually, I think they're critical. And I think the more you have it spelled out in law, it's a heck of a lot

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

Business and Labor Committee
February 07, 2011

easier if you're sitting on the other side of the table, Senator Lathrop. All you have to do is the math on it and you figure all of a sudden you know I'm below the average, I'm probably going to pay. So let's just take that money and pay our staff. So I've had some experience along this line and that might be why I was chosen, I don't know. [LB555]

SENATOR LATHROP: Okay. And you make three main points. One is that we should make changes to the CIR and not eliminate it. The second would be that, like the cities, you want to see the criteria used for making the comparison better defined and clearer in the statute. And the third would be in a situation unique to the state, and that is they have a Special Master program. And your bill would simply remove that from the process and... [LB555]

SENATOR HARMS: That's correct. [LB555]

SENATOR LATHROP: ...the state employees would have a trial, if appropriate before the CIR. [LB555]

SENATOR HARMS: That's correct. And the purpose for that is it speeds it up and it's just more cost-effective for us. [LB555]

SENATOR LATHROP: And you have put time lines in there because the state,... [LB555]

SENATOR HARMS: Correct. [LB555]

SENATOR LATHROP: ...in their budgeting process, needs to have... [LB555]

SENATOR HARMS: Absolutely. [LB555]

SENATOR LATHROP: ...the process... [LB555]

SENATOR HARMS: There are three of them in there. [LB555]

SENATOR LATHROP: Very good. Thanks, Senator Harms. [LB555]

SENATOR HARMS: Okay, thank you. Are there any other questions? [LB555]

SENATOR LATHROP: Yes, Senator Carlson has one for you. [LB555]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Harms,... [LB555]

SENATOR HARMS: Yes, Senator Carlson. [LB555]

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

Business and Labor Committee
February 07, 2011

SENATOR CARLSON: ...if you go to page 15, Section 10... [LB555]

SENATOR HARMS: Okay, go ahead. [LB555]

SENATOR CARLSON: ...and line 6, we've got the wording...you have the wording in there "the commission shall." So this is not a "may" this is a "shall." [LB555]

SENATOR HARMS: Yeah. [LB555]

SENATOR CARLSON: Then you go down from there to subsection...well, under (c), so still we're saying "shall take into account the geographic proximity of the employer." And I like that wording, but how does that really improve what is currently being done? [LB555]

SENATOR HARMS: Well, first of all, they've had rules and regulations, as I understand it, that were not in law and have not been consistent. This would make it consistent that you simply shall follow the following. [LB555]

SENATOR CARLSON: All right. So as you've gone down the list here on some of these that are "shalls," your feeling is this puts it in statute and will demand consistency. [LB555]

SENATOR HARMS: Absolutely correct. [LB555]

SENATOR CARLSON: Okay, thank you. [LB555]

SENATOR HARMS: That's a good question. Thank you. [LB555]

SENATOR LATHROP: Senator Harr. [LB555]

SENATOR HARR: I have a quick question about geographic proximity. You're from the Panhandle area. As you know, every teacher seems to, from Chadron State, seems to go to Wyoming because Wyoming pays a lot better for their teachers. Would proximity be within the state or would it be if Wyoming is closer to Gering, would you look to Casper then rather than Omaha? [LB555]

SENATOR HARMS: Senator Harr, I don't mean this to be a smart answer, but it's whatever you would like. [LB555]

SENATOR HARR: What's that? [LB555]

SENATOR HARMS: It's whatever we would like for that array to be. So, in other words, if you were looking at comparability, I can tell you from...let me just move to the

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

Business and Labor Committee
February 07, 2011

community college side of the structure to give you a little bit of background for where my experience has come from. We were...when I went into the commission, the NSEA had I think chosen us more as a target to take a good look at, try and expand an outside of array to go into Wyoming and Colorado. And I went into Wyoming and Colorado and studied those systems. I found there is really no comparability at all. I mean, they don't have the same structure, they don't have the same tax system, they don't have the same collective bargaining process. One meets and confers, the other does have. There's no relationship at all. And I think all of those components have to come in. My thought is when you look at Chadron State College and the university you're going to have to go outside the state to a certain degree. You're going to have to match them up with comparabilities and what kind of degrees they have, what their mission would be. You also have to be really careful and the fact is that if you're looking at a college or a university that has a hospital and this doesn't have a hospital, your costs are going to be a lot different. So I think there are lot of factors you're going to have to take in. But I think you're going to have to go out of state to do that. The university would have a very difficult time comparing, to whom, their size. [LB555]

SENATOR HARR: Thank you. [LB555]

SENATOR HARMS: Yes. Did I answer your question? [LB555]

SENATOR HARR: I think so. [LB555]

SENATOR HARMS: I have a tendency to walk around that. (Laugh) [LB555]

SENATOR HARR: It did, yeah. [LB555]

SENATOR HARMS: Okay, all right. Thank you. [LB555]

SENATOR LATHROP: No, as always, very thoughtful. We appreciate your introduction and your answer to the questions. [LB555]

SENATOR HARMS: Thank you. [LB555]

SENATOR LATHROP: And you said you did want to stick around... [LB555]

SENATOR HARMS: I do. I do. [LB555]

SENATOR LATHROP: ...so we'll look forward to your close and... [LB555]

SENATOR HARMS: Thank you very much, Senator. [LB555]

SENATOR LATHROP: Yeah, sure, Senator Harms. Those in support. And can I see by

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

Business and Labor Committee
February 07, 2011

a show of hands who is here in support? Okay. And how many in opposition? Okay. Then I don't think we need to necessarily put a time limit on this as long as we keep it moving. Welcome to the Business and Labor Committee. [LB555]

STAN CARPENTER: Thank you, Senator Lathrop and members of the committee. My name is Stan Carpenter, S-t-a-n C-a-r-p-e-n-t-e-r, and I'm the chancellor of the Nebraska State College System. And I appreciate the opportunity to chat with you today about Senator Harms's LB555. We are in support of the bill in its entirety as it is presented to the committee. But I will, in an effort to remain fairly brief, focus on just a couple of things that we are very interested in. And that is, one, the elimination of the Special Master process as a way to expedite the collective bargaining process when it gets to the impasse stage, and also talk a little bit about the need for the array, if you will, or the comparability portion of Senator Harms's bill. We entered into collective bargaining in 2008 and wound up going through the impasse process. And it took us nearly two years to get that process complete from beginning to end; that is, from beginning of bargaining until the end of the collective bargaining process through the impasse process. And that was with the, on our request, eliminating the Court of Appeals from the process and going directly from the CIR to the Supreme Court. So that is a very difficult thing for us to deal with. It protracts the process. It leads to uncertainty, it leads to anxiety, both on the employer's part and on the employee's part as we go forward. It's time consuming to have the Special Master step in place, it's expensive, and we think that it would be better served, we would be better served, the state would be better served if we were simply able to go directly from reaching impasse to the Commission on Industrial Relations, because that is where we believe the expertise for labor relations and employee relations rests in the state and not with the Special Master. We were also looking for some predictability in this process through the CIR. And prior to 2009, for example, the CIR permitted new evidence to be admitted after we had gone to the Special Master and their hearing. And 2009, when we expected that to remain the case, that was no longer the case. We were told by the CIR that we were not permitted to bring forth new evidence to the CIR that did not go to the Special Master. That occurred without any warning to us. It occurred without any notice to us. And I believe you may recall that in November of 2009 there was a Legislative Performance Audit Committee report on the CIR, and it commented on that particular issue when it said, if I can find my quote here, the 2009 decisions that does not permit new evidence were not consistent with the commission's decisions in the past. And, in fact, Commissioner Blake even commented on that in one of his dissents in the state's case, quoting, I believe we have clearly established a practical construction and there is nothing to indicate to anyone that the parties should not have relied upon this construction in the bargaining process which commenced under a SECBA, that is the State Employees Collective Bargaining Act in 2008. He went on to say further, without the rules of procedure to indicate a change in our interpretation, we should not now without warning depart from the past decisions. So what we're looking for, Senator and members of the committee, is some predictability, some understanding of the rules of

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

Business and Labor Committee
February 07, 2011

the road; understanding how the game is basically played, if you will, before the CIR. We appreciate Senator Harms bringing this. I see the red light is on. We believe that the comparability factors would be important to us and would help the Nebraska State College System as we go forward through bargaining. [LB555]

SENATOR LATHROP: Very good. Thank you for being here, Chancellor. [LB555]

STAN CARPENTER: Thank you. [LB555]

SENATOR LATHROP: We appreciate your remarks. And before you get away, let's see if there are any questions. I see none. [LB555]

STAN CARPENTER: Thank you, Senator. [LB555]

SENATOR LATHROP: Thank you for your testimony. [LB555]

WILLIAM WOOD: Senator Lathrop and members of the Business and Labor Committee, my name is William J. Wood. My last name is spelled W-o-o-d. I'm the chief negotiator and administrator of the Employee Relations Division of the Administrative Services Department. Thank you for the opportunity to testify in support of LB555. I concur with the previous testifier and will add some additional testimony in favor. The Employee Relations Division bargains three labor contracts covering 11,219 employees. The proposed changes to the State Employees Collective Bargaining Act are needed. As has been outlined a little bit earlier, we have some additional processes before going to the Commission of Industrial Relations. We have a mandatory mediation period if we haven't reached agreement by January 1; from the 1st through the 10th we're in mandatory mediation. We then have to exchange final offers. And if we still aren't at agreement on January 15, we have to invoke the Special Master process. We're supposed to work through that process and get a decision from the Special Master no later than February 15. The problem we had was mentioned a little bit earlier in that the Special Master level reasonability is the standard. Reasonability is not defined anywhere in the statute. So we've had considerable problems with that. The dates not being jurisdictional is another problem. And Senator Harms mentioned the case we were involved in two years ago with the State Code Agencies Teachers Association where we were at impasse. They didn't submit their final offer by the date set in statute and the Special Master and CIR and ultimately the Supreme Court says it's not jurisdictional. In other words, for you nonattorneys, it's, you know, not some requirement they have to meet to file a case or to move forward if we're in the appeal process. So that brings us to the question: What in the act is a requirement? Are all the dates not requirements then? We simply don't know at this point. This bill would require the CIR to enter an order no later than March 1. A definite date needs to be set. In 1997, we were at impasse with the State Law Enforcement Bargaining Council, representing the law enforcement bargaining unit. The statute provides the commission will issue appropriate

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

Business and Labor Committee
February 07, 2011

orders by July 1 or as soon thereafter as practicable. In that case, the commission did not issue an order until March 8 of the following year. So in our three most recent cases that went to the CIR, a decision has not been issued by July 1. The size of the employer that it's compared to is important. You heard Senator Harms mention our case in 2009 involving the teacher bargaining unit. We had 877 teachers at that time collectively in our schools. We were compared with Lincoln that has 34,973 students and Omaha that had 49,191 students. We think that the system can be fixed so that it renders timely decisions and leads to predictable results. That concludes my testimony and I'm available for any questions. [LB555]

SENATOR LATHROP: Very good. Thanks, Mr. Wood. Any questions? Senator Smith has a question for you. [LB555]

SENATOR SMITH: Thank you, Senator Lathrop. Mr. Wood, are you familiar a little bit with Senator Utter's bill, LB482? [LB555]

WILLIAM WOOD: Yes. [LB555]

SENATOR SMITH: Okay. And I'm probably going to put you on the spot a little bit with this, and if you can't answer it, it's okay. But I'm trying to kind of merge these a little bit in my mind and understand what the differences are that we're seeing. With LB555 relative to LB482, we're looking for...you're looking for the same type of a dispute process as is suggested in LB482 with the municipals. [LB555]

WILLIAM WOOD: Pretty much. That's... [LB555]

SENATOR SMITH: Very generally speaking. [LB555]

WILLIAM WOOD: That's true. We normally compare with other states so that metropolitan statistical area might not apply but generally the same. [LB555]

SENATOR SMITH: Comparability is a little bit different there, the array is a little bit different. [LB555]

WILLIAM WOOD: Yeah. [LB555]

SENATOR SMITH: And then the one thing that you're suggesting or proposing with LB555 that's not part of LB482 would be the "ability to pay" component. [LB555]

WILLIAM WOOD: That's correct. And I believe some of the other states that have similar statutes, like Delaware and Iowa, do have some provisions in their statute regarding ability to pay. [LB555]

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

Business and Labor Committee
February 07, 2011

SENATOR SMITH: Okay, thank you. [LB555]

SENATOR LATHROP: You know, if I can, ability to pay is an interesting topic that you bring up. When the cry for the reform of the CIR started two years ago, everybody that was screaming for change in the CIR started out with we need to have ability to pay and/or reasonableness. And today you want to get rid of the Special Master who has a standard of reasonableness. And most of the people that I've talked to that deal with city issues say, no, we don't want anything to do with ability to pay because that's a little bit of a two-edged sword, isn't it? [LB555]

WILLIAM WOOD: It can be. But we think it can be made so it's workable. [LB555]

SENATOR LATHROP: Well, one of the concerns I suppose, at least...and now I'm expressing what I've heard through the process of working with the cities on the ability to pay, and that is, what if comparability says somebody ought to make \$15 an hour, but they have a huge ability to pay? Should they be paid \$16 an hour? [LB555]

WILLIAM WOOD: No, I don't think that's the intention. The intent is to look at...determine the comparability and then determine whether the governmental entity has the ability to... [LB555]

SENATOR LATHROP: So you would use...the way you would use ability to pay is just one way, which is... [LB555]

WILLIAM WOOD: It would be a screen. [LB555]

SENATOR LATHROP: ...if we can use it to lower wages, we want it, but not to increase wages? [LB555]

WILLIAM WOOD: Well, I think what it does, it's another screen to determine. And, yes, there wouldn't have been an original proposal possibly or comparability. We'd determine comparability first and then look at ability to pay. [LB555]

SENATOR LATHROP: Okay. And while we're on the topic because you brought it up and I think it's a fair subject of discussion and I want to ask you this question then, because when we had members of the court here or the commission, when we had an interim study a year ago, what we were told is we, the CIR, don't have any interest in the ability to pay for the reason that we, the CIR, become a super city council. In other words, if you're going to talk about ability to pay, then you necessarily have someone making value judgements about what you're spending your money on. [LB555]

WILLIAM WOOD: Well, I can appreciate that comment. [LB555]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Okay. All right. Very good. Thank you for your testimony. Yes, Senator Harr. [LB555]

SENATOR HARR: And I just want to piggyback on this ability to pay. And you can maybe answer this question for me too. And this is the problem that I have with ability to pay is, is it would seem possible to make a budget. And I could decide to spend to my limit and then say to the CIR, I don't have the ability to pay; look, I've spent to my max. And so you spend that raise instead of holding it back to see where it is. How would you handle that situation? [LB555]

WILLIAM WOOD: Well, I think you have to look back traditionally how the money in the budget has been allocated. I don't think that I'm proposing that the governmental entities have an ability to manipulate the budget that way. We would look at, you know, what percentage has been allocated in the past for these employee wages. [LB555]

SENATOR HARR: Okay. [LB555]

SENATOR LATHROP: I appreciate that. But I'm wondering, and let's just take the state of Nebraska on ability to pay. And we have teachers that teach at the university, in our university system. If we want to spend all of our money on roads, and I'm up on the floor, you know, talking about what are we going to spend our money on, there's people that would spend a lot of it on roads, and there's people that would spend a lot of it on, say, state aid to education and K-12. And if we exhausted our budget on roads, we could effectively...with ability to pay, effectively eliminate the role of the CIR. [LB555]

WILLIAM WOOD: Well, I think you have to factor something into it as to how the ability to pay is going to be measured so that you don't get results like that. [LB555]

SENATOR LATHROP: Yeah, well, I think those just illustrate the concerns that and why I think the cities ultimately came to the conclusion that probably ability to pay was more...presented more problems than it solved. But I appreciate your comments and your discussion on the subject which has certainly been an important piece of some people's proposals. So thanks for your appearance here today too. [LB555]

WILLIAM WOOD: Thank you. [LB555]

SENATOR LATHROP: We're still on proponents? Yes, next proponent. Is there anyone here in opposition to...oh, I'm sorry. Did I cut you off? You're a proponent. [LB555]

ED WIMES: Yes. [LB555]

SENATOR LATHROP: Okay, very good. Welcome. [LB555]

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

Business and Labor Committee
February 07, 2011

ED WIMES: Good afternoon, Senator and members of the committee. My name is Ed Wimes, W-i-m-e-s. I'm the chief negotiator for the Board of Regents, University of Nebraska. I'm here today in support of LB555. We believe the provisions relating to mediation are necessary and that there must be a process, forum in place to resolve disputes that arise within the collective bargaining process. It has been our experience that the Special Master process is not necessary and that the Commission of Industrial Relations is the appropriate forum to resolve disputes of impasse. And with that, I'm willing to answer any questions. [LB555]

SENATOR LATHROP: Very good. Any questions for Mr. Wimes? I see none. Thank you for your testimony and your thoughts today. [LB555]

ED WIMES: Thank you. [LB555]

SENATOR LATHROP: Others in favor, proponents. Okay. We'll move to opponents of LB555. [LB555]

DALTON TIETJEN: Once again, Senator Lathrop, members of the committee, I'm here to testify in opposition to LB555. I'm here today representing NAPE/AFSCME Local 61 and the UNO Chapter of the American Association of University Professors; combined, that's well over 10,000 state employees. I've worked with NAPE/AFSCME and its approximately 10,000 employees for all of my 25 years of practicing law. My late law partner, Ray Simon, was part of the task force that helped to develop LB661 which resulted in the State Employees Collective Bargaining Act. That task force was a very large group of people that represented labor and management. They spent many, many months working through all of the possible details that they could think of in order to provide a good mechanism for state employees collective bargaining. They resulted in the act that we now have. The three main features of that act that they found to be most important, in my recollection and my discussions with Ray and in sitting in on some of those task force meetings, were time line provisions, the Special Master, and the final offer concept where the Special Master and the CIR were required to pick either one party's final offer or the other's and not split the baby, not come up with anything in between. This bill, LB555, would gut the act of two of those most important features of the State Employees Collective Bargaining Act. I'd like to point out that this act was not the product of a bunch of radicals or people that were acting in haste. The task force again was made up of labor representatives and state government representatives. The act itself was sponsored by Senator Jerome Warner. It came out of the Appropriations Committee and the Business and Labor Committee, which at that time was chaired by Senator Bill Barrett. They were the two main proponents of this bill. It got overwhelming approval from the Legislature. In the 24 years since then it's been through four Governors, 12 Legislatures, I believe, by my count, and it has worked. NAPE/AFSCME didn't go to the impasse resolution procedures until the year 2000 and then with only one bargaining unit with less than 500 people in it. It's pushed the parties to agreements

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

Business and Labor Committee
February 07, 2011

and it has not resulted in frequent use of the impasse procedures. And I would point out, it does allow for consideration of the ability to pay in that there's the reasonability standard and it says that the Special Master should consider factors that are relevant and frequently used in collective bargaining. That, I argued, should not include the ability to pay. The Special Master didn't buy it. He slapped me down and said, I sure can consider that. However, in that particular case we were only apart by less than \$400,000 and the state at that time had a Cash Reserve Fund of over \$600 million. The Special Master said that's statistically insignificant, they have the ability to pay. I would point out that this whole process has worked very well. There have been really no complaints until just the last few years. And that has come, in my opinion, because we've had some unsuccessful cases on the state's side. But that's come again, in my opinion, because of the offers that were made. But the offers are always very close together; that's the most important thing. The offers are always very close together. The Special Master has to choose one or the other. So it does greatly increase predictability. The parties know exactly what their liability is all throughout the whole procedure. [LB555]

SENATOR LATHROP: Very good. In fairness to the position taken by the state, we had an opinion from the Supreme Court, I believe. And if I understand the concern expressed by the state of Nebraska, which is, previously the court or the commission regarded itself as a second tribunal for a trial. And recently, the Supreme Court basically said, you have a hearing before a Special Master, and if you don't like that, the CIR isn't a second place to try your case but a place to appeal to. And that really was a development in the process that had not been the norm before that decision. Would you agree with that? [LB555]

DALTON TIETJEN: Well, yes and no. I agree with it to the extent that new evidence had been allowed at the commission prior to that. However, nobody had ever objected to new evidence being allowed at the commission level prior to two years ago. Then all of us that were facing impasse filed motions in limine saying, this is an appeal tribunal, you can't accept new evidence. And that's when the commission examined all of the legislative history. Judge McGinn wrote a very well-reasoned, well-researched opinion and said, that's right, we are an appeal tribunal, we can't accept new evidence. The Supreme Court affirmed that. And so now we have certainty. The Supreme Court has said, no new evidence at the CIR level, it's strictly an appeal tribunal. And that's what everybody knows they have to live with from now on, so we can plan on that. [LB555]

SENATOR LATHROP: Dalton, between the time the Special Master makes a decision and the time...and the bill, Senator Harms's bill, has time frames in it and they make them jurisdictional. And the concern, I think as I divine it from his bill, is that the state of Nebraska needs to budget, we need to know what do we have to pay our employees. [LB555]

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

Business and Labor Committee
February 07, 2011

DALTON TIETJEN: Yes. [LB555]

SENATOR LATHROP: And so this...he's built in sort of ways to make that happen quickly. My question has to do with from the time the Special Master makes a decision to the time you appeal from the decision of the CIR, how much time is that taking in the meantime? In other words, if the CIR is an appeal tribunal, how much time is it taking in that process? [LB555]

DALTON TIETJEN: Well, I'm just working by memory now from our last go-round, because that was the first time we had it in exactly that process. And the...as I recall, the CIR rendered a decision quite quickly; I believe it was by perhaps June of the year in question. And then what took all of the extra time was the fact that the CIR's decision was appealed by the state to the Supreme Court. And it took the Supreme Court a long time to come down with a final decision. [LB555]

SENATOR LATHROP: Okay. [LB555]

DALTON TIETJEN: But the time lines are absolutely an essential part of that process, and we agree that they should stay in there. It's a brutal time line. It's very difficult to try to get everything pulled together under that crunching time line but it is essential. [LB555]

SENATOR LATHROP: Okay. Senator Harr. [LB555]

SENATOR HARR: And I'm going to show my ignorance here and I don't have a Chapter 81. What is the standard of review from the Special Master to the CIR? [LB555]

DALTON TIETJEN: The CIR is to show...as was pointed out by Senator Harms, it's to show significant deference to the decision by the Special Master, and it should be affirmed unless there is significant deviation from what the CIR finds to be comparability. [LB555]

SENATOR HARR: It's de novo then? Or I guess I don't understand. I mean is it...? [LB555]

DALTON TIETJEN: No, well, it's de novo on the record. [LB555]

SENATOR HARR: On the record, okay. [LB555]

DALTON TIETJEN: Yes. [LB555]

SENATOR HARR: And that's new. Okay. [LB555]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Okay. I think that's it. Thanks, Dalton. [LB555]

DALTON TIETJEN: Thank you. [LB555]

SENATOR LATHROP: Anyone else here in opposition to LB555? [LB555]

JERRY HOFFMAN: Chairman Lathrop, committee members, my name is Jerry Hoffman, J-e-r-r-y H-o-f-f-m-a-n. I am here representing the Nebraska State Education Association. I'll keep my remarks brief, as I think much of what I wanted to cover initially has already been covered. Let me say that if your goal is to look at a quick, clean process that's inexpensive, then you would retain the Special Master. The Special Master, over the last 25 years, has been a quick, clean way of resolving a dispute between the state and its employee bargaining units. As is evidenced in the 2008 negotiations between the State Code Agencies Teachers Association and the State College Education Association, both of whom are represented by NSEA, in those cases that wound up in the Supreme Court in many ways LB555 represents the state's dislike or dissatisfaction with that Supreme Court ruling. And what you see before you is language that amends the State Employee Collective Bargaining Act in order to essentially overturn those rulings. What is expensive is the appeal from the Special Master all the way up to the Supreme Court both in terms of taxpayer dollars used on legal fees to appeal that process, but also in terms of the time frame in which the final ruling is made; in this case it's made two months prior to when negotiations began, as established in the State Employee Collective Bargaining Act, which is the second Wednesday of September in even-numbered years. So that means there are two months prior to where both parties have to get their negotiation hats back on and negotiate in good faith for the upcoming year. And indeed, that is what has happened in both the SCATA, if you will, the State Code Agencies Teachers Association, and SCEA with respect to the current negotiations. They entered negotiations with the state and with the State College Board of Trustees, respectively, and what we see now is SCATA, in 2011 and '12, taking a zero percent increase in salary and a 2.8 percent increase in salary for the second year of your next biennium. SCEA, the faculty group with the state colleges in Chadron, Peru, and Wayne, each took 1 percent increase in salary. So the standard of reasonableness and the standard of having both parties come to...reach a settlement in the negotiations process has worked well for 25 years and continues to work well as we see with current negotiations. With that, I'll conclude my remarks and thank you for your time. [LB555]

SENATOR LATHROP: Very good. Thanks, Jerry. Any questions? Senator Carlson. [LB555]

SENATOR CARLSON: Thank you, Senator Lathrop. Jerry, would it be the NSEA's position then that there should be no significant changes in the CIR? [LB555]

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

Business and Labor Committee
February 07, 2011

JERRY HOFFMAN: What we're taking a position on here, Senator, is there's really no problem with the Special Master process in the context of the State Employee Collective Bargaining Act. It is an interest-based arbitration process that enables, where both parties have...where there is impasse in the negotiations of both parties, to resolve that impasse as quickly as possible and be able to get to this body, the legislative body, the settlement amount so that it can be entered into your biennium budget process. So the Special Master, as again, an interest-based arbitration process to mediate, if you will, a settlement, is a process that has worked quite well. [LB555]

SENATOR CARLSON: Okay. Thank you. Then...but in general then, you would rather not see significant changes made through any of these bills that are introduced today? [LB555]

JERRY HOFFMAN: That's correct. [LB555]

SENATOR CARLSON: Okay, thank you. [LB555]

JERRY HOFFMAN: You're welcome. Thank you. [LB555]

SENATOR LATHROP: I think that's it. Thanks, Jerry. [LB555]

JERRY HOFFMAN: Thank you, Senator. [LB555]

BILL PRATT: (Exhibit 17) Senator Lathrop, members of the committee, my name is Bill Pratt. I'm a history professor at UNO and also the chief negotiator for the UNO Association of University Professors. I just wanted to make a few observations since Mr. Tietjen and Mr. Hoffman really covered many of the points that I wanted to make. We have been to the Special Master or through the Special Master process seven times. Only once was the Special Master decision appealed. And I might add, the CIR affirmed the Special Master decision in that case. You know, the Special Master process is quick, inexpensive, fair, and good public policy. It's quick. You know, you have an exchange of final offers on the 10th of January. If you don't have a resolution at that point, those final offers go to the Special Master. He makes a decision, and by the 15th of February he has to take either this offer or that offer, which requires both parties, especially the union, to be very prudent and conservative. It's a much less expensive process. There's no need for a lawyer as there is if you go before the CIR. I have to say that in the Special Master hearings we've had in recent years, we probably haven't spent \$5,000, maybe \$6,000 total. On the other hand, if we would go to the CIR it would be tens of thousands of dollars. I have a couple of recommendations to make, but these relate to the Special Master process. One of them is that the Special Master decisions be put on file with the CIR so there's a record. A second recommendation is that a transcript of the hearing be made unless both parties agree it's unnecessary. And the third recommendation and I think this has to do something with fitting into the time

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

Business and Labor Committee
February 07, 2011

schedule, if the Special Master decision is appealed, the appellant will pay the legal costs of the other party if that initial decision is upheld on appeal. Thank you. [LB555]

SENATOR LATHROP: Very good. Thanks, Mr. Pratt. Any questions? Senator Carlson has one for you. [LB555]

SENATOR CARLSON: Thank you, Senator Lathrop. Dr. Pratt and I met at a reception a month or so ago, and we somehow got into a discussion of the CIR. And so he was giving me his thoughts, and I said: You've got to come to the hearing and testify. And I appreciate that you did. Thank you for being here. [LB555]

BILL PRATT: Thank you. I have a more extended copy of my testimony I prepared for the committee. [LB555]

SENATOR LATHROP: Doctor, one thing maybe we can...we've been talking about the Special Master and no one has really told us what that person is. They're actually sort of an expert on the subject matter, chosen by the CIR to hear a particular case. [LB555]

BILL PRATT: The CIR has a list of arbitrators or in this case Special Masters or fact finders. And the two parties select a Special Master through a strike mechanism. I might say that in our experience we have often selected the same person; that we've had one Special Master three times and another twice, and I don't think in any of those cases either party was dissatisfied at the selection process. Now you might not like the result at the end. But he's an arbitrator who may be from out of...well, I guess, in every case that we've had the arbitrator was from out of state. [LB555]

SENATOR LATHROP: But they're generally experts in the subject matter, are they not? [LB555]

BILL PRATT: Oh, these people are specialists. That one person that's been used three times in our hearings is the director of Industrial and Labor Relations, University of Illinois, Urbana-Champaign. He's had some 600 arbitration cases. [LB555]

SENATOR LATHROP: Very good. Well, thanks for the background and your thoughts on the subject and for coming down here and responding to Senator Carlson's invitation. [LB555]

BILL PRATT: Thank you. [LB555]

SENATOR LATHROP: Anyone else here to testify in opposition to LB555? Anyone here in a neutral capacity on LB555? I see none. Senator Harms, you're good to close. [LB555]

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

Business and Labor Committee
February 07, 2011

SENATOR HARMS: Senator Lathrop, thank you very much. First of all, thank you, committee, for your taking the time to listen to all of these bills today. Senator Lathrop, the only thing I would say to you is this, is that whatever you as a committee decide to do, I hope that we'll take a long, hard look at the rules and the policies and the procedures that the CIR is using. I don't think anything should be unofficial. I think it ought to be in the law. I think it ought to be very clear, very distinct so that it moves smoothly. If I was on the other side as far as management was concerned, I'd like to know what those really are, because it doesn't take a rocket scientist to sit down and figure out, you know what, if I add all this up, I'm not going to go to the CIR. (Laugh) It's going to cost me too much money. That needs to be clarified. I think the dates need to be clarified. I also think that it's rather interesting that what we did 20 years ago is good today. It's not. Times have changed, conditions in this great nation have changed. We don't have the same financial capabilities we had 20 years ago. So I hope you'll take that into consideration. It's time to make a change. It's time to put these things on the table so people can understand exactly what the process is, how it's going to work, and to make sure that we have moved in the right direction. So I thank you very much, colleagues, for the opportunity to visit with you. And I know you've got a long day before you, so thank you, Senator. [LB555]

SENATOR LATHROP: (Exhibits 18-20) We do. Thanks, John. We always appreciate having you come into the committee. Before we close the hearing on LB555, the record will reflect that I've received three letters in opposition: one from the Professional Firefighters Association; another from...two from the IBEW, one Local 1483 and the other Local 1597. They will be made part of the record. And we'll close our hearing on LB555 and that will take us to LB564 and Senator Fulton. Welcome. [LB555]

SENATOR FULTON: Okay. [LB564]

SENATOR LATHROP: You're good to go. [LB564]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29 in the Legislature. I bring to you LB564. Eleven months ago, I introduced LB1040, LB1041, and LB1042 to this committee. All three of those bills worked within the existing structure of the CIR, making revisions to the statute while being careful to keep intact the present practice of collective bargaining in Nebraska. None of those three bills advanced. Indeed, I do not believe the committee even afforded votes on those three bills. Therefore, I bring to you this year LB564. In doing so, I join Governor Heineman, numerous of our legislative colleagues, a plethora of statewide elected officials, many of whom you have heard from and will hear from, and citizens all across the state of Nebraska who have called on you, Mr. Chairman, and this committee to provide meaningful and comprehensive reform of the CIR. Here is my idea on how we could accomplish that. First...well, I should say LB564, tactically how it is enacted, is to make

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

Business and Labor Committee
February 07, 2011

changes to two acts--the Industrial Relations Act and the State Employee Collective Bargaining Act. First, LB564 eliminates the jurisdiction of the commission to order rates of pay and conditions of employment, thus empowering the governing body employer and the public employee bargaining unit to negotiate wages, benefits, and employment conditions, as well as the means of resolving any impasse without the threat of taking the matter out of the hands of stakeholders and handing it over to a decision made by an unelected commission. Second, the bill establishes a time line for negotiations similar to that presently found under the State Employee Collective Bargaining Act. Under this time line, if an impasse occurs during the course of negotiation as an added requirement of bargaining in good faith the parties should agree on a means of resolving that impasse. Absent such an agreement, the parties, according to my bill, must engage in mediation. Third, should mediation be ineffective in resolving the impasse, the parties would then be required to present evidence before the commission for a recommended decision. In arriving at a recommended decision, under LB564, the commission is freed from the constraints of the comparability analysis that current statute requires and may base its recommendation on any evidence presented to the commission. Fourth, after the commission's recommendation is made and sent to both parties, the commission becomes a public clearinghouse for information on the public employment dispute such that citizens and their media outlets may become aware of the terms of the dispute and may engage their elected representatives on the matter. Prior to the budget submission deadline of the governing body involved in the dispute, the governing body will vote to adopt or reject the commission's recommendation--a vote also open to public scrutiny. Five, should the governing body reject the commission's recommendation, the existing collective bargaining agreement would continue in force and effect without any change until such time as a new agreement could be arrived at by the parties. And finally, by removing the jurisdiction of the commission, LB564 also eliminates the ability and need of a party to appeal the ruling of a Special Master to the commission under the present State Employee Collective Bargaining Act. The provisions of LB564...well, I'm going to go back a little bit here. LB564 is my idea. It was not brought to me from a special interest group. It was not brought to me from a conservative group nor from a government group nor from a labor union. It originates from a normal acting citizen who has been elected by the people to employ his God-given capacity of human reason to solve the problems facing our state. And I believe any member of this committee, indeed any member of our legislative body, unencumbered by outside influences, could and would come up with a similar proposal. This proposal, if the committee will review it, please, is comprehensive and meaningful reform. It's much more open and understandable to the public. It is more compatible with the information age in which we live, certainly more so than the statutes of government that existed in 1947 or 1969, when the CIR was enacted and last amended. Now I have studied this issue with some depth and I've read through the Constitutional Convention of 1920, the floor record from 1947, as well as committee, and that of 1969. And I understand that there is some momentum here. And I understand that committees past and present have swatted ideas down, perhaps some

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

Business and Labor Committee
February 07, 2011

good ideas, perhaps some bad ideas. So I brought forward this piece of legislation. And I figure if the committee is going to kill my bill anyway, at least it will have been my own idea that was put forward for public consumption. I'd appreciate answering any questions you have on the bill. [LB564]

SENATOR LATHROP: Very good. Any questions for Senator Fulton? I see none. Thank you. Are you going to stay to close? [LB564]

SENATOR FULTON: I will but in the interest of time I will reserve closing unless it's required of me. I will close if I need to close but I will do so with respect for your time. [LB564]

SENATOR LATHROP: Okay, yeah. We'll permit you to waive later if you care to. Those in support of Senator Fulton's LB564. And while our first testifier is coming up, can I see a show of hands of those who intend to testify in support. Five. And how about in opposition? Five, four, oh five. Okay, very good. Welcome. [LB564]

PAMELA LANCASTER: Thank you. Good afternoon. Thank you for allowing me this time to speak to you. I am Pamela Lancaster, L-a-n-c-a-s-t-e-r, Hall County Supervisor and NACO's immediate past president, Nebraska Association of County Officials. I'm here in support of LB564 and I appreciate Senator Fulton as much as I believe that he included counties in this discussion. First of all, I'd like to be sure that the committee understands that Hall County strives to treat all of its employees fairly and equitably. We conduct wage surveys in an effort to be competitive regarding our wages and benefits. We have no trouble attracting or retaining good employees, still we do have four departments that are unionized and we negotiate those contracts approximately every two years. I'd like to also go on record saying that whatever the final decision is regarding the CIR, I certainly hope that Nebraska does not become a strike state. Surely there are more civilized ways to settle an agreement than by strike. In Hall County, as well as many other counties where the determining salaries and benefits for our union or nonunion departments, every decision is made with consideration regarding the salaries and benefits of our array of counties. In other words, we look at wages and benefits of counties most like us, generally half or twice our size, and try to stay above midpoint or to the top of the scale. Having been there once, I can tell you that dealing with the CIR, no one wins. Each side declares a win but truly the problems that develop between labor and management, the relationship is damaged, and it takes a very long time to heal, besides it's extremely expensive as you have heard. And in these days, you need to hire a very skilled labor attorney to represent you. So the cost is exorbitant. Allow me to share, and this is specific to Hall County, the results of the present system that varies from contract to contract because we do bargain in good faith, and as I also mentioned, we have a handbook to deal with employees that do not happen to be under a union contract. So in general, there are 11 paid holidays. All employees accumulate vacation from the time they come to work based on a six and a

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

Business and Labor Committee
February 07, 2011

half hour per week or a total of ten days per year, two weeks in the first year, and until the fifth year when employees receive three weeks of vacation; 10 years, five weeks of vacation; 20 years, six weeks of vacation. Sick leave can be accumulated up to 24 weeks. Health insurance for the family, the employee contribution is 15 to 20 percent depending, and the county pays the rest of the premium with \$1,000 deductible. I'm certain that all of you have either been an employer or an employee and you would certainly understand that these are very generous benefits and our salaries are similar. We are... [LB564]

SENATOR LATHROP: Ms. Lancaster? [LB564]

PAMELA LANCASTER: Yes. [LB564]

SENATOR LATHROP: Can you wrap it up or summarize it? I'm going...when you get done, we're going to talk about the light system one more time. [LB564]

PAMELA LANCASTER: Okay. I have... [LB564]

SENATOR LATHROP: But I'll ask you to wrap it up. [LB564]

PAMELA LANCASTER: I have five thoughts if I may just give you those. [LB564]

SENATOR LATHROP: If you can make it in...yeah, see, here's the problem with the light system. When the red light goes off and people don't stop talking or summarize and wrap it up, then I have to be what appears to be rude about cutting folks off. And when the yellow light goes off, you have one minute. And it's 4:30 right now and we are on the third bill. [LB564]

PAMELA LANCASTER: I apologize. [LB564]

SENATOR LATHROP: And we have nine bills, and these folks all have families that they need to get to, and there are people on the ninth bill that want to be heard. So I'll ask everyone here to respect the light system, and then I'm going to have to begin to interrupt. I'll see if anybody has any questions for you. Okay? [LB564]

PAMELA LANCASTER: Okay. Can I give you the five or... [LB564]

SENATOR LATHROP: I think...do we have your written testimony? [LB564]

PAMELA LANCASTER: No, sir. I can submit it. [LB564]

SENATOR LATHROP: Okay. Why don't we have you do that. [LB564]

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

Business and Labor Committee
February 07, 2011

PAMELA LANCASTER: I mean, I would do that later. I'd have to return it. [LB564]

SENATOR LATHROP: Why don't we have you do that. And it's not you, Ms. Lancaster,... [LB564]

PAMELA LANCASTER: I understand. [LB564]

SENATOR LATHROP: ...nor Hall County. It's just that I have nine bills tonight. [LB564]

PAMELA LANCASTER: I understand. [LB564]

SENATOR LATHROP: And the only way we can get to the end of the day at a reasonable hour is to enforce the lights. Okay? [LB564]

PAMELA LANCASTER: Thank you. [LB564]

SENATOR LATHROP: Yeah, you're very welcome. Let's see if anybody has any questions for you though. I see none. Thank you very much for your testimony and your appearance today. [LB564]

PAMELA LANCASTER: Thank you. [LB564]

SENATOR LATHROP: Okay. Red means stop, okay? Welcome, Mr. Spatz. (Laughter) [LB564]

JOHN SPATZ: Senator Lathrop, I like the... [LB564]

SENATOR LATHROP: And I'm not picking on you in particular. [LB564]

JOHN SPATZ: I like the light system. I'd like to know where to get one of those, so I'll talk with you afterwards. (Laugh) [LB564]

SENATOR LATHROP: It's green, you're on your time. You can talk to the committee clerk about the lights. [LB564]

JOHN SPATZ: Okay. Okay, I'll do that. My name is John Spatz, it's spelled, S-p-a-t-z, believe it or not, and I'm here representing the Nebraska Association of School Boards. And I've prepared a more in-depth testimony that I'll use on LB619, but I do want to say that we do support LB564 for a variety of reasons. One of the difficulties that we have in the school system is the theory of comparability because we've struggled to come up with a system that we think under the comparability structure makes sense. Because we have so many things that you can't compare to. And somebody brought it up earlier, in the Panhandle we have to compare to Wyoming, but that's not relevant under...or

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

Business and Labor Committee
February 07, 2011

compete for teachers with Wyoming. Waverly may have to compete for teachers with Lincoln but they compare to a Falls City who doesn't compete with Lincoln for teachers. There are so many variables that are thrown in there. And a couple of things that Mr. McGuire said earlier I'm going to agree with and far be it to me to disagree with him. But in the school system, the CIR is very predictable, and there are very few cases that go to the CIR for school systems. It's predictable in that we always know there's going to be a constant ratcheting up no matter what. It doesn't take into effect equalized systems versus nonequalized systems, increases or decreases in state aid, you know, poverty students, English language learners in a particular district. It can't take into account any of these things. That's very important in terms of how you pay somebody. And the reason why there aren't a lot of cases that go before the CIR in the school system is schools know what is going to happen. They have calculators. They know how to compute where they're at. So there are very few cases and, in fact, most of the cases that do go before the CIR aren't dealing with wages. They deal with things like cash in lieu of, insurance, or deviation clauses, or continuing contract...I mean, very random things in contracts that sometimes can have a big impact on wages down the line and thereby impact all school systems. So we support this concept. We're going to be testifying again later today and I'm going to be getting more in depth into some of the reasons why, but I will accept any questions. [LB564]

SENATOR LATHROP: Thanks, John. Any questions for John? Senator Carlson. [LB564]

SENATOR CARLSON: Thank you, Senator Lathrop. We've heard quite a bit today about the limited number of cases that actually get to the CIR. [LB564]

JOHN SPATZ: Right, right. [LB564]

SENATOR CARLSON: That's been mentioned more than once. [LB564]

JOHN SPATZ: Yep. [LB564]

SENATOR CARLSON: And that is a factor. [LB564]

JOHN SPATZ: Yep. [LB564]

SENATOR CARLSON: But...and this I don't think is the fault of the CIR. [LB564]

JOHN SPATZ: No, it's not. [LB564]

SENATOR CARLSON: How many times in negotiations is the decision made, let's just do it, we don't want to go to the CIR? [LB564]

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

Business and Labor Committee
February 07, 2011

JOHN SPATZ: Probably in the vast majority. I would say there's very few school districts around the state where the first question is when discussing negotiations, what would happen if we went to the CIR? So that's the starting point. It's relevant in every single negotiation around the state. It's very relevant. Even though only a few get to the CIR, schools have calculators. We know exactly...and that's relevant from the very second they start talking about the negotiations, the first question is always, what would happen if we went to the CIR? And then that's where it starts it. [LB564]

SENATOR CARLSON: Well, thank you. And I think that's an important factor that needs to be mentioned, so. [LB564]

JOHN SPATZ: Yes, it is. And I've described it as the gun pointed to the head, named the CIR, of the school district, and it's...we're under that threat constantly. [LB564]

SENATOR CARLSON: Thank you. [LB564]

JOHN SPATZ: Thank you. Anything else? [LB564]

SENATOR LATHROP: Okay. I think that's it. Thanks, John. [LB564]

JOHN SPATZ: Thank you, Senator Lathrop. Appreciate it. [LB564]

SENATOR LATHROP: We'll look forward to seeing you on LB619. [LB564]

JOHN SPATZ: Yep, we'll be back. [LB564]

SENATOR LATHROP: Anyone else here in support of LB564? [LB564]

MARK SCHORR: Yes, Chairman Lathrop and other senators on the committee, again my name is Mark Schorr, S-c-h-o-r-r. I testified on LB482 in a neutral capacity, so I will honor the light system and not go into everything I said there. I made a number of points. But again, I'm here on behalf of the Lincoln Chamber of Commerce. And the Lincoln Chamber of Commerce supports Senator Fulton's bill, LB564. It is a comprehensive bill that will cover all public bodies currently covered by the CIR. We believe that this bill constitutes the kind of substantial and meaningful reform that the mayor of Lincoln, Chris Beutler, and Governor Heineman have said they believe is needed, and we agree with them in that assessment. It puts more pressure on the parties, in my opinion, at the negotiating table. It opens it up to bring in all kinds of evidence of comparability or what would be appropriate compensation as opposed to what I believe is the current system which is unworkable in terms of comparability. We've heard testimony throughout the day on, do you look at Minneapolis because the city is only two times the size of Lincoln or do you take into account the metropolitan statistical area of Minneapolis? As I said before, in those larger metropolitan areas

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

Business and Labor Committee
February 07, 2011

there's a much higher cost of living. That's an "establishable" fact, and compensation levels of various types of employees in those areas are substantially higher than here in Lincoln. We believe LB564, as Mr. Corrigan commented on earlier, does exert the necessary pressure on the parties to bargain in good faith and to resolve issues at the bargaining table. We believe this will force more resolution of issues at the bargaining table because it places the ultimate responsibility on the governing bodies and the elected officials themselves in terms of coming to some agreement at the bargaining table. We believe that LB564 is a very balanced bill and that it constitutes the type of significant and meaningful reform that is necessary with the CIR today. And with that, I'll conclude my comments. [LB564]

SENATOR LATHROP: Very good. Thanks. We appreciate your remarks again. Any questions? I do have a question for you. As I look at LB564, just as a matter of reviewing the structure as it was described by Senator Fulton, in the end we go from a system that decides things to a system that listens to all the evidence. It doesn't get any cheaper. They go through the entire process. The CIR then says, we think you ought to get a buck an hour raise, for example, and then it goes...then that information is relayed back to the city council and they may or may not give a raise. That's the process. Am I right? [LB564]

MARK SCHORR: As I understand it, that is kind of the process, but what it does though,... [LB564]

SENATOR LATHROP: That's exactly what... [LB564]

MARK SCHORR: ...it allows the parties to bargain to impasse and it allows a party who believes it has bargained to impasse in the form of a public body to implement an offer after having the CIR be a fact-finder. The CIR is essentially a fact-finder. [LB564]

SENATOR LATHROP: Okay. So let's say that they go through this entire process that everyone here has described as very expensive, and they conclude, the CIR does, the neutral independent CIR decides that it should be that the employee should get 15 cents an hour more. That goes back to the very same city council that went to impasse, and they can do nothing with it under this process. Am I right? [LB564]

MARK SCHORR: That may be a possibility, but the flaw I see in that analysis is, this would not be, as I look at it, the type of expensive process that our current Lancaster County and city of Lincoln are doing spending tons of money... [LB564]

SENATOR LATHROP: Okay, then let's... [LB564]

MARK SCHORR: ...sending people all over the country studying positions and jobs and municipalities to try and prepare a case at the CIR. I don't believe that LB564 would

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

Business and Labor Committee
February 07, 2011

require that type of expensive processing of the case. [LB564]

SENATOR LATHROP: Well, certainly it shouldn't if no one has to pay attention to the outcome, and that's my point. The essence of LB564 is that the CIR makes a decision regardless of how expensive it is to come up with and how much time anybody has devoted to it, and it goes back to the very same people that went to impasse for them to do with it as they please, which could include ignoring it. [LB564]

MARK SCHORR: Well, this is public employment so there is no right to strike. [LB564]

SENATOR LATHROP: Okay. I have another question for you. And Senator Utter's bill addresses concerns about comparisons to private employment. And you're here for the Lincoln Chamber of Commerce, am I right? [LB564]

MARK SCHORR: Yes. [LB564]

SENATOR LATHROP: So can you tell us whether or not the folks at the Lincoln Chamber of Commerce would agree to provide that information to those who are litigants before the CIR? [LB564]

MARK SCHORR: I haven't spoken to all of them, sir, but this is a board of director's position, so I believe you would see openness from private industry, at least in Lincoln, to share information on comparable positions, yes. [LB564]

SENATOR LATHROP: So if we want to know what the folks are making down at the Ford dealership, they'll open their books or provide that information to labor unions and to the cities? [LB564]

MARK SCHORR: I can't sit here today, sir, and personally guarantee you that every private business in Lincoln will open its books and show what their employees make. [LB564]

SENATOR LATHROP: Okay. I think that's as far as I need to go with you on that one. Is there anybody else have any other questions or concerns? [LB564]

SENATOR SMITH: Yes. [LB564]

SENATOR LATHROP: Yeah, Senator Smith. [LB564]

SENATOR SMITH: Thank you, Senator Lathrop. Mr. Schorr, once again I'm trying to go back and look at how it compares back to LB555. And this last step, if impasse continues after the expiration of the existing collective bargaining agreement, "the existing agreement shall continue in force and effect." And with the assumption being

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

Business and Labor Committee
February 07, 2011

that, you know, employers are really wanting to do right by their employees, this is really a way of them representing their ability to pay, is it not? [LB564]

MARK SCHORR: Yes, it is. And what that provision does, in my opinion, Senator Smith, is it preserves the status quo, at least the status quo if the parties cannot come to terms after the CIR renders its opinion on the factual finding. [LB564]

SENATOR SMITH: Okay. Thank you. [LB564]

SENATOR LATHROP: I think that's it. Thanks, Mr. Schorr. [LB564]

MARK SCHORR: Thank you. [LB564]

SENATOR LATHROP: I appreciate your testimony and your answers to the questions. [LB564]

MARK SCHORR: You bet. [LB564]

SENATOR LATHROP: Mr. Mach is back. [LB564]

COBY MACH: Good afternoon, Mr. Chairman, members of the committee. [LB564]

SENATOR LATHROP: Welcome, again. [LB564]

COBY MACH: Coby Mach, M-a-c-h, representing the Lincoln Independent Business Association. Governor Heineman has asked for meaningful and significant reform to the CIR. We would agree with that. We believe LB564 offers a comprehensive complete restructuring of the CIR. It does place the final decision-making authority, where we think it should be, with our elected officials. I'm not sure that anyone so far today has provided specific examples of what comparability has done. I will present three and I've got more with me if you'd like them. In the last three years, 2007 to 2010, the Lincoln assistant director of Parks and Recreation has gone from \$89,000 to \$105,600 a year, an increase of 17.8 percent over those three years; we have a city administrative assistant that has gone from \$57,000 to \$70,000 a year, an increase of 20.8 percent over those three years; and a public works maintenance coordinator that's gone from \$80,000 a year to \$101,650 a year, an increase of 26.7. That is what the process, the comparability, has done. Do those elected officials have to agree to pay those salaries? They did but with a threat of going to the CIR over their head. Our organization is not here today at all to support--this will be the final time I speak. We are not supporting LB664. However, should substantial reform not move forward, we would support a repeal but only as a last-ditch effort. Again, we encourage you to support LB564. The final decision-making authority would be with the elected officials. Thank you for your time. [LB564]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Very good. We always appreciate hearing from you. Any questions for Mr. Mach? Senator Carlson. [LB564]

SENATOR CARLSON: Thank you, Senator Lathrop. What bill did you say you're not supporting? [LB564]

COBY MACH: We are not going to support or oppose LB664. We think that's a bill of last resort. [LB564]

SENATOR CARLSON: Okay. Thank you. [LB564]

SENATOR LATHROP: I see no other questions. Thanks, Coby. [LB564]

COBY MACH: Thank you for your time. [LB564]

NICK CUSICK: Well, Senator and committee, thank you for the opportunity. My name is Nick Cusick, last name Cusick, C-u-s-i-c-k. I'm not smart enough to be here as an attorney or a lobbyist or someone who knows the intricacies of all the bills and all the negotiations that will go on between now and the time that anything is decided. What I am is a simple manufacturer with 200 employees primarily in the city of Lincoln. And I'm kind of a bottom line guy, and ultimately I look not at the intricacies but the bottom line effect not in dollars and cents. But I hope I bring...kind of following your recommendation and bring a couple of new items to the table here. I think I'm the first private sector employer who has testified. I missed part of the testimony. [LB564]

SENATOR LATHROP: I think you are. [LB564]

NICK CUSICK: That being said, I want to talk a little bit about employee morale in the private sector. Effectively all public sector employees are employed by those people who pay taxes in the private sector and those people who pay taxes who are employees in the public sector. My employees, because of economic conditions over the last three years and my flexibility in being able to adjust my wages and my benefits accordingly to the economy, they have been working on the same wage level that they did in 2008. Only in January 1, 2011, was I able to give them a 2.5 percent increase. My salaried people...those are my hourly people; my salaried people only on January 1 got back to their 2007 salaries. I had the flexibility of doing that. I would suggest that my employees who, when they read about whether it's a 1, 2, 5 percent increase of their neighbors who they're paying their wages for, that is not a positive morale thing for the people who are...you know, who are working in my employment. The next item I'd bring up is turnover. I would challenge all of you to ask any public entity what kind of turnover rate for employees you have, both voluntary and nonvoluntary, in the public sector. I would suggest it's significantly lower than it is in the private sector, and I might suggest that

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

Business and Labor Committee
February 07, 2011

you think in terms of that there being a reason for that, and that is because it is pretty sweet in the public sector relative to the private sector. I'd make one other comment and answers part of Mr. Schorr's...the question you asked Mr. Schorr. Being a private employer, Mayor Beutler at a recent Lincoln Chamber of Commerce meeting asked the very question you did: Would Lincoln employers open up their books for scrutiny relative to wages for comparability? And my answer was unequivocally, yes. I have nothing to hide. My data is available. Some of the other employers that were in the room at that same meeting said, well, we have some national regulations or some national control because they're national companies that might affect that, but a lot of that is composited so there's a lot of composite information. So I strongly support this bill as a comprehensive bill. I believe ultimately I as an employer, as a private sector employer, would if not this or if not something that's as comprehensive as this once the negotiations are done, would support in fact the total repeal of the CIR and everything that goes with it, so. Thank you. [LB564]

SENATOR LATHROP: Thank you, Mr. Cusick. Any questions? Senator Carlson. [LB564]

SENATOR CARLSON: Thank you, Senator Lathrop. This is a tough question. Now you mentioned that you've given your employees a 2.5 percent increase in the last three years and you just were able to do that. What's happened to your gross revenue in the last three years? [LB564]

NICK CUSICK: It's been reasonably stable, it's been reasonably stable. Our unemployment has gone down, but because of efficiency and productivity, we've been able to...I think we're probably down about 8 or 10 percent totally between our four operating divisions. [LB564]

SENATOR CARLSON: So in this three years, then in terms of net income to you, you've been able to kind of hold your own. [LB564]

NICK CUSICK: We've been able to...you know, you have to ask my banker what he defines as holding our own. We're still in business today and we still have 200-plus employees. We had 270 at our peak. I suspect if we'd had the same type of constraints, including CIR but not exclusively the CIR type of constraints on our ability to be flexible in our employment, payment, and benefits, we'd probably be down dramatically lower than that, but. [LB564]

SENATOR CARLSON: Now you'd mentioned how there can be a morale problem when public employees seem to be in a different class and have more benefits than what you're able to pay yours. Are your employees thankful that they have a job? [LB564]

NICK CUSICK: Nice tee-up of a very simple answer, and the answer is, yes. [LB564]

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

Business and Labor Committee
February 07, 2011

SENATOR CARLSON: Okay. Thank you. [LB564]

NICK CUSICK: And that's a typical private sector current thought process. [LB564]

SENATOR CARLSON: Okay. Thank you. [LB564]

SENATOR LATHROP: Does your business make something that competes with the city of Lincoln? [LB564]

NICK CUSICK: We do not. [LB564]

SENATOR LATHROP: Okay. [LB564]

NICK CUSICK: And I would say, and because of time I didn't mention it, but I'm not one of those private sector employers who say, gee wiz, wouldn't things be great if the public sector operated just like a business. I don't believe that because you have different things. So the answer is no. We make basketball equipment, electronic signage. [LB564]

SENATOR LATHROP: Okay, okay. Just trying to understand. [LB564]

NICK CUSICK: Sure. [LB564]

SENATOR LATHROP: Senator Smith. [LB564]

SENATOR SMITH: Thank you, Senator Lathrop. Mr. Cusick, thank you for being here today. And kind of a follow-up on the other senator's question. What kind of turnover, can you kind of share that with us, that you've had over this period of time where your wages were frozen or relatively flat? [LB564]

NICK CUSICK: Yeah. I would have to say and I don't have a number right in front of me, but quite honestly our turnover has been the lowest that it has been in our history. It kind of ties to the question of, are they thankful that they're having a job. I did not mention that during that time, in addition to having their wages frozen and our salaried people reduced by 5 to 10 percent, many of our people were working 32 hours or less than 40 hours a week, so. [LB564]

SENATOR SMITH: Um-hum. So maybe not necessarily that they're happy to have a job but there's other things that you're doing there to maintain morale... [LB564]

NICK CUSICK: Clearly. [LB564]

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

Business and Labor Committee
February 07, 2011

SENATOR SMITH: ...create morale to where you reduce their turnover. [LB564]

NICK CUSICK: Clearly. [LB564]

SENATOR SMITH: So something other than the wages. [LB564]

NICK CUSICK: Sure. [LB564]

SENATOR SMITH: Thank you. [LB564]

SENATOR LATHROP: Very good. Thank you. Let me see another show of hands. It looks like we have people that might be coming in, and I'm wondering, how many more people are here to testify in support of this bill? And how about in opposition? Okay. All I'll ask, because we're now at 5:00 and I'm on my fourth out of nine bills, but if somebody has already said how you feel, expressed how you feel, then maybe you can turn in a sheet rather than testify. Welcome. [LB564]

ADAM HORNING: Thank you. Adam Horning. I am...H-o-r-n-u-n-g, I am a Lincoln city councilman. I'm also an attorney here in town and I represent a number of businesses nationally, locally, and internationally. And I am an at-large city councilman, so I was elected by the entire city of Lincoln rather than a district. I ran on a strong platform, which most of the city council people have, of not raising property taxes. The result of that approval by the city is that we're in a place where we have a fixed amount of revenue, for the most part, and we have ever-increasing costs. So the CIR and what we have gone through over the two years that I've been on the city council is that there are substantial cuts that are having to be made or going to have to be made. So I challenge you to consider what the effect is actually of the CIR and the way that it goes about its business, particularly who it affects. I think I've heard a lot about average wages and getting wages to the appropriate people. The problem is when we start making these cuts, it's cuts to pools, it's cuts to libraries, it's cuts to bus services. Those are the things that affect the poor the most. So when we start making...it's a zero-sum game, so if the CIR continues to make the decisions and force our hand on these issues, all we're left with is cuts to services that affect people that are most in need. And so I think it has a...it's a system that's just not working, especially for municipalities the size of the city of Lincoln. It also affects taxpayers, and those people who are least able to afford property taxes are those people that are least able to afford an increase in property taxes. And so you can imagine any kind of change in our revenue model is going to have a substantial effect on those people who can least afford it. The other problem that I've noticed as a lawyer on the city council is that this system is incredibly inconsistent. It couldn't be a more inconsistent body of law if you wanted it to. We have had several different counsel come before us and try to give us advice on positions that we're supposed to be taking. We cannot get a clear understanding of the advice we're supposed to follow. The cases are very infrequent. The precedent is very mixed. We

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

Business and Labor Committee
February 07, 2011

just do not have a clear understanding of what we are supposed to do. So the system is not working well and it's incapable of being understood. So I would challenge you, especially if you're on the committee, to try to fix this system. But I would also challenge you, if you cannot fix it, then please come to our city council meeting and help us understand the system because nobody can understand it. And with that, I'll address two issues that you raised, Senator Lathrop: the information from the other bodies, especially from the private sector. If you go out and negotiate and you, under this bill, if you reach impasse, you go to the CIR and you come back, you have to negotiate. That's what everybody does in the private sector today is that at the end of the day you're left with what is called negotiation which is, by the way, the system that seems to work for 99 percent of America. And so I think that's a great system. It will result in wage increases. It will also result in wage decreases. What happens is that there's bargaining that's occurring instead of a gun pointed to the head. And the other one is to address the negotiation process with the private sector. I think that the private sector should be consulted. I think that the information will be available, and to the extent that they're comparable jobs, I think it would be great to look to them, so. [LB564]

SENATOR LATHROP: Very good. Any questions for the Councilman? I see none. Thank you. [LB564]

SENATOR HARR: I have a quick question. [LB564]

SENATOR LATHROP: Senator Harr. [LB564]

SENATOR HARR: And I do apologize because I do want to get going. But if private sector does provide the income, would that be provided through an audit or how would you recommend it be provided? Would it be voluntary? [LB564]

ADAM HORNUNG: Yeah, I think it would be voluntary. [LB564]

SENATOR HARR: And how would you prove that that is correct then? [LB564]

ADAM HORNUNG: I think that you would have to go with what they've given you. And just to give you a sense of this, this is no different than the system we currently have. We have a major problem, and I think the senator mentioned this: Well, wait a second, they're not going to give you the information. Nobody gives us the information today. When we go to do comparability analyses, there are four or five cities who are comparable to us that won't give us information. There's no requirement for the city of Wichita to give us information, just as there's no requirement for the private sector to give us information. Somehow you all think that that system works currently. I would think that getting... [LB564]

SENATOR HARR: Whoa, whoa, whoa. I never said...whoa, whoa, whoa, whoa. [LB564]

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

Business and Labor Committee
February 07, 2011

SENATOR ASHFORD: I don't think anybody is saying that. [LB564]

SENATOR HARR: No. [LB564]

ADAM HORNUNG: Okay. [LB564]

SENATOR ASHFORD: That's why we're having these hearings. [LB564]

ADAM HORNUNG: Well, there's been bills before this committee I think for several years now and nothing has happened. [LB564]

SENATOR HARR: Well, I'm a freshman. [LB564]

SENATOR COOK: Okay. [LB564]

ADAM HORNUNG: Yeah, I agree with you, Senator Harr. (Laughter) [LB564]

SENATOR COOK: Yeah, I need to chime in here. Just because they were here I wasn't here, so please don't ascribe that to everybody sitting here... [LB564]

ADAM HORNUNG: Good. You guys sound like me on the city council, so. So my point... [LB564]

SENATOR COOK: ...listening to your testimony, sir, thank you. Please. [LB564]

SENATOR HARR: Just be careful what you...yeah. Be careful what you say. [LB564]

ADAM HORNUNG: So my point behind it is that this information is available from the private sector just as it's available from the public sector. It's hard to get, yes, but it's equally hard to get today. [LB564]

SENATOR HARR: Well, but I guess it doesn't get to the real liability question. Is it just based on the word of the private enterprise or would you recommend that it be an audit? Would it be...? [LB564]

ADAM HORNUNG: No, I don't think you can audit them for the information. I think you'd have to ask them for the information. And so that's similar to what we're currently dealing with. You'd have...there's not a lot of reliability in the information but we just have to go with what we've got. [LB564]

SENATOR HARR: Thank you. [LB564]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: I think that's it. [LB564]

CHIP MAXWELL: (Exhibit 78) Mr. Chairman, members of the committee, Chip Maxwell, M-a-x-w-e-l-l. I'm speaking today for the Omaha Alliance for the Private Sector. I am not a formal member of that group, but the alliance's thinking was rather than have another voice make probably the same general argument you've been hearing for most of the day, I was asked to come down and give you a quick observation on what it's like to be a local elected official and dealing with the on-the-ground reality of the CIR. In fact, the one observation I want to make...there's a written statement going around that's there for you, but one observation I'll make, Senator Lathrop, I think goes to your analysis you offered a few minutes ago. And I would say essentially I agree with you. I think you're correct. It is possible for a local governing body to essentially ignore the findings of the CIR. I think that was the gist of the point you were making a few minutes ago. [LB564]

SENATOR LATHROP: That's the substance of the bill as I read it. [LB564]

CHIP MAXWELL: Okay. I'm going to...my observation as to why that may be that's something the alliance likes about the legislation for this reason: One of the most frustrating things for me serving on the Douglas County board was contractual negotiations with the public sector unions. That's not the fault of the unions. I'm not a union basher. The unions should be trying to get the best deal they can. But the problem, the elephant in the room, is the CIR because eventually every conversation came down to, it's all about the comps. The CIR is going to do two things: what are comparable jurisdictions and what are they paying their people to do the same job. And it doesn't matter what our deliberations were as local elected governing officials. Maybe we think the numbers should be there. But if the CIR formula says, no, the numbers should be here, that's pretty much the end of negotiation. You either put the number there or you can try to defy it and then you'll be dragged down to the CIR. The CIR will put the number there and stick you with a bill for your local taxpayers for going through the CIR process. That was one of the most frustrating things about serving on the county board. And so my observation is I think your analysis is correct, but the idea here is that the buck should stop with the local governing body. Keep the CIR in the loop. The information is helpful and valuable to know what people are being paid for comparable jobs in comparable jurisdictions. But ultimately a burden is being imposed on local taxpayers, and the people making the call, the people having the final decision-making authority ought to be the elected representatives who are directly accountable to those taxpayers. The way it works now is we're essentially at the mercy of unions and politicians in other cities and other states who are making deals, and that comes back in our CIR number taken from the array of comparable jurisdictions, and it really neuters the local elected officials who are trying to look out for the taxpayers who elect them. Thank you for your time. I'd be happy to answer any questions. [LB564]

SENATOR LATHROP: Very good. Thanks, Chip. Appreciate it. [LB564]

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

Business and Labor Committee
February 07, 2011

SENATOR ASHFORD: Very briefly, Chip. [LB564]

CHIP MAXWELL: Yeah. [LB564]

SENATOR ASHFORD: The problem with that analysis is, in my view, is that it is the elected officials clearly. When we take the police and fire contracts in Omaha, the pension, particularly the pension, which has gone into an underfunded position, had nothing to do with the CIR because the CIR cannot enter an order on pensions, so. [LB564]

CHIP MAXWELL: Correct. [LB564]

SENATOR ASHFORD: Isn't it really the decisions made by several elected officials going back 35, 40 years, and to determine what the appropriate contribution levels should be based on actuarial...because they get yearly actuarial... [LB564]

CHIP MAXWELL: Um-hum. [LB564]

SENATOR ASHFORD: ...and you did when you were on the county board, actuarial information, but still those...nothing was...I mean, literally the pension was in an underfunded situation for a number of years, and that had nothing to do with CIR. So how does that...? [LB564]

CHIP MAXWELL: Two quick responses. Number one, you are correct. I will say again, my beef has never been with unions. My beef is with politicians who have been accommodating them. [LB564]

SENATOR ASHFORD: But what does the CIR have to do with that? [LB564]

CHIP MAXWELL: Well, what I...now as a county commissioner, I did not handle the police or fire contracts. Those were city managed. [LB564]

SENATOR ASHFORD: No, but you had... [LB564]

CHIP MAXWELL: Well, what I'm told is that sometimes in the negotiating leverage: Tell you what, we won't push so hard, like we could really hang you out to dry with the CIR on wages, well, we'll...let me just finish. [LB564]

SENATOR ASHFORD: But isn't that anecdotal, Chip? [LB564]

CHIP MAXWELL: It is, but that's my answer to your question, is what I've been told is sometimes what it works out is: Tell you what, you give us a better deal on benefits and

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

Business and Labor Committee
February 07, 2011

then we won't push so hard on the wages, where we could nail you if we wanted to in the CIR. But, again, it is...you're right, it's anecdotal because I've never been directly involved in that kind of a negotiation. [LB564]

SENATOR ASHFORD: Right. Well, and the county I believe have some defined benefit plans and Douglas County has defined benefit plans. [LB564]

CHIP MAXWELL: True. [LB564]

SENATOR ASHFORD: And those have been in place for a number of years and those were not changed or by...and the CIR had no jurisdiction to change them. I mean, I understand your... [LB564]

CHIP MAXWELL: The county is in better shape than the city, to be candid, but yes. [LB564]

SENATOR ASHFORD: I understand your point and I'm not... [LB564]

CHIP MAXWELL: Um-hum. [LB564]

SENATOR ASHFORD: My point only is, is I get it. [LB564]

CHIP MAXWELL: Um-hum. [LB564]

SENATOR ASHFORD: But when you're talking about elected officials making those decisions. But, quite frankly, that's why we elect people to make decisions, and if they make decisions that end up with having significant underfunding in the pension plan, whether it's the county or the city, you know, and those become legal obligations... [LB564]

CHIP MAXWELL: Um-hum. [LB564]

SENATOR ASHFORD: ...of the county and the city, that certainly for existing...or for employees who have retired and employees who are on the system now and they can't be changed under federal law or...I guess my, you know, what I've been wrestling with during this whole process is, you know, we can change the CIR 30 different ways, we can accept Tony's bill or whatever it is, and we're still left with significant pension and healthcare issues that is not going to change the fundamental underfunding unless, you know, unless those things get resolved. [LB564]

CHIP MAXWELL: I don't think there's any disagreement between us on that. [LB564]

SENATOR ASHFORD: Okay. [LB564]

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

Business and Labor Committee
February 07, 2011

CHIP MAXWELL: I guess the argument would be, also give the local elected official another tool but with regard to wages as well as the benefits, but. [LB564]

SENATOR ASHFORD: No, and I get that. I get that point and I understand that and I accept that point. I just...just so the room, you know, we all understand what we're dealing with. We're dealing with people we elected since 1961 for the police and fire pension funds that those decisions were made. Whether or not unionization had anything to do with that, I don't know and you could argue both sides... [LB564]

CHIP MAXWELL: Um-hum. [LB564]

SENATOR ASHFORD: ...depending upon the year and who's in power and who promised what to the police union and so forth and so on, but in reality the CIR had very little to do with that process. Thanks. [LB564]

SENATOR LATHROP: Thank you, Chip. [LB564]

CHIP MAXWELL: Thank you for your time. [LB564]

JON CAMP: Good afternoon, Senator. [LB564]

SENATOR LATHROP: Good afternoon. [LB564]

JON CAMP: My name is Jon Camp, that's J-o-n C-a-m-p. I'm a member of the Lincoln City Council. In fact, I have been for 12 years. I had the privilege a year ago of testifying before several of you, but as a couple of you have mentioned, we've got some new faces here. And at that time, I had testified in a neutral position on Senator Fulton's legislation or proposals. I said that at that time the system is fractured. I'm coming back to you today because I am disappointed that this committee didn't do something with what Senator Fulton had to get it out to the full Legislature so there could be a meaningful discussion of that. The system is broken. In my 12 years on the Lincoln City Council, as we've gone through a number of labor negotiations, it is the first question of what will the CIR do. There is a reasonable mathematical precision there when you talk about these array of cities, but the array of cities is not necessarily comparable. There is difficulty, as has been said, about getting information; some won't give it to us. There's difficulty in the system in that if we have, say, seven cities and three of them have 0 percent on a certain benefit, they're thrown out so you just average the four that are there. There's problems with the comparable cities when we deal with Aurora, Illinois, with Minneapolis or St. Paul, because they're not more than twice our size, but they happen to be in a metropolitan statistical area that's substantially higher; that that metropolitan statistical area has a much higher standard of living and pays more. There are also funny things that can be done in the...not funny but rather strategic things,

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

Business and Labor Committee
February 07, 2011

tactical things that can be done in the system. For example, in Lincoln, about ten years ago, the fire union was successful in taking over our ambulance service. That totally changed our array of cities. No longer could we compare the Lincoln Fire Department as we had with the same fire departments. We now had to go to fire departments that had ambulances, which typically are the larger cities which those larger cities are paying substantially more; didn't pay any attention to what it costs to buy a home in Lincoln versus Chicago or Minneapolis. That doesn't come into play, and that's one of the problems we have. Now before you, you have today nine measures. Of those, I believe two provide what are the meaningful and substantive changes that need to come about. Those two are this measure that Senator Fulton has introduced or LB664 which will come before you later which totally abolishes the CIR. I would ask that you advance this measure to the floor. If it needs a few modifications, then let it be debated among the full Unicameral and your colleagues. But please go ahead. Let's get this 800-pound gorilla, namely the CIR, into a more meaningful posture, and I think Senator Fulton's bill does that. Earlier you were asking questions of Mr. Maxwell about who's deciding and so forth and, Senator Lathrop, you too, going back to the officials. Let us as the elected officials--we represent unions, we represent private sector--let us make the decisions. [LB564]

SENATOR LATHROP: Mr. Camp, thank you. Senator Wallman, you're recognized. [LB564]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Thank you for being here, Mr. Camp. [LB564]

JON CAMP: Thank you, Senator. [LB564]

SENATOR WALLMAN: Regarding Mr. Mach's statement, I see where that's coming from and the percentage thing, but... [LB564]

JON CAMP: Did you say Mr. Maxwell's? [LB564]

SENATOR WALLMAN: Mr. Coby Mach... [LB564]

JON CAMP: Oh, excuse me. Thank you. [LB564]

SENATOR WALLMAN: ...on the salary things. But who decides that thing? City councils, right? You okayed these contracts. [LB564]

JON CAMP: We basically... [LB564]

SENATOR WALLMAN: You know, like the firefighters and the union...I mean on the ambulance thing, somebody okayed that. [LB564]

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

Business and Labor Committee
February 07, 2011

JON CAMP: The...we're getting into a whole political system there of what happened and... [LB564]

SENATOR WALLMAN: Yeah, yeah, yeah. (Laughter) [LB564]

JON CAMP: No, I voted against all of those. I voted against all of those. There was huge union pressure. [LB564]

SENATOR WALLMAN: That's okay. Yeah. [LB564]

JON CAMP: Look at our contributions and who gets them. I'm sorry, follow the money. [LB564]

SENATOR WALLMAN: But, I mean, somebody signed those contracts, you know, to get that, you know,... [LB564]

SENATOR LATHROP: We don't want to go there today. We really don't. [LB564]

SENATOR WALLMAN: I'm sorry, Senator. [LB564]

SENATOR LATHROP: You're the third member of the Lincoln City Council that we've had here and we've indulged you. And I have to say, between the remarks that have preceded this hearing and some of the remarks we've had here, you're not showing the deference this committee deserves or the respect, and I'll ask you to do that and confine your remarks to the question you've been asked. All right? [LB564]

JON CAMP: Yes, sir. [LB564]

SENATOR LATHROP: Any other questions? All right. Thank you. [LB564]

SENATOR SMITH: Yes, sir. Yes, sir. [LB564]

SENATOR LATHROP: Oh, I'm sorry. Senator Smith. [LB564]

SENATOR SMITH: Thank you, Senator Lathrop. Mr. Camp, and I'm lagging probably a little bit behind on the discussion. I'm trying to keep up here, but help me understand the discussion that preceded with Mr. Maxwell. There have been some bad decisions made in the past evidently in whether it's wages, pensions, whatever, you can look at a lot of examples across the board, and to where some of the municipalities, some of the public sectors are in bad shape. And some of those decisions have been made on a local level, some have resulted as a ruling from the CIR. And from what I hear you're saying is that let that occur at the lowest public level where there are elected officials. And I

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

Business and Labor Committee
February 07, 2011

think in this particular bill there's some discussion here that if there is impasse the CIR must make public its findings. So, you know, if it's already gone beyond the stage where there's impasse and now the public has a chance to see what the CIR really...if it's in a fact-finding role, what the comparables are... [LB564]

JON CAMP: Yes. [LB564]

SENATOR SMITH: ...to where the public can really say, well, these are...this is information that we can hold our public officials accountable to. But what that...in this particular bill, there's that lacking prior to. So if earlier in the process the general public has an understanding of what those comparables are, that's going to provide more pressure and input on the elected officials to where the right decision is made. [LB564]

JON CAMP: And, Senator, I'd like to see more of that transparency. It doesn't exist as much as it should under the present system because both sides are saying there, that 800-pound gorilla, the CIR, is there. That's what we look at. And, in fact, while the cases before the CIR have been increasing, but really every labor negotiation is a CIR decision. We figure out what will they decide, and so the CIR is there whether it's formally or not. [LB564]

SENATOR SMITH: And pressing that and pushing that decision to the most local elected official, there's more accountability is what you're saying? [LB564]

JON CAMP: Yes, I am. [LB564]

SENATOR SMITH: Thank you. [LB564]

SENATOR LATHROP: I see no other questions. Thank you. [LB564]

JON CAMP: Thank you very much to the committee. [LB564]

SENATOR LATHROP: Anyone else here in support? All right, apparently not. Anyone in opposition? [LB564]

JANE KINSEY: I'm in support. [LB564]

SENATOR LATHROP: Oh, I'm sorry. Didn't see you. [LB564]

JANE KINSEY: Jane Kinsey, K-i-n-s-e-y. I'm a citizen of Lincoln. I'm a sole business owner there. I ran for the city council before. And when I went and asked my elected officials why they could not cut the salaries or freeze the salaries of the department heads and they had to lay off the lower-level employees in order to balance the budget, I was told that I needed to get in touch with the Legislature in order to have the law

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

Business and Labor Committee
February 07, 2011

changed so they could do that. It is appalling to me that the heads of these departments make twice as much as the average family in Lincoln, Nebraska. The latest figures that came out was it was about \$45,000 was the average income in Lincoln and they're making up to \$100,000. So I would...as a result of that, I got in touch with Senator Fulton last year when he introduced his bill, and he was kind enough to respond to me and to tell me that he would like to change that. So that's why I am here now in support of this bill. We need to do something to stop this overexpenditure of money. The private sector is in trouble, and the city and the state is in trouble, and we all have to cut back. I'm not here against the unions. I'm not here for the department heads. But we need to be able to have control by our leaders in order to keep the wages in line with what the income is. Thank you. [LB564]

SENATOR LATHROP: Thank you. And was your concern with what the department heads were making? Did I understand your testimony? [LB564]

JANE KINSEY: Well, when I asked them why they couldn't freeze, because last year, you know, independent and private business was freezing all around and all over, and I was told that this could not be done because of the present Legislature which goes down to the CIR. [LB564]

SENATOR LATHROP: Okay. That reflects some of the remarks that I've seen from the city council in the newspaper and maybe done more charitably than what I've read. But thank you for your testimony today. Is there anyone else here... [LB564]

SENATOR ASHFORD: The only thing I'd say, Senator Lathrop,... [LB564]

SENATOR LATHROP: Oh, I'm sorry. [LB564]

SENATOR ASHFORD: ...again, we've heard a lot of testimony today, but I do think we're here because we want to look at the CIR and make changes that are fair to everybody, but we have to think about the fact that those elected representatives from Lincoln that you've elected are the ones that voted for the pension plans and voted for these various things, and they voted for what the department head salaries are going to be. We don't make those votes. In fact on a state level, we've held most of our employees flat on the state level; the Governor has done that. So I think we've made the decisions and are making the tough decisions and I think those things have to be made on the local level. So, yes, the CIR needs to be looked at and changed in some respects, but we also...we can't use that...in my view, use that as an excuse to sort of kick the can down the road by local officials who can't make decisions, and that would be my...but, quite frankly, thank you for coming and we'll see what we can do. Thanks. [LB564]

JANE KINSEY: Senator Ashford, you have given me courage to go back and confront

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

Business and Labor Committee
February 07, 2011

them. [LB564]

SENATOR ASHFORD: Okay. (Laughter) [LB564]

SENATOR LATHROP: Good. Okay. That was our last supporter, so we'll take opposition to LB564. And one thing I'm going to ask you now, again, I'm starting to repeat myself but it's now 5:15, so please, if somebody has already said what you want to express, please feel free to sign a sheet and forego the opportunity to take your three minutes. Welcome again. [LB564]

DALTON TIETJEN: Senators, I thank you so much for your patience. This will be my last time here. All of my clients are strongly opposed to this bill and there are really two things that I have to say about it. The first involves nonstate employees. As you pointed out, Senator Lathrop, and under this bill the CIR can enter no binding orders; therefore, that strike substitute that I mentioned way back several hours ago is gone, yet there's still the law that prohibits any public employees from striking. So not only has the balance of power totally shifted, I don't think it...right now I think it's fairly well-balanced, but there is no balance of power whatsoever under this bill. The employees have nothing to go on other than the goodwill of the elected officials. That's it. Under this bill, effectively any public employer could freeze wages forever. Just stick with impasse and never, ever change the contract that they first went to impasse on, and that would be the end of it. In terms of state employees, I see this as being basically a litigator's dream, or nightmare, however you want to look at it. There are no standards to guide the Special Master whatsoever; no standards to guide the Court of Appeals in its decision. Therefore, since there are no standards to decide what order these bodies should make, everyone can appeal and they will appeal. They might as well appeal. They might get a decision the next time around. So we'll have no idea what the decision will be by either body or why the decision maker makes it, and everybody will go for it. It will be more expensive, more time-consuming. It will solve no problems. [LB564]

SENATOR LATHROP: Thank you, Mr. Tietjen. Any questions? Seeing none, appreciate it. [LB564]

DALTON TIETJEN: Thank you. [LB564]

SENATOR LATHROP: Next opponent. [LB564]

GENE HANLON: I'd say good afternoon but I should say good evening. My name is Gene Hanlon. I'm an employee with the city of Lincoln, and I'm on the board of directors of the Lincoln City Employees Association. I forgot to spell my name, H-a-n-l-o-n. We represent...the Lincoln City Employees Association represents 650 people, the largest city union. And our board is against LB482, LB564, LB664, and LR29CA. The Lincoln City Employees Association, we've been around since 1970. We've always been able to

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

Business and Labor Committee
February 07, 2011

resolve any problems we've had with the city during negotiations without ever taking an issue to the CIR. As a matter of fact, in our last negotiations in 2010, we agreed to lower the retirement match for our new hires and we also doubled our deductibles and out-of-pocket expenses for health insurance. That resulted in significant savings to the city of Lincoln and to the taxpayers of the city of Lincoln. I'm going to focus my comments primarily on the issue of comparison of public to private sector employees. I think it's important to compare apples to apples. In the city of Lincoln, for example, in the public works and utilities department, we have a \$90 million budget. An accountant in that department should not be compared, in my opinion, to an accountant of a retail sales store that has \$500,000 in sales. I think they both practice the same accounting principles but the scope and complexity of the city employee in my mind is much more complicated. In my opinion, one of the main determinations of compensation is education. And there was a gentleman from Rutgers University, his name is Jeffrey Keefe. He's with the Economic Policy Institute with the Rutgers University School of Management and Labor Relations. He did a study of public versus private sector employment, and he looked at more than just wages. He looked at education levels. And he found that 54 percent of public sector employees had a bachelor's degree compared to 35 percent of the counterparts in the private sector. So I think it's a complex issue. You need to really look at the...compare apples to apples when comparing to the private sector, and education does play a role. That concludes my remarks. I'd be happy to answer any questions. [LB564]

SENATOR LATHROP: Very good. And it sounded like you testified on about four bills there too. [LB564]

GENE HANLON: Yeah. [LB564]

SENATOR LATHROP: Good. That's all right. [LB564]

GENE HANLON: I've been sitting around for a while. [LB564]

SENATOR LATHROP: That's all right. Maybe I should have encouraged that earlier. (Laughter) Any questions? I see none. Thank you for your testimony. [LB564]

JOHN CORRIGAN: Good evening, members of the committee. John Corrigan, C-o-r-r-i-g-a-n, on behalf of the AFL-CIO, and we're in opposition to LB564. And I just want to touch on two issues. The comparability matter that was discussed as the CIR, it would take it as being a gun being held to somebody's head, we take great offense to that. It is a two-edged sword, if you will, that both sides tend to lose what they want when they go to the commission and gain the market. And there are certainly...I can give you several examples of things that everybody liked before they went to the CIR that the CIR changed. And at the table we hear all the time, well, you have to give that up because you'll lose it in the CIR. And sometimes the employers are right about that

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

Business and Labor Committee
February 07, 2011

and that makes people come together. The other issue I wanted to address is this concept of the private employers would just be happy to share their compensation information with us. And currently that is a problem that the unions they encounter will go to a city who is told by the other employer, hey, these guys are going to come and ask for information, they're going to do your survey, don't give it to them, and they don't. But we do have the subpoena power through the commission and eventually we're able to get that information. And then I don't...with LB564, the commission not having the power to issue direct subpoenas, our ability to depose persons who are providing this information to make sure that there isn't two sets of books, that we are looking at the actual compensation and all of the bonuses and all of the ways that employees are compensated to evaluate that makes this bill very poor public policy and certainly tilts the field in favor of the employer because even though we might have this ability to go to the commission, not having any ability to have an order entered, it perpetuates the process of throwing this...kicking the can down the road. And that's simply not acceptable to this side of the fence. Thank you. [LB564]

SENATOR LATHROP: Very good. Thanks, John. I see no questions. [LB564]

WALTER RADCLIFFE: Senator Lathrop, members of the committee, my name is Walter Radcliffe, and I appear before you today as a registered lobbyist on behalf of the State Troopers Association of Nebraska in opposition to LB564. Mr. Tietjen articulated about four points that I would only say amen to. If the committee really wants to do something like this, it could make it a lot shorter. Just put out a bill that repeals the CIR, all dispute resolution mechanism processes, and put in a line that says, whatever the employer says is what the employee has to take. The political subdivisions that I represent--they're going to testify and follow me--but the state troopers, this is just bad policy. It's a step back to...the robber barons even did more than this, so. I'd answer any questions. [LB564]

SENATOR LATHROP: Doesn't look like there's any. [LB564]

WALTER RADCLIFFE: Thank you. [LB564]

SENATOR LATHROP: Thanks, Walt. [LB564]

LYNN REX: Senator Lathrop, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We respectfully do oppose LB564. We feel very strongly and our board strongly supports the concept of comparability. We believe that employees and municipal employees should be paid comparable wages. We think the best way to address this issue is through LB482, and also all the work that's been done, Senator Lathrop, by your committee and others to try to resolve these issues. This bill would add less predictability than we even have now. We didn't think that was possible but this bill would actually do that. And I would submit

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

Business and Labor Committee
February 07, 2011

to you that one of the biggest concerns we have about this measure is that this measure assumes that all municipalities, for example, have unions. Most of them do not. We have 532 cities and villages in the state of Nebraska, hundreds of them. The overwhelming majority of them do not have unions. So what we need to have is a process by which folks at the local level can understand what is comparability, how do you get to that number, because the mission is to not go to the CIR. The mission is to pay your employees fairly. And that's why we have so many municipalities I think that are without unions. With that, I would also respond to one of the issues that was raised by a citizen that came forward and was concerned that cities aren't allowed to freeze salaries. And indeed that is true if you're not paying comparability. So across the state of Nebraska, as there have been some that have said why aren't local governments freezing salaries, well, because if you're not paying at comparability or above, you're not in a position to freeze salaries. The option that you have as a local official is to lay people off and do away with jobs. That's the option you have. You either pay comparability or you have less people. That's the option. So we do think that local elected officials are capable of making the right decisions. We do think they can do that. We think that this process outlined in this bill does not afford them the opportunity to really do that in a fair and equitable way. And I know that's not Senator Fulton's intent, but we think that would be the result. So with that, we would just indicate to you that we do oppose this. We support comparability. We support substantive changes and serious reform to the CIR. I'd be happy to respond to any questions that you might have. [LB564]

SENATOR LATHROP: Any questions for Lynn? Senator Ashford. [LB564]

SENATOR ASHFORD: No, not a question. But, Lynn, I just want to thank you for the effort you've put forward over the summer and fall attending all the meetings, doing all the homework on all the issues, and bringing us the perspective of the cities across the state of Nebraska. You always do a wonderful job. I've known you for a long time. You continue to do a wonderful job even if we disagree on some issues, and I just really appreciate your service. [LB564]

LYNN REX: Well, thank you, and I really appreciate all the time that you and Senator Ashford and Molly and so many people have put forth. So thank you very much. We really appreciate it. [LB564]

SENATOR LATHROP: Yes. I want to echo what Senator Ashford said. And I've not given you credit for your participation in the working group, and not to slight you, but Lynn has been involved in this working group and, frankly, was one of the people that brought to the Business and Labor Committee sort of the concerns of the cities across the state. You were there bringing your concerns to us when no one else was. You've worked on the issue before anybody else was concerned about it, and for that we appreciate it. [LB564]

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

Business and Labor Committee
February 07, 2011

LYNN REX: Well, thank you, and thank you for listening. [LB564]

SENATOR LATHROP: We look forward to working with you in the future. [LB564]

LYNN REX: Thank you very much. [LB564]

MARK McGUIRE: Mr. Chairman, members of the committee, my name is Mark D. McGuire, M-c-G-u-i-r-e, registered lobbyist and an attorney for Nebraska State Education Association. The NSEA is totally opposed to this bill because it has no remedy, it proves nothing, and it has no remedies; therefore, it does not go to resolving industrial disputes which, when I testified earlier, is the whole key as to what the CIR is, and we would ask that it not advance. I would be happy to respond to any questions. [LB564]

SENATOR LATHROP: Thanks, Mark. Any questions for Mr. McGuire? I see none. Thank you for your testimony. Anyone else here in opposition? Anyone here in a neutral capacity on LB564? Seeing none, Senator Fulton I see here, and we'll bring him forward to close. [LB564]

SENATOR FULTON: Mr. Chairman, I'll just close so that it reflects on the record that I'm willing to work with this committee. I do have responses but I will provide them at a time which is another day, so thank you. [LB564]

SENATOR LATHROP: Senator Fulton, we should acknowledge the fact that you have been sort of out front, ahead of a lot of people on concern for the CIR. And I don't know where your measure is going today, but we do appreciate your concern for the subject matter and the fact that you've been willing to work with the committee. So thank you very much. Oh, I'm sorry. Senator Carlson. [LB564]

SENATOR CARLSON: Senator Lathrop, thank you. I think several of us would be very interested to what your responses are, not today, but I am very interested in how you would respond to some of what you heard today. [LB564]

SENATOR FULTON: Okay. And I'll be glad to share that. [LB564]

SENATOR LATHROP: Oh, Senator Smith. [LB564]

SENATOR SMITH: Thank you, Senator Lathrop. And Senator Fulton, you know, thank you for bringing this forward. And, you know, up to this point in time, my e-mails had...I had had the most e-mails over the daylight-saving time before you submitted your bill, so it kind of took the pressure off the daylight-saving time issue. But... [LB564]

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

Business and Labor Committee
February 07, 2011

SENATOR FULTON: Don't give that credit to me, Senator. (Laugh) [LB564]

SENATOR SMITH: But actually I will tell you that I have received the most e-mails...out of these nine that we're hearing today, I received the most e-mails and contacts in favor of your bill and the least number in opposition to your bill. And I believe that probably a lot of that comes from the sense of a significant reform here, which I believe that everyone really wants to see that, whether the details here are the proper ones or not, and also consistency across all public sector employees. And I just want to thank you for putting a lot of time into that. [LB564]

SENATOR FULTON: Thank you. [LB564]

SENATOR SMITH: Thank you. [LB564]

SENATOR LATHROP: (Exhibits 21, 22, 23, 24, 25, 26, 27, and 28) Thanks, Tony. Before we close the hearing on LB564, I have letters in opposition. I want to read who they are from so that the record will reflect their opposition. First from IBEW Local 1597; IBEW 1483; International Brotherhood of Electrical Workers Local 763; IBEW 1536; Change to Win; General Drivers and Helpers Local 554; and one in support from Mary Gerdes, coordinator of the Tea Party of Nemaha County. And those letters will be entered into the record, both in support and in opposition, as the case may be. (See also Exhibit 79.) And that will close our hearing on LB564 and bring us to Senator Lautenbaugh. Do you wish to open on LB624 first? [LB564]

SENATOR LAUTENBAUGH: LB624 or LB623? [LB624]

SENATOR LATHROP: Either one. [LB624]

SENATOR LAUTENBAUGH: LB624 will be the much easier of the two. [LB624]

SENATOR LATHROP: All right. Let's have you open and then...yeah, open on LB624. [LB624]

SENATOR LAUTENBAUGH: LB624 was designed to deal with some issues regarding the State Troopers Union and some possible cost savings that could have been accomplished there. After further reflection, the bill did not do what we wanted it to do. It actually obscured more than it revealed I guess is the best way to put it, and it was decided to be unhelpful. My intention was to withdraw it, but the committee being very efficient got the hearing scheduled and then I couldn't withdraw the bill. So I would invite you to either kill the bill or use it as a shell bill for something else. [LB624]

SENATOR LATHROP: Okay. [LB624]

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

Business and Labor Committee
February 07, 2011

SENATOR LAUTENBAUGH: But it's not intention to pursue its advancement. [LB624]

SENATOR LATHROP: All right. And given that you've just suggested to the committee that you wanted to withdraw LB624 but now want to see it killed or used for some other purpose, is there anybody here who cares to testify in support or in opposition to LB624? Seeing none, we'll close the hearing on LB624 and move to LB623. And that again brings us to Senator Lautenbaugh. [LB624]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. And I guess I did skip some steps at the beginning here. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h. I'm the senator from District 18. I've listened to a lot of the testimony this afternoon in this hearing and I know that Senator Ashford, Senator Lathrop, Senator Fulton, Senator Utter, others, have all worked very hard for quite some time in the CIR area. The same cannot be said of me. So I cannot say that I've been part of the discussions you've had. My bill was brought solely to deal with some issues that Douglas County had, and I agreed to introduce it simply to put those before the committee as well. Being respectful of your time, we brought one witness, Patrick Bloomingdale, who is the deputy county administrator for Douglas County who is well-versed in these issues and will explain what our bill would do. Generally it deals with three areas. Layoffs during the pendency of an action. It strikes some language that prevents any layoffs which ties the hands of the county during a budget crisis if there is a current matter pending before the CIR. We believe if there is not a budget crisis, individuals would be otherwise be protected by civil service rules and otherwise. Item two, health insurance and pensions are mandatory subjects of collective bargaining but the CIR doesn't seem inclined to rule on them, so we end up with status quo orders to the detriment of the county. And another solution or more discussion as to how wage and benefit arrays are determined. This one would require that or this bill would require that we look first to the metro statistical area, then within the state. It does also mention the possibility of seeking private results. We're mindful of the fact that we aren't necessarily going to be able to get results from private individuals or private entities, but if they are available, it's something the commission should certainly be able to consider. In a nutshell, that's what the proposed bill does. I'd be happy to try to take any questions you might have, although I would represent to you that Mr. Bloomingdale would be a lot more useful to you in answering questions than I would. I can pretty much promise you that actually. [LB623]

SENATOR LATHROP: Okay. We'll see if anybody has any questions in spite of that, and it doesn't appear that that's the case. Do you want to stay and close, Scott? [LB623]

SENATOR LAUTENBAUGH: I'll be around, yes. [LB623]

SENATOR LATHROP: Okay. Very good. That brings us to the supporters of LB623. [LB623]

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

Business and Labor Committee
February 07, 2011

PATRICK BLOOMINGDALE: (Exhibit 29) Good afternoon, Senator Lathrop and distinguished members of the committee. My name is Patrick Bloomingdale. I'm the deputy Douglas County administrator. I'm also the labor relations coordinator for the county. I've been negotiating contracts with the county for about ten years. Just for some background, we have 1,700 of our 2,300 employees are unionized, and ten unions that make up 33 bargaining units and 17 contracts. There's just...just to lay out some basic points of what this bill does as Scott kind of touched on. Layoffs, right now, if there's a pending dispute before the commission, the CIR's application of the current statute prevents the county from conducting those layoffs within that bargaining unit even for legitimate budgetary reasons. And the county has no argument that nobody should be threatened, harassed, or coerced through layoffs or otherwise. But it's unreasonable in the county's mind to take that tool out of their toolbox, if it can show...to take layoffs out of the toolbox, if it can demonstrate that it's for legitimate budgetary reasons, particularly now when we're all faced with such difficult budget times. And this change would not prevent the unions from going to the CIR and arguing that it wasn't for legitimate budgetary reasons. So that is not taken off the table. Insurance and pension, as has been discussed before, those are mandatory subjects of collective bargaining. The county has been successful in keeping the elements, particularly of health insurance of the plan, out of our contracts, but when we go to make changes, the unions will go to the CIR and prevent those changes from occurring because they're mandatory subjects of collective bargaining, unless there is clear language in the contract that waives their right, and that language has to be so clear that, you know, almost impossible to do it from our standpoint and still maintain a level playing field of negotiations. So the county on the one hand has to negotiate those elements but on the other hand if it goes to the CIR, as has been discussed, the CIR generally doesn't take jurisdiction over those issues, which puts it in the lap of the parties again to try to negotiate. And then finally on comparability arrays, we're simply looking at using the metropolitan statistical area, first. And if you can't find enough jurisdictions there, then you look to the state of Nebraska, and then go out within 500 miles looking at jurisdictions a quarter to the size to twice the size. Right now, the county can't use Sarpy which is a market competitor, the city of Bellevue, Sarpy County, because it's not half the size to twice the size. It's too small even though...you know, if somebody is going to look for a job, they're going to choose maybe between a job in Bellevue, a job in Council Bluffs, maybe even a job in Lancaster County, which is just a little bit outside the MSA. They're not going to look for a job in Ramsey County, Minnesota, or Dane County, Wisconsin, so why are those being used as comparables in the first instance? So basically those are the three basic changes and I'll be happy to answer any questions. [LB623]

SENATOR LATHROP: Let's see, I don't see any questions. I do want to thank you. I think you prepared a written kind of a summary of your thoughts and concerns that was shared with me as well and that's helpful. [LB623]

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

Business and Labor Committee
February 07, 2011

PATRICK BLOOMINGDALE: Yeah, I did. And if I can say, Senator, I forgot to say this, just that LB482 has some very good elements in it, and for the efficiency of this committee we would be more than happy to try to roll LB623 into LB482 so you don't have multiple bills to consider. I wasn't part of the working group. I'd be excited and look forward to being a part of that working group if at all possible. [LB623]

SENATOR LATHROP: We'll get back to you on that one. (Laughter) [LB623]

PATRICK BLOOMINGDALE: Okay. [LB623]

SENATOR LATHROP: What we've tried to do...and I appreciate the concerns of Douglas County. Believe me, I do. What we've tried to do with that group is to have just like a lawyer here and a lawyer here that do the work, and... [LB623]

PATRICK BLOOMINGDALE: I'm a lawyer too, just... [LB623]

SENATOR LATHROP: And I'm just trying to get some progress or significant progress in that. And then I think we'll look to get some input from counties and utilities, for example. [LB623]

PATRICK BLOOMINGDALE: Absolutely. [LB623]

SENATOR LATHROP: But thanks for the offer; I appreciate that. I see no other questions, so that should do it. [LB623]

PATRICK BLOOMINGDALE: Thank you for your time. [LB623]

SENATOR LATHROP: Any other proponents of LB623? Anyone here in opposition to LB623? Welcome. [LB623]

ROSS STEBBINS: Thank you. Chairman Lathrop, members of the committee, Ross Stebbins, president FOP Lodge 8, representing 400 corrections officers in Douglas County, Nebraska. The provisions in LB623 will hinder the collective bargaining agreement. When our employer has the ability to arbitrarily change provisions in our contract dealing with healthcare and pensions, we as an employee have no recourse but to ask that our contract language be upheld, and status quo orders help to protect our contract. Language in LB623 would remove that protection. Last year, a status quo order by the CIR stopped part-time corrections officers from working in our jail. This is how important it is for corrections officers to have the ability to go to the CIR court to stop bad ideas that would put the officers I represent in extreme danger. We must have the ability to negotiate in good faith with Douglas County. The current system is fair, impartial, and based on facts. I would ask you not to support LB623. I stand for any questions. [LB623]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Thank you, Mr. Stebbins, for your testimony. Are there any questions? I see none from the committee. [LB623]

ROSS STEBBINS: Thank you. [LB623]

SENATOR LATHROP: Thank you. [LB623]

JIM MAGUIRE: Good evening, Senators. My name is Jim Maguire, it's M-a-g-u-i-r-e. I am president of the Fraternal Order of Police Lodge 2 which represents the Douglas County deputies. I promise to be brief. I just want to say that the impression...I don't want you to walk away with the impression that all opponents of every bill regularly go to the CIR. That's not true. I've been on our department for 19 years, I've been president of our lodge for the last 10, and we've never gone to CIR. So I don't want you to walk away thinking that everybody that comes up here opposing these bills constantly uses this as some kind of vehicle to get one over on the cities and the counties. That's just simply not true. The last remark that I will make about this bill is that I think it is a matter of fairness for everybody that all the rules are consistent for the employees. Don't try and exclude Douglas County from Sarpy County, from Lancaster. I think all you're going to do is have ill will between the county officials and some employees saying that, yes, you can use the CIR as an avenue and some of you cannot. Thank you. [LB623]

SENATOR LATHROP: Thanks, Jim. Any questions for Mr. Maguire? I see none. Thank you. Any other opponents? Mr. Corrigan, welcome back. [LB623]

JOHN CORRIGAN: John Corrigan, C-o-r-r-i-g-a-n. I just want to highlight that this concept that we will with Douglas County only look to the metropolitan statistical area is completely inconsistent with Douglas County's position that they've taken in their most recent wage case, a case involving Local 571, where they were successful in presenting evidence to exclude the city of Omaha as a comparator, an employer who they share the same facilities with. So they may want to go compare with Bellevue because it might drive their wages down. But the fact is, this is another effort, in our opinion, to tilt the scale against working people and against the chance to have an agreement. And LB623, by cutting off Douglas County, it is...and creating a different set of rules is not consistent with fair and efficient labor policy. Thank you. [LB623]

SENATOR LATHROP: (Exhibits 30, 31, 32, 33, and 34) Thanks, John. Any questions? I see none. Any other persons here wishing to testify in opposition to LB623? Anyone here in a neutral capacity? Seeing none, I'm going to read into the record, while Senator Lautenbaugh is coming up, some of the letters that we've received. I'll start with...it appears they're in opposition. IBEW Local 1597; International Brotherhood of Electrical Workers; International Brotherhood of Electrical Workers Local 1483; International Brotherhood of Electrical Workers Local 763; and the IBEW 1536. It may seem

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

Business and Labor Committee
February 07, 2011

repetitive to keep repeating those except that they've saved us five minutes apiece, so we appreciate those who have expressed their opinion by letter. Senator Lautenbaugh to close. [LB623]

SENATOR LAUTENBAUGH: Well, if you're grateful to people who have saved you time, then I think my bill should be the best bill today so far because I think it's gone, (laughter) two of them have gone more expeditiously than any one, I would point that out. The county is sincere though. They do wish to be heard on this issue and, if you will, have a seat at the table. I know Mr. Bloomingdale is well-versed in this area and would be a very helpful participant as we go forward on this. Again, I will offer to answer any of your questions, although I know that's probably not technically possible, but we will be happy to work with you. [LB623]

SENATOR LATHROP: We'll see if anybody wants to put you to the test. [LB623]

SENATOR LAUTENBAUGH: You're all tired. I appreciate the scheduling of this bill. [LB623]

SENATOR LATHROP: And even I'll pass on that opportunity. Thank you, Senator Lautenbaugh--today. [LB623]

SENATOR LAUTENBAUGH: Thank you. [LB623]

SENATOR LATHROP: Thank you, Senator Lautenbaugh. That closes our hearing on LB623, and brings us to LB619 and Senator Larson. He's making his first appearance in front of the Business and Labor Committee. [LB623]

SENATOR LARSON: (Exhibit 35) First appearance on any committee to testify, so. Thank you, Senator Lathrop. This is, for the record, from the Farm Bureau. Ready to go? Senator Lathrop and members of the Business and Labor Committee, I am Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I represent the 40th District of Nebraska from O'Neill. Today I'm introducing LB619. LB619 offers an alternative approach to other bills presented at the hearing today. This bill removes school districts, educational services units, and learning communities from the jurisdiction of the CIR. LB619 does not change the procedure that the CIR follows, as that procedure relates to other public employees. This bill also does not change the applicability of State Employees Collective Bargaining Act to school districts, ESU, or learning community employees. About 35 states allow collective bargaining of teachers, and this bill does not aim to change the rights of teachers to bargain. However, dispute resolution through the CIR has been less than effective in meeting the needs of school districts and teachers. School districts face unique challenges in negotiating employment contracts, and these unique challenges are why it's so important to include school district, ESU, and learning community employees in the discussion of the CIR. Cost of employment contracts have continued

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

Business and Labor Committee
February 07, 2011

to go up even in the face of declining school aid and budget problems. Last year, teachers saw an average base wage increase of 4 percent from the 2009-2010 school year to the current school year, which was higher than any state employee. Overall costs to school districts have also increased substantially because teachers are unwilling to raise their insurance deductibles which are within the purview of the CIR, and many school districts are paying up to or over \$17,000 for a full family insurance premium. The only way to remedy this problem of increasing personal cost in declining school district budgets is to eliminate staff. School districts do not have the other options that other state agencies have, such as furloughs or salary freezes, when it comes to meeting their budget. The NSEA or the Nebraska State Education Association has estimated at current projections 1,600 to 2,000 teachers may have to be let go as a result. That is unacceptable, and much of this can be avoided by CIR reform. Dispute resolution by the CIR disallows school districts from paying specific teachers more to meet the needs of their students. For example, a rural school district or an underperforming urban school often has difficulty retaining quality teachers, but these school districts cannot offer incentives to recruit these teachers. School districts are restricted to paying all of their teachers along the same scale, but in fields where fewer teachers are available, like math and science, some leeway in pay scale would make a huge difference. There are also unequal bargaining experience between the teachers union and local school boards. While teachers are represented by the Nebraska State Education Association, a sophisticated bargaining agent, school districts rely on school board members who have generally had less experience in negotiations and in some instances had not recognized the long-term financial consequences of giving up management prerogatives. The specific procedure followed by the CIR does not work for school districts. The CIR compares equalized and unequalized school districts in the same array, and school districts that do not have large property tax bases are not able to keep pace with the unequalized districts. The arrays used by the CIR do not account for state aid changes, competition with other school districts, or where these school districts are at within their property tax levy. The CIR is also limited to consideration of only certain aspects of retirement and healthcare. Healthcare plans and exorbitant costs of these plans have limited the budgeting options of school districts and will lead to fewer teachers to meet the needs of Nebraska students. For these reasons, I hope the committee considers this bill and the circumstances facing school districts in our state in the discussion of CIR reform. I'm happy to answer any of your questions. I know there is a few behind me that will be testifying in support of the bill that may be better suited to answer some of the questions that you have. [LB619]

SENATOR LATHROP: All right. Hang on just a second. Let me do something before we go any further. Can I see a show of hands of the number of people that wish to testify on this bill? Okay. My committee clerk has indicated an interest in a break. And while you folks have been able to come and go, my friend Kate has been at that desk since 1:30, (laughter) and in fairness to her I think I'm going to recess for five minutes. Give those of us that have been sitting in one place a few minutes to stretch. And we'll

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

Business and Labor Committee
February 07, 2011

be...(Recorder malfunction) [LB619]

BREAK

SENATOR LATHROP: (Recorder malfunction)...take any questions the people on the committee may have, after which we'll take up proponents of LB619. Any questions for Senator Larson? Senator Cook. [LB619]

SENATOR COOK: Thank you, Mr. Chair. Senator Larson, welcome to the Business and Labor Committee. [LB619]

SENATOR LARSON: Thank you, Senator Cook. [LB619]

SENATOR COOK: Does your proposal contemplate support workers for the school system, such as administrative staff, administrators for the building, the administrators for the districts, bus drivers, custodial staff? How are their interests represented if it's saying school district? So many of those people are employees of the school district. [LB619]

SENATOR LARSON: I'd leave that to those behind me, but I think, under my own estimation, they aren't represented right now in terms of the collective bargaining. Oh, they are? Oh, then I'll leave it to those behind me to answer that question. [LB619]

SENATOR COOK: All right. Okay. [LB619]

SENATOR LATHROP: Any other questions? I see none. Do you want to stay to close, Senator Larson? [LB619]

SENATOR LARSON: I'll stay for a little while. [LB619]

SENATOR LATHROP: Okay. Great. Mr. Spatz again. Good to have you back. [LB619]

JOHN SPATZ: (Exhibit 36) Yes, and thank you. Good to be back. And, again, for the record, my name is John Spatz, S-p-a-t-z. And let me reiterate for the record, I'm here for the school board association. And I did pass something around and I assume...oh, there, it's coming around right now. And for time purposes, I've cut about four-fifths of what I originally planned to say out and I'm going to be brief. And there's four things, four things that I want to address real quickly from a real broad perspective. Number one, there's two examples, in Hyannis and Crete, where school districts were sued because they tried to pay a teacher more. In rural Nebraska, we're struggling right now in some cases to bring in math, science, and Spanish teachers, for example. And under the current system, a school district in rural Nebraska can't create an incentive to recruit somebody to come teach in a school district. So in a situation like that, a teacher is

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

Business and Labor Committee
February 07, 2011

harmed. Number two, in the urban areas we have some underperforming schools. And one of the things that wouldn't be allowed under the current system is to create incentives for the best teachers to go to the underperforming schools. And who is harmed in a situation like that? The teachers and the students. Now for both of those two situations, I suspect some of the opposition will say, yes, you can do that if it is bargained. You can bargain to do that. But that's certainly easier said than done. Under the current system, school boards cannot pay certain teachers more to meet a drastic need in the district. And we've got issues with poverty and language issues. Schools cannot pay teachers more under the current system unless it's bargained. Number three, one of the big problems that we see under the current system is there seems to be a statewide strategy to keep the healthcare deductibles very, very low. And as you can see on your sheet, most of them are either \$350 or \$600 deductibles, which is becoming very expensive for school districts, and that is comparable. And a lot of money is going to pay healthcare premiums that should be going to pay teacher salaries. And then, number four, I'm sure you've been paying attention to what is going on over in the Education Committee and you all are aware of the budget constraints for state aid this year. We may have a 0 percent or a .5 percent spending cap for schools this year. On the same token, we may have a 1 percent increase in pension requirements for school districts. Under scenarios like that, we will lose many, many, many teachers across the state of Nebraska if the CIR is not reformed. Now that's not going to be the answer to all of our financial problems, I understand that, but the teacher who is employed right now, who a year from now will not be employed, is not being represented at this hearing. We're going to lose many, many teachers if we don't do something to the CIR. And I see my red light is one so...I have a lot more to say but I would love to answer any questions if you had any. And I do want to thank you, Senator Lathrop and this committee, for doing this. This is very important and the time you're putting into it. I do want to thank you. [LB619]

SENATOR LATHROP: Thanks, John. Thanks. And we've had a couple of meetings, I think you and I have, to talk about the school administrators and I appreciate your point of view. You do have a little problem getting some agreement among the membership in your organization... [LB619]

JOHN SPATZ: Yes. [LB619]

SENATOR LATHROP: ...as to what they want to see. [LB619]

JOHN SPATZ: Correct. [LB619]

SENATOR LATHROP: And so the bill, which would essentially take them out of the CIR, is about all they can agree on. [LB619]

JOHN SPATZ: Yeah. That's right. Yes, and one of the problems that we came up with

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

Business and Labor Committee
February 07, 2011

were the modifications we thought that may make some sense in one way or another, similar to state aid where any tweak or change that we looked at maybe benefited some districts or harmed some districts, really is taking the schools completely out... [LB619]

SENATOR LATHROP: Welcome to Greg Adams' life. [LB619]

JOHN SPATZ: Welcome to Greg Adams' life and all of you. But really, we see there are circumstances where teachers will benefit greatly if we eliminate the CIR. Students will benefit greatly if we don't increase class size and if we don't eliminate shop programs and music programs. Students and teachers will benefit if we eliminate the requirements. [LB619]

SENATOR LATHROP: Okay. Senator Harr. [LB619]

SENATOR HARR: Yeah, I just have a quick question. I'm not sure if this is a...how many...how many people...how many bargaining units are there in the state of Nebraska? [LB619]

JOHN SPATZ: Well, there's approximately 250 school districts. Are you talking about within the school districts? [LB619]

SENATOR HARR: Well, let's just use 250 then. [LB619]

JOHN SPATZ: Okay. [LB619]

SENATOR HARR: I think it's 254 but around there. [LB619]

JOHN SPATZ: Two fifty-four, yeah. [LB619]

SENATOR HARR: And how many have gone to the CIR... [LB619]

JOHN SPATZ: Very few. Very few. [LB619]

SENATOR HARR: ...in the last ten years? [LB619]

JOHN SPATZ: I couldn't tell you. It's a very, very small number, and the reason why is schools know what's going to happen if they go to the CIR. It would be foolish for schools to go to the CIR. [LB619]

SENATOR HARR: So there is a bit of certainty in the CIR though. [LB619]

JOHN SPATZ: There's a lot of certainty in the CIR, and the certainty is that teachers will lose their jobs and wages will continue to go up and class sizes will continue to get

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

Business and Labor Committee
February 07, 2011

bigger. We're going to eliminate programs that schools provide right now. [LB619]

SENATOR HARR: Well, I think that's ad hominem a little. (Laugh) [LB619]

JOHN SPATZ: Okay. Well, the NSEA had said that we'd lose between 1,600 and 2,000 teachers if something doesn't change this year. [LB619]

SENATOR LATHROP: Senator Ashford. [LB619]

SENATOR ASHFORD: Yeah, just...I've been here many years and I've never seen that happen. [LB619]

JOHN SPATZ: Seen what happen? [LB619]

SENATOR ASHFORD: I don't know what you're...I mean there are...the class sizes are smaller now than they were 20 years ago. [LB619]

JOHN SPATZ: Right. [LB619]

SENATOR ASHFORD: The teacher salaries are 42nd or whatever it is nationwide. [LB619]

JOHN SPATZ: Right. [LB619]

SENATOR ASHFORD: That's about where they were. In fact, they got...when I was in the Legislature in the '80s and '90s, I think it got to 36th and now we're 42nd or 44th. So I don't know if historically...I'm not arguing... [LB619]

JOHN SPATZ: Right. [LB619]

SENATOR ASHFORD: ...that if you didn't have the CIR, each school board could make their own decisions, I guess, though I think there would be some question about benefits and that sort of thing. [LB619]

JOHN SPATZ: Uh-huh. Absolutely. [LB619]

SENATOR ASHFORD: But as far as outcomes are concerned, I don't think the outcomes historically are what you're suggesting. Now the only other thing I'd say is that, yes, it would be helpful in certain cases to pay teachers more possibly if they go into low-income areas with language ESL issues. I think that's something not only that can be bargained but something that this Legislature can talk about or think about,... [LB619]

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

Business and Labor Committee
February 07, 2011

JOHN SPATZ: Sure. You bet. [LB619]

SENATOR ASHFORD: ...and it's something I would support. [LB619]

JOHN SPATZ: Yeah. [LB619]

SENATOR ASHFORD: The question really is, is money. I mean... [LB619]

JOHN SPATZ: Yep, absolutely. [LB619]

SENATOR ASHFORD: But I guess my only caveat here, and I'm not disputing your underlying claim that if there was no CIR that school boards could do what they wanted, I'm wondering if the outcomes would have been any different. I mean salaries have gone down relatively. Maybe the health benefits are, as you suggest, higher than other states. I don't know, I haven't seen that data. But I would guess that Nebraska is probably pretty comparable on teacher salaries. And we do compete with other states... [LB619]

JOHN SPATZ: Yes, we do. Yeah. [LB619]

SENATOR ASHFORD: ...for, at least in the urban areas and probably in the rural areas,... [LB619]

JOHN SPATZ: Uh-huh. [LB619]

SENATOR ASHFORD: ...for good teachers. [LB619]

JOHN SPATZ: Uh-huh. [LB619]

SENATOR ASHFORD: Let me just ask one other question. You're representing the school boards, as I understand,... [LB619]

JOHN SPATZ: That's correct. [LB619]

SENATOR ASHFORD: ...and not the administrators. Are you representing the administrators? [LB619]

JOHN SPATZ: No, just the school boards. [LB619]

SENATOR ASHFORD: Just the school boards. [LB619]

JOHN SPATZ: Yep. [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR ASHFORD: Okay. All right, thanks. [LB619]

SENATOR LATHROP: Do I understand that when it comes to the schools, do they...and they try to go through the CIR process, do they go outside the state of Nebraska for comparables? [LB619]

JOHN SPATZ: The bigger schools do,... [LB619]

SENATOR LATHROP: Okay. [LB619]

JOHN SPATZ: ...the Omaha, Lincoln, but the vast majority are compared within the state. And the problem with comparability is it's so...we can't draft legislation that can encompass all the differences between all the districts, between state aid, equalized, nonequalized, levy. [LB619]

SENATOR LATHROP: And that's the problem you have with getting some agreement among your membership over what they'd like to see us do... [LB619]

JOHN SPATZ: Yes. That's correct. [LB619]

SENATOR LATHROP: ...other than take them out of the CIR. [LB619]

JOHN SPATZ: That's correct. And it really does... [LB619]

SENATOR LATHROP: Okay. Thanks, John. [LB619]

JOHN SPATZ: Okay. [LB619]

SENATOR ASHFORD: And let me just...I'm sorry but I do have to make this one last...I agree with you that teachers that work in the difficult...and I'll tell you it's not just Omaha. I mean we work a lot on our truancy initiative with Grand Island, Hastings, Kearney, other communities across the state that are dealing with, you know, difficult issues of poverty and ESL and other related issues. I'm absolutely supportive of paying those teachers more. [LB619]

JOHN SPATZ: Yep. [LB619]

SENATOR ASHFORD: And, you know, if there's a way to do that then we should do it, and maybe we should focus on that issue. What I worry about a little bit is looking at the CIR as the root of all evil, when, in fact, the outcomes for teacher salaries and benefits don't reflect that. I mean they don't reflect that Nebraska is out of whack with other states or...and that's my concern. I've heard this argument for 25 years but no one can ever show me the numbers that somehow Omaha or Nebraska are paying exorbitantly

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

Business and Labor Committee
February 07, 2011

high benefits and salaries. [LB619]

JOHN SPATZ: Okay. Well, I'd be happy...I can visit with you some other time. I sense a need to move on but... [LB619]

SENATOR ASHFORD: And maybe that...do you have data? Well, let me ask this. [LB619]

JOHN SPATZ: Yeah. [LB619]

SENATOR ASHFORD: No. Do you have data that shows that, that Nebraska is out of whack with... [LB619]

JOHN SPATZ: With salaries? No. And one of the arguments I made was that if we could take some of the money that we're putting into these extremely low deductibles and devote it towards salary, we would look a lot better. [LB619]

SENATOR HARR: Well, if I may,... [LB619]

SENATOR LATHROP: Sure. [LB619]

SENATOR HARR: ...isn't that just robbing Peter to pay Paul, because at the end of the day it comes out of their salary one way or another? [LB619]

JOHN SPATZ: Well, not necessarily. If you have young teachers, and one of the things that administrators and school boards have been banging their head against the wall where they have young teachers with a \$350 deductible and they don't meet that deductible, they're still paying for that. That money could be going into their pocket as opposed to going to pay premiums. [LB619]

SENATOR HARR: Well, and maybe we're getting off the beaten path a little bit, but they're still getting insurance... [LB619]

JOHN SPATZ: Uh-huh. [LB619]

SENATOR HARR: ...and they're getting that insurance tax-free. [LB619]

JOHN SPATZ: That's right. Well, the question is, who do you want the money to go to, the insurance company or to the teacher? [LB619]

SENATOR HARR: Well, that wasn't my question. [LB619]

JOHN SPATZ: Okay. What's the question? [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR HARR: My question was, they're getting that money tax-free, that insurance tax-free. [LB619]

JOHN SPATZ: Uh-huh. [LB619]

SENATOR HARR: So it actually increases their salary. Now whether they use it not is up to them and their given circumstances, but it's available there. [LB619]

JOHN SPATZ: Well, right. [LB619]

SENATOR HARR: And I don't know if I've heard any teachers complaining about their insurance. I personally have a wife who works in education and she'll tell you \$600 is too much. [LB619]

JOHN SPATZ: Uh-huh. Okay. Well, okay. (Laugh) [LB619]

SENATOR HARR: So, I mean, if we're going to use anecdotal. I mean, we're 42nd. You look at our surrounding states. Wyoming is 16. [LB619]

JOHN SPATZ: Uh-huh. [LB619]

SENATOR HARR: Chadron State doesn't hold on to any of their teachers. [LB619]

JOHN SPATZ: Right. [LB619]

SENATOR HARR: They all go to Wyoming. [LB619]

JOHN SPATZ: Right. [LB619]

SENATOR HARR: Iowa, 26; Colorado, 28; Kansas, 37th. We slip all the way at 42nd. I don't think we can say, you know, we're escalating, escalating, escalating. It sounds great, I love it. It makes it sound like we've got an easy solution to our budget problem, but when you do comparable to the, you know, school districts around us, our teachers aren't paid very well. [LB619]

JOHN SPATZ: Well, and that's one of the things I'm trying to say, is that we should. If giving... [LB619]

SENATOR ASHFORD: So if we get rid of the CIR then our teachers are going to be paid more? (Laughter) [LB619]

JOHN SPATZ: In...well, just hold on. Just hold on. If the school districts had more ability

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

Business and Labor Committee
February 07, 2011

to address their needs, some teachers would make more, yes. And it's my opinion, if we had more control over the health benefits, the deductibles, yes, I think it would go up but we could put money into medical savings accounts and that money, as opposed to be paying the premiums, could go to salaries. [LB619]

SENATOR ASHFORD: And I don't disagree with that and I...I'm sorry, Senator, go ahead. [LB619]

SENATOR HARR: No, go ahead. No, it's yours. [LB619]

SENATOR ASHFORD: I mean I just...I've heard this for 25 years (laugh) and it always is the teachers really aren't where the business community or others say that teachers are; that they're paying their teachers too much, we're paying them too much, we're paying them too much. But we're not paying them too much. [LB619]

JOHN SPATZ: That's not necessarily my testimony here today. [LB619]

SENATOR ASHFORD: Okay, and I get that. [LB619]

JOHN SPATZ: My testimony is that things could be better for all parties involved if the school districts were to have more control over how this was done. [LB619]

SENATOR ASHFORD: And I think that's a fair comment and maybe there's a way to address that. [LB619]

JOHN SPATZ: There might be. And I realize this is a placeholder. I understand what... [LB619]

SENATOR ASHFORD: And I'm done. I'm sorry, Mr. Chair, (inaudible). [LB619]

JOHN SPATZ: Okay. And I'm sorry... [LB619]

SENATOR LATHROP: No, that's all right. It's...you're struggling with the same two issues. One is our good friends that John represents can't agree on what they want and so it's hard for us to put our hands around whether the solution that you want is workable or something we can massage into new law. Taking the teachers or the, you know, the teachers out of this probably isn't a... [LB619]

JOHN SPATZ: Well,... [LB619]

SENATOR LATHROP: I mean that's just a narrow version of the next two bills. [LB619]

JOHN SPATZ: Right. [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: But the other thing we struggle with, and I'll tell you that we struggle with it in the context of work comp and we struggle with it in the context of our budget, and that's the rising cost of healthcare. Healthcare is exploding. The cost is ridiculous and it's driving a lot of why we're here today. And we talk about it like people are getting wages that aren't fair or that they're out of sync with the private sector. In reality, a lot of what's happened in these negotiations has been eaten up by the increase in premiums, and our employees are getting less money but they're...and their benefits don't really look that much better. They're just going up more in terms of the cost for the political subdivisions. But again, we appreciate your...oh, Senator Smith. [LB619]

SENATOR SMITH: Yes. And, Senator Lathrop, thank you. Mr. Spatz, I...this is a little bit different argument than we've seen in the others and, rather than this being...your support of this one being driven by rising costs, it's really based on having the flexibility to assign the benefits into competitive wages. [LB619]

JOHN SPATZ: Absolutely. [LB619]

SENATOR SMITH: And... [LB619]

JOHN SPATZ: And it's based upon trying to avoid teacher RIFs. [LB619]

SENATOR SMITH: Yes. And this handout that you provided, this is unbelievable in that the health insurance deductibles range from, again, you mentioned this already, \$300 to \$600 or...well, one is \$1,000. But they average about \$700. And do I understand this correctly, in one of these columns it says percent insurance premium paid by the district? I don't see any district that does not...that it's not 100 percent. [LB619]

JOHN SPATZ: There's a few. There are a few. And this is a few weeks old so there may be some settlements since then, since this, but there are a few. There's a 95 percent here for, what is that, Hastings, I think, and I can't...that goes across. There's a few that pay 95 or 90 percent I think. [LB619]

SENATOR SMITH: But definitely the vast majority is 100 percent. [LB619]

JOHN SPATZ: But, yeah, the vast majority are 100 percent and the full family health is around \$17,000 a year. [LB619]

SENATOR SMITH: Yeah. So there are a lot of dollars in there. [LB619]

SENATOR LATHROP: Wait a minute. Senator Ashford, you're recognized. [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR ASHFORD: Just...go ahead, Senator Smith. [LB619]

SENATOR LATHROP: No, I think he was done. [LB619]

SENATOR SMITH: I'm finished. Thank you. [LB619]

SENATOR ASHFORD: The CIR doesn't set health benefits, does it? [LB619]

JOHN SPATZ: It's comparable. [LB619]

SENATOR ASHFORD: No. Does it...it doesn't set...CIR doesn't set health... [LB619]

JOHN SPATZ: But they do compare the contribution, how much the value of that is. [LB619]

SENATOR ASHFORD: Well, but I don't think that's what...in actual fact, I think the wage...they very rarely are impacted by those contributions. [LB619]

JOHN SPATZ: Well, they do compare what the deductible is. [LB619]

SENATOR ASHFORD: Well, what I'm getting at, were they at...well, do they? [LB619]

JOHN SPATZ: Yes. [LB619]

SENATOR ASHFORD: Are you sure? [LB619]

JOHN SPATZ: I'm pretty sure about it. [LB619]

SENATOR ASHFORD: And they adjust the wages based on that? [LB619]

JOHN SPATZ: That's all in the same pot. It all accounts for... [LB619]

SENATOR ASHFORD: Well, no, do they adjust, though? In your experience, do they adjust the wages based... [LB619]

JOHN SPATZ: The wages are comparable and the deductible is comparable. [LB619]

SENATOR ASHFORD: But I...okay. Well, I think the facts are that they don't adjust the wages based on the deductibles but it may be a subject of bargaining but, in fact, they... [LB619]

JOHN SPATZ: It is a subject of bargaining. [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR ASHFORD: But they don't...the CIR does not make an order on deductibles, as far as I know. I mean maybe I could be...I could stand corrected. [LB619]

SENATOR LATHROP: Well, we have Mr. McGuire coming up here. [LB619]

JOHN SPATZ: There will be people, yeah, the attorneys that practice in this... [LB619]

SENATOR ASHFORD: But what I'm trying to get...what I'm trying to get at is that the...what I'm trying to get at, I don't think it has much effect on the wage orders that are entered by the CIR. [LB619]

JOHN SPATZ: Okay. [LB619]

SENATOR ASHFORD: But what I'm getting at is if...it is those insurance benefits I think are relatively independently determined, aside from what the CIR does or doesn't do. Those are also the same insurance benefits that all the administrators get, are they not? [LB619]

JOHN SPATZ: Yeah. Yep, usually. Yep. Yep. [LB619]

SENATOR ASHFORD: Okay. All right. And it's usually the administrators that negotiate these contracts, are they not? [LB619]

JOHN SPATZ: No. No. No, not...it's usually the board. Usually it's a negotiation subcommittee on behalf of the board. [LB619]

SENATOR ASHFORD: And the administrators aren't involved. But those benefits apply across the board to all employees. [LB619]

JOHN SPATZ: Yes, they do, to all employees. And it is a mandatory subject of bargaining though. [LB619]

SENATOR ASHFORD: It's a mandatory subject of bargaining, but I don't believe... [LB619]

JOHN SPATZ: And maybe, maybe we're miscommunicating. [LB619]

SENATOR ASHFORD: No, I'm sure it's my fault, but maybe someone on the other side can... [LB619]

JOHN SPATZ: Yeah, and I don't practice before the CIR. I know there's some people, I'm sure, who would like to... [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR ASHFORD: Well, I just don't think...I guess my answer is I think those health benefits...Senator Lathrop is more spot on here, that the cost, the healthcare costs have risen independently... [LB619]

JOHN SPATZ: Yes. [LB619]

SENATOR ASHFORD: ...of collective bargaining, quite frankly. [LB619]

JOHN SPATZ: Oh, absolutely. Yes. [LB619]

SENATOR ASHFORD: And that the wages are not determinable...are not impacted significantly by what those health benefits... [LB619]

JOHN SPATZ: But... [LB619]

SENATOR ASHFORD: ...and certainly the pension benefits. [LB619]

JOHN SPATZ: But at the end of the... [LB619]

SENATOR ASHFORD: I'm talking about the CIR orders. [LB619]

JOHN SPATZ: Yeah, okay, but at the end of the day the school only has so much money, and if they're spending \$17,000 on a full family health insurance, that's money that's not going to teachers. [LB619]

SENATOR ASHFORD: I understand that. I get it. But it's not...the CIR has very little impact on that, is what I'm telling you. [LB619]

JOHN SPATZ: Okay. [LB619]

SENATOR ASHFORD: And I could be wrong but someone can correct me if I'm wrong, but I believe the CIR doesn't have much impact on that. [LB619]

JOHN SPATZ: And maybe we'll have to visit about this because maybe I'm not understanding. [LB619]

SENATOR ASHFORD: Okay. [LB619]

SENATOR LATHROP: Senator Carlson. [LB619]

SENATOR CARLSON: Thank you, Senator Lathrop. We are 42nd in teacher salary at \$44,957. You don't know the answer to this. If you do, I'll fall off my chair. [LB619]

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

Business and Labor Committee
February 07, 2011

JOHN SPATZ: Okay. [LB619]

SENATOR CARLSON: But Wyoming has got \$54,602. Does Wyoming's salary include benefits? [LB619]

JOHN SPATZ: I doubt it. I don't know. [LB619]

SENATOR CARLSON: Does our salary include benefits? [LB619]

JOHN SPATZ: No. [LB619]

SENATOR CARLSON: No. I don't know how many of the...I don't know how many of the other states, but certainly if they have a different health plan that is a less expensive plan then they're going to have a higher average. [LB619]

JOHN SPATZ: Sure. Sure. Absolutely. [LB619]

SENATOR CARLSON: And that's an important factor. The other thing that I don't quite understand, it's nice if you can afford it but why are we encouraging small classes? We can't afford it. [LB619]

JOHN SPATZ: Uh-huh. [LB619]

SENATOR CARLSON: Thank you. [LB619]

JOHN SPATZ: Is that a question or... [LB619]

SENATOR CARLSON: No, I just... [LB619]

JOHN SPATZ: Okay. [LB619]

SENATOR CARLSON: ...I wanted to get my two cents (inaudible). [LB619]

JOHN SPATZ: Okay. [LB619]

SENATOR LATHROP: Once in a while we get to make a statement. [LB619]

JOHN SPATZ: No, no, I'm not complaining. That's fine. [LB619]

SENATOR LATHROP: Okay. Any other questions or comments? All right. Thanks, John. [LB619]

JOHN SPATZ: And again, thank you very much for your time. I appreciate it. [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Yeah. [LB619]

MIKE DULANEY: (Exhibit 37) Senator Lathrop, members of the committee, my name is Mike Dulaney, M-i-k-e D-u-l-a-n-e-y. I'm the executive director for the Nebraska Council of School Administrators. And, Senator Lathrop, you hit it right on the nail when you said membership is not agreeing on what the solution is. That's exactly it, and I can speak for my group and I know that Mr. Spatz has had the same problem. Our members do not agree on what the right solution might be. They can pinpoint certain problems but it's difficult to come up with a solution, a magic bullet that's going to really take care of it all. Our three organizations--the NSEA, school boards, and administrators--have worked together on many, many issues over the years and we have come together on 90 percent. I'm going to use that number because we have. We have come together to help solve the problems that we faced. One of those is health insurance. I don't know if you know this but the Educators Health Alliance, the EHA, is the health plan that all school districts and ESUs, except three, just three, are under. So we're all under the same plan. Our three organizations come together to co-manage that health plan. That's very unusual if you look nationwide, very unusual. So we do work together. Now most recently one of my members came up with a concept that we thought we would run by NSEA to see if it would be palatable to them. We thought it was a reasonable solution, and we also stressed that it was a short-term solution. We were not looking for a permanent fix to the CIR but a temporary solution, and that would be if you look at the arrays, and I'm going to...I do have a handout for this item or for this concept, and I see I'm already in the yellow, but when this comes around you'll the one side is an explanation of the idea and then the other is an actual comparability study array, so you can see how school districts might look in one such array. But the idea is to take a percentage of the comparable number that would otherwise be 100 percent that a district would have to comply, and of course the idea is that you're at least \$1 over the midpoint. And so the concept might be to say, instead of 100 percent, 95 percent or 90 percent or whatever percent might be agreeable. That's an idea and the idea is to simply bring down the number the school district would otherwise be obligated to be responsible for and dummy down that number for a short period of time until the economic times are better, the state aid is looking better, and we can get back to normal. So we did bring that idea forward to the NSEA and, to their credit, they were there with us. They listened very intently on the idea and that's where it sits at this point. [LB619]

SENATOR LATHROP: Very good. Thanks, Mr. Dulaney. Senator Harr has a question for you. [LB619]

SENATOR HARR: Thank you, and I'll be quick. You give a sample comparability study and you have on here schools, days, base salary, total compensation, and I guess I looked at this previously also that had similar information, and I guess my question is,

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

Business and Labor Committee
February 07, 2011

what is...I don't know where this information came from. [LB619]

MIKE DULANEY: The information I'm providing you? [LB619]

SENATOR HARR: Well, let's start, yeah, this information. [LB619]

MIKE DULANEY: Yes, this came from the business manager at Crete Public Schools. [LB619]

SENATOR HARR: Okay. So you don't know how accurate these numbers are, you don't... [LB619]

MIKE DULANEY: Oh, I believe that they're accurate based on the fact that they are within this array. And so I have every reason to believe they're accurate. [LB619]

SENATOR HARR: Well, okay, so let's start with the first one, Schuyler. I assume that's public schools. [LB619]

MIKE DULANEY: Yes. [LB619]

SENATOR HARR: Base salary is \$30,850. How do you know that to be true? Have you seen where this number came from? [LB619]

MIKE DULANEY: No. No, Senator, I haven't. [LB619]

SENATOR HARR: Okay. [LB619]

MIKE DULANEY: Would have to verify that. [LB619]

SENATOR HARR: Okay. And so that would be true with York, Nebraska City. You're going off of someone else's information. [LB619]

MIKE DULANEY: Right, Crete Public Schools' information, uh-huh. [LB619]

SENATOR HARR: Okay. And you don't know where they got that information. [LB619]

MIKE DULANEY: Well, again, I assume they get it because they're in this array. They would have to know these numbers. [LB619]

SENATOR HARR: Yeah. And again, that's just an assumption. [LB619]

MIKE DULANEY: Yeah. Yeah. [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR HARR: Okay. [LB619]

SENATOR LATHROP: All right. Thanks, Mr. Dulaney. I think that's it. [LB619]

MIKE DULANEY: (Exhibit 38) Okay, I do have one other handout that I wanted...and this particular sheet does explain this concept that we were putting forth. [LB619]

SENATOR LATHROP: Okay. And the page will pass that around to us. Thanks. [LB619]

MIKE DULANEY: Thank you. [LB619]

SENATOR LATHROP: Anyone else here in support of LB619? How about those who care to testify in opposition? And how many people would that include? Looks like two people in opposition. Okay. Welcome. [LB619]

JESS WOLF: Thanks, Senator Lathrop and members of the committee. My name is Jess Wolf, J-e-s-s W-o-l-f. I'm the president of the Nebraska State Education Association and I'm here representing my 28,000 members in opposition to LB619. Quite simply, LB619 is a bill looking to solve a problem that doesn't exist. I know you heard from proponents that there is a problem but not from where I sit. And you've had information today about the number of cases that have been brought before the CIR and from the K-12 school systems in the last three years. It amounts to less than one half of 1 percent. The average K-12 teacher salary in the state, as Senator Ashford has been pointing out, is still ranking 42nd, appears that it might be dropping to 43 this year. Again, the problem doesn't seem to be a problem that exists in relationship to there being an over amount of salary going to our teachers. Local associations have reached agreement with their boards. Obviously, our low ranking among states hasn't caused local associations to seek improvements from the CIR. I will tell you that, having had negotiated for over 25 years that, it was mentioned earlier on a couple of the other bills, that the first question that everybody asked themselves is what happens if I go to the CIR. If you don't think every negotiating team that my association represents doesn't ask the same question, you're sorely mistaken. That's exactly what we ask, exactly the same question. Nor have our agreements resulted in windfall salary increases for education employees. My members do take into account the local financial situation. In fact, I'm going to tell you that one of the earlier bills we talked about today, I think it was LB555 with the SCATA and the SCEA situation, you need to know that the 11 percent recommendation that came back from the Special Master, that the SCEA actually proposed to the school or to the college association that they would accept 6.5. When it comes back from the Special Master, what has to happen is an agreement. They wouldn't accept the agreement. They insisted on going to the CIR and eventually on to the Supreme Court. I will tell you that the people I represent live and raise their families in those communities across the state. They have an interest in what happens in those communities. Perhaps more importantly, they also pay their taxes and, more

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

Business and Labor Committee
February 07, 2011

importantly, they spend their income on the main street in those same communities. I've heard some concerns about predictability. I think you've covered that well enough today so I won't go into it. To totally remove educational employees from the CIR statutes is a knee-jerk reaction to those false concerns raised by the employers. To totally restrict public education employees from having a venue to use for fair resolution of differences is clearly the wrong way to go and, in fact, I think it's un-American. And I will tell you that the 2,000 employee figures that we're talking about here has nothing to do with the CIR. It comes from the \$140,000 cut in education that's going to occur if the proposal that's on the table right now goes through. That's where the 2,000 teachers come from. So I would ask you to definitely postpone LB619. I will try to answer your questions or some of the other questions you've had earlier, if you'd like. [LB619]

SENATOR LATHROP: Okay. Anyone have any questions for Mr. Wolf? I see none. Thanks for your testimony. [LB619]

JESS WOLF: Okay. Thank you. [LB619]

SENATOR LATHROP: We appreciate your waiting and coming in at 6:30. Welcome back. [LB619]

MARK McGUIRE: Yes, thank you, Senator Lathrop. Mark McGuire, M-c-G-u-i-r-e, general counsel for the NSEA. Senator Harr, you were asking good questions. Let me help you a little bit with the numbers here. These numbers tell me nothing, and I deal with CIR comparability, salary schedules, all that stuff literally every day of my life. What's missing here is any information as to either the FTE, the full-time equivalent faculty, but more significantly, what's known as the staff index factor. Ninety-nine-plus percent of the school districts in Nebraska have a pay scale called an index salary schedule. The teachers from a school are placed on the schedule. The schedule is a vehicle to distribute money. It doesn't create money; it moves money around. I have no doubt but that at Schuyler they have 185 days, that's relevant because in the CIR land you adjust up or down, but that's nothing here. Base salary of \$30,850, and a total compensation of \$8,157 million. Okay. In total compensation, (a) I need to know, is that gross money, health insurance premium plus salary, or is it just compensation, and if so, how do you get there without knowing what their schedule is like, without knowing what a sample faculty would look like on that schedule? And so you have these numbers and that's all they are is just a bunch of arithmetic, if you want to know the truth. The mean is what it means: average of the numbers above. Median was the one that falls in that midpoint. Comparability, which normally in CIR language is approximate midpoint, would be the average of mean and median, and just eyeballing it here it looks like it would be about right. Once again, it doesn't tell you anything because it doesn't tell you to whom it's distributed. They're just numbers on a piece of paper. I'd be happy to respond to any questions. [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Are there any questions in view of the testimony? Senator Ashford. [LB619]

SENATOR ASHFORD: Just on the deductibility issue that was raised, the deductibles are so low that it's okay that the wages are low or whatever. I think that was the argument that was being made, but there that somehow the CIR causes these deductibles to be lower than the private sector or... [LB619]

MARK McGUIRE: No, no, no. No, no, no. My experience is that deductibles are part of what's negotiated, because you are looking at plan A that's a \$500 thing and then the plan B, you know, just trying to figure out the costs. What's significant, they go hand in hand in a kind of a different sense. We're talking about people that don't make very much money, you know, that have a starting pay here of, well, we've got a whole list of them here. The first one is \$30,850. Well, to that person, the difference between a \$250 deductible and a \$600 deductible and applied to a family... [LB619]

SENATOR ASHFORD: It's not a percentage. Those are whole numbers, so you have to compare it to the... [LB619]

MARK McGUIRE: Yeah. Well, and that money is a big...that amount is a big deal to them, and that's so, yeah, it enters in and... [LB619]

SENATOR ASHFORD: It's negotiated but it doesn't necessarily have an impact on wage. If you go to the CIR, which it doesn't happen very often,... [LB619]

MARK McGUIRE: If you go to the...yeah, which is not very often, and our prior testimony was we go nine times in eight years. The total cost of benefits is determinable there, you know, as is the compensation component to reach what is known as total compensation. That's there, but the CIR isn't going to dictate. They'll... [LB619]

SENATOR ASHFORD: Well, they're not going to change the deductible or... [LB619]

MARK McGUIRE: They focus in on the... [LB619]

SENATOR ASHFORD: Wages. [LB619]

MARK McGUIRE: Bingo. Wages and the total amount. And that's what this visual aid, for whatever it's worth, is trying to do, is to show that the medium amount of money is generated there. How it's divvied up is not shown here, so... [LB619]

SENATOR ASHFORD: Okay. Thanks, Mr. Chairman. [LB619]

MARK McGUIRE: Yeah. [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Any other questions? I see none. Thanks, Mark. [LB619]

MARK McGUIRE: Thank you. [LB619]

SENATOR LATHROP: (Exhibits 39, 40, and 41) Anyone else here in opposition to LB619? Anyone here in a neutral capacity? We will...come on up, Senator Larson, to close. And while we're doing that or while you're getting settled in, I'm going to let the record reflect that we have letters of opposition from two organizations and one in support. The Farm Bureau has written a letter dated February 7 of 2011, signed by Craig Head in support of LB619. And we have two opposed. That would be IBEW Local 1597 and 1483. And again, we appreciate them writing us letters and indicating their position. Senator Larson to close. [LB619]

SENATOR LARSON: Thank you, Senator Lathrop and members of the Business and Labor Committee. Real quick, to address Senator Ashford's question, and we've made a lot about it with Mr. Spatz and Senator Ashford. The CIR does have an impact on the deductible of insurance premiums. It is comparable through their array, which in turn affects premiums that the school districts have to pay. That, in turn, impacts salaries, because if schools have to spend more on insurance, they have less money to do...or to pay teachers on the salaries. Hence the reason, since it is comparable, that it drops us in salaries. I'd like to close with eliminating the CIR will allow for rural Nebraska and underperforming districts to recruit the quality of teachers that it needs to keep a high quality of education in those areas. School districts must be involved in the discussion of meaningful CIR reform as we move forward if we want to continue to keep quality education in the state of Nebraska. [LB619]

SENATOR LATHROP: Thank you, Senator Larson. Senator Harr, you're recognized. [LB619]

SENATOR HARR: Just quickly, this wouldn't get rid of collective bargaining if we got rid of...so... [LB619]

SENATOR LARSON: No, it doesn't. We would turn back to the Nebraska Teachers' Professional Negotiation Act. [LB619]

SENATOR HARR: Okay. So would collective bargaining not exist? [LB619]

SENATOR LARSON: No, collective bargaining would exist... [LB619]

SENATOR HARR: Okay. [LB619]

SENATOR LARSON: ...under the Nebraska Teachers' Professional Negotiation Act.

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

Business and Labor Committee
February 07, 2011

[LB619]

SENATOR HARR: Fair. Okay. Collective bargaining exists. You would... [LB619]

SENATOR LARSON: Under my estimation of that, that is what it would fall back to. [LB619]

SENATOR HARR: Okay. And... [LB619]

SENATOR LARSON: Do you want a copy of it? [LB619]

SENATOR HARR: I'll take your word on that. My issue isn't with that. My issue is if you still have collective bargaining...and, by the way, I do think we need to pay STEM teachers more. I think we need to pay, you know, teachers who choose to go to underperforming schools more. But if we still have collective bargaining, it still has to be negotiated that those teachers can make more or less. [LB619]

SENATOR LARSON: But it would, from my understanding, it would...obviously, we are pulling them out of the CIR. There would be more of a mediator basis as is outlined in this. [LB619]

SENATOR HARR: Well,... [LB619]

SENATOR LARSON: And, therefore, it would give the school boards more,... [LB619]

SENATOR HARR: But currently the... [LB619]

SENATOR LARSON: ...how should I say, more options than what the CIR currently offers. [LB619]

SENATOR HARR: Okay. But currently they could negotiate for that, couldn't they? Do you agree with me? [LB619]

SENATOR LARSON: In term...negotiate for what? [LB619]

SENATOR HARR: For what I was talking about, higher wages for STEM and/or... [LB619]

SENATOR LARSON: They can negotiate for higher wages but at the same time, as I made the argument, right now it goes back to the insurance deductibles if you want to move it there,... [LB619]

SENATOR HARR: But we're not... [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR LARSON: ...because the school districts only have so much money to spend total, and as we are spending so much money in that area, because deductibles are comparable, they just do not have the money to spend on higher wages. It's an either/or. We can increase the wages if we increase the deductibles. And for a young man like me, for somebody who wanted to go into the teaching field, had I wanted to, I don't need a \$350 deductible on my personal plan because I won't even meet that this year. It hurts the younger teachers at this point. [LB619]

SENATOR HARR: Okay. But you're comparing apples to oranges. What I am getting back at, leave insurance out of this... [LB619]

SENATOR LARSON: You can't leave insurance out of it when you're talking about CIR reform. [LB619]

SENATOR HARR: No, for this hypothesis we're leaving insurance out of it, okay? This perfect world, we're going to leave insurance out of it, okay? [LB619]

SENATOR LARSON: But... [LB619]

SENATOR HARR: Now what I'm saying is, insurance is going to be the same whether we have the CIR or whether we have this board you're talking about. There's still, if the CIR is eliminated, there's still collective bargaining and there's still negotiations that go on. [LB619]

SENATOR LARSON: There will still be negotiations, yes. [LB619]

SENATOR HARR: Which is what we have today. It's just that it's a different board. Yes or no? [LB619]

SENATOR LARSON: It's different because you have to pull in the whole array of what they use to determine teacher salaries, and insurance is part of that. [LB619]

SENATOR HARR: Okay. [LB619]

SENATOR LARSON: So for us to pull it completely out doesn't make sense,... [LB619]

SENATOR HARR: Okay, well, let's... [LB619]

SENATOR LARSON: ...because if we're going to use collective bargaining then...I mean we're obviously going to go round and round in this argument, Senator Harr. [LB619]

SENATOR HARR: Yeah, so then just answer my questions. Let's start there then. If

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

Business and Labor Committee
February 07, 2011

there's collective bargaining in both, correct? Yes or no? [LB619]

SENATOR LARSON: As I said, we would return back to the Nebraska Teachers' Professional Negotiation Act. [LB619]

SENATOR HARR: So there would be collective bargaining in both, you'd agree with me. [LB619]

SENATOR LARSON: We would return back to this, yes. [LB619]

SENATOR HARR: Thank you. Feel much better to get that answer out of you. All right. Now if there is collective bargaining and there currently is collective bargaining, you could bargain...currently you can still bargain for extra money for STEM and ESL and underperforming schools. Is that correct? Is there anything that prevents that? [LB619]

SENATOR LARSON: Prevents bargaining for what? The ESL and... [LB619]

SENATOR HARR: ESL, STEM, any of that, lower performing schools. There's nothing that prevents a school board from negotiating with a school union on that, is there? [LB619]

SENATOR LARSON: A school board can negotiate with a union as they see fit right now, yes. [LB619]

SENATOR HARR: Okay. So I guess my issue is, if we have this board or this board, you're still going to have teachers, labor versus management, at the end of the day. [LB619]

SENATOR LARSON: Yes, you will have labor versus management. [LB619]

SENATOR HARR: Okay. [LB619]

SENATOR LARSON: But currently, through the CIR, the way that it is...the...what it takes into account, the insurance, the salary, all of it together, at this point hurts... [LB619]

SENATOR HARR: And the mediator wouldn't take that into account? [LB619]

SENATOR LATHROP: That's up to the mediators. There's more than one mediator, from my understanding of the Nebraska...I think one, is one appointed by the school...what? All right, but... [LB619]

SENATOR HARR: Okay. That's all I have. Thank you. [LB619]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Okay. I think that's it. Senator Larson, thanks for your time,...
[LB619]

SENATOR ASHFORD: Spirited discussion. [LB619]

SENATOR LATHROP: ...spirited discussion and your thoughts on LB619. That will close the hearing on LB619 and bring us to Senator Nelson and LB664. And while Senator Nelson is approaching the table to testify, can I see a show of hands of people who intend to testify or would like to testify on LB664? Okay. Senator Nelson, please. Welcome. [LB619]

SENATOR NELSON: Thank you. Can I suggest the absence of a quorum? [LB664]

SENATOR LATHROP: Wait just one second. Are we good to...? I'm not sure. I've never had, you know, I mentioned this before. Now I've had three people that had to leave because of family commitments, which is why I was trying to move this along today. Why don't you wait. Yeah, I've had three people that have had to leave the committee because of family commitments. While we're waiting, after this is LR29CA. How many people intend to testify on that? How many people are testifying on both? Okay. You may proceed. [LB664]

SENATOR NELSON: Thank you, Chairman Lathrop. This is familiar ground to me because Appropriations meets here and I'm sure I'm last on these two bills because I've developed the stamina to go until 8:00 or 9:00 p.m., as we have in Appropriations. Would that be correct? [LB664]

SENATOR LATHROP: Sure. [LB664]

SENATOR NELSON: All right. (Laughter) My name is John Nelson, spelled N-e-l-s-o-n. I represent Legislative District 6 in midtown Omaha and I'm here today to introduce LB664. The hour is late and there are many individuals wishing to testify on this matter so I'll keep my remarks brief. LB664 abolishes the CIR and prohibits the government of Nebraska from engaging in collective bargaining. The collective bargaining process in Nebraska and elsewhere has led to out-of-control spending, higher taxes, unfair benefits, and has outraged many of the people in Nebraska. These facts became apparent to me when I was walking door to door last fall during my campaign for reelection. No issue was brought up to me more often than the out-of-control costs for government employees and consistent inequity in decisions by the CIR. Most of my constituents have had enough of their property taxes going up to pay for wages and benefits that appear to be unreasonable in light of our economic conditions. LB664 addresses the concerns of many Nebraskans. I introduced this legislation on my own volition and without being approached by any individual or special interest group other

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

Business and Labor Committee
February 07, 2011

than the voters in my district. This is a serious proposal which deserves your serious consideration. While the subject is controversial, I remind everyone that the proponents of this legislation are as honorable and sincere in their beliefs as the opponents are in theirs. It is my belief that committees should not hold bills of a serious nature in committee. Even if you may not agree with the policy advocated by LB664, I encourage you to advance this bill to the floor for debate by the full body. If there are technical problems with the bill, I would be happy to work with the members of the committee and with committee counsel to correct whatever problems may exist before debate on General File. If the committee wishes to advance two competing bills to the floor, I encourage you to do so. All 49 members of the Legislature deserve to be heard on this subject. I thank the committee for the opportunity to open and I look forward to working with each member of this committee to fix this broken system on behalf of the people of Nebraska. And I would be happy to answer any questions that you may have at this time. [LB664]

SENATOR LATHROP: Thank you, Senator Nelson. Any questions? [LB664]

SENATOR ASHFORD: None other than, John, just one question. How does the CIR increase property taxes? [LB664]

SENATOR NELSON: I've been watching the testimony this afternoon, Senator Ashford, and it's the end result of the CIR decisions that appear to place the burden on city councils and counties to have to increase taxes in order to comply with the orders of the CIR. [LB664]

SENATOR ASHFORD: I mean the only reason I would just...and I...it may be so, I don't know, I don't have all the data from the last 40 years, but it seems to me, at least in Omaha, the property tax levy is I think 29 cents, something like that, and I don't think that's dramatically changed over the last 20 or 25 years. In fact, it's probably gone down. But, you know, I think that...you...and, quite frankly, I think you have raised the ultimate issue here and that is what has the CIR helped or harmed... [LB664]

SENATOR NELSON: Uh-huh. [LB664]

SENATOR ASHFORD: ...or is it sort of in the middle? And I think that's what we're hearing also testimony on today. And so I think, in the end, whether a bill goes out or doesn't go out, I think it's our job as a committee to determine, number one, has the CIR resulted in higher taxes or significantly enough higher taxes that it deserves to be changed or thrown out or whatever, or is it just do we need a more efficient system to resolve industrial disputes or disputes between employees and employers. And I think there lies the issue. And I ask...so for me, if someone other than just telling me that it...not you but if the people who deal with this every day in the operational sense, you know, did the pensions go up, the fire pensions go up in Omaha because of the CIR?

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

Business and Labor Committee
February 07, 2011

Well, clearly not, because the CIR has no jurisdiction to set pensions. So I guess those are the kinds of things that encourage me to...though I am, I will say this and I'll...I am convinced that everyone has said that we need a much more efficient, cost-effective system to resolve these issues, but whether or not the CIR, in and of itself, has raised property taxes, I just...I don't know that. And I think that's the kind of answer to that question I think that would be helpful. But... [LB664]

SENATOR NELSON: Well, certainly the CIR, per se, has not raised taxes. It's the perception of the...what's going to happen if issues do go before the CIR. And so that puts an additional burden on government to try to avoid it again. [LB664]

SENATOR ASHFORD: And that's a fair comment, Senator Nelson. I just am waiting for someone to prove to me that the CIR has increased taxes. But anyway, thanks. [LB664]

SENATOR LATHROP: I see no other questions. And since you're opening on the next bill, do you want to open on the next bill now? [LB664]

SENATOR NELSON: I would prefer to do one bill at a time. [LB664]

SENATOR LATHROP: Okay. Okay. [LB664]

SENATOR NELSON: Senator, thank you for the opportunity though. [LB664]

SENATOR LATHROP: That's fine. And so you'll be around to close on this one... [LB664]

SENATOR NELSON: Certainly, yes. [LB664]

SENATOR LATHROP: ...since you're opening on the next one. [LB664]

SENATOR NELSON: Yes. [LB664]

SENATOR LATHROP: All right. Thanks, Senator. Those in support? And I might add, since we're getting late into the day, if you intend to testify in support, why don't you move towards the chairs in the front row so that we can kind of keep track of who's left to testify. Welcome. [LB664]

JIM KRIEGER: Thank you, Chairman Lathrop and members of the committee. I am Jim Krieger, K-r-i-e-g-e-r, vice chair and CFO of the Gallup Organization, and serve as chairman of the Greater Omaha Chamber of Commerce. I'm here today on behalf of the Omaha Chamber and the Nebraska Chamber of Commerce and Industry in support of LB664. We thank Senator Nelson for bringing this to the committee. The Omaha Chamber has been contemplating and discussing this issue for a long time. Chairman

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

Business and Labor Committee
February 07, 2011

Lathrop and Senator Ashford, you were kind enough to visit the chamber board this year. Thank you very much. The chamber board members greatly appreciated that. To say that the concern about the issue has been growing among the chamber members and the public would be a significant understatement. From the start, we knew that any proposal we would support would have to be meaningful, significant, and comprehensive, and would have to cover all government bodies and come under the purview of the Industrial Relations Act and the State Employees Collective Bargaining Act. We have come to the firm conclusion that this approach offered by Senator Nelson is the best approach. Some have called this extreme. Some say it would lead to chaos. We do not agree. In fact, it would align more closely with most of Nebraska's employee constituency. States have widely differing policies on collective bargaining for public employees. Virginia and North Carolina explicitly prohibit collective bargaining for state employees or local employees, and they prohibit strikes. South Carolina and West Virginia are among those states that have no statutes providing for public employee collective bargaining and treat that as a definitive prohibition. Texas strictly prohibits collective bargaining agreements for public employees with one exception: Local police and firefighters can collect signatures to get a measure on the ballot for the voters' approval. A number of other states do not have any statute for providing collective bargaining as well. So while LB664 might not provide for a mathematical average model, it's not certainly extreme but bold certainly, but not certainly extreme. Now there is a misconception that this is a proposal to slash salaries and cut benefits and lay people off--it is not; that this is a conservative attempt to "get rid of labor unions because they, the conservatives, want everyone to work for minimum wage"--it is not. And those who would look to this as such an opportunity would learn quickly that quality employees require quality compensation. This proposal is to allow state and local governments to do their jobs. It is a proposal to restore the authority and the responsibility of elected officials to determine appropriate compensation levels for public servants. LB664 better aligns responsibilities in local elected government and management. We've come to the point where governing bodies bow to the judgment of the CIR even before the dispute is taken to the commission. Recently, the city of Lincoln set its firefighter compensation based on what members of the city council calculated would be required by the CIR. This is not good public policy and it's even worse management. Additionally, it is unfortunate the system under which we presently operate has so soured the relationship between the public and our public servants, especially as to law enforcement and firefighters. This outcome is to be predicted by removing the decision from our local officials. [LB664]

SENATOR LATHROP: Mr. Krieger, we'll ask you to wrap it up. [LB664]

JIM KRIEGER: Okay. This is the time for meaningful, significant, comprehensive reform, and LB664 will accomplish that. Thank you very much for your time. I would entertain any questions. [LB664]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Senator Harr. [LB664]

SENATOR HARR: So I have less of a comment than a question. Quality work requires quality compensation. We only get \$12,000 a year. (Laughter) [LB664]

JIM KRIEGER: I agree. I think... [LB664]

SENATOR HARR: (Inaudible) remember that when there's a constitutional amendment. [LB664]

JIM KRIEGER: I think that's low, Senator. [LB664]

SENATOR ASHFORD: I'm sure Jim is for raising our salaries. [LB664]

SENATOR HARR: Oh, good, good, good, good. [LB664]

JIM KRIEGER: Not about cutting salaries at all. I believe people should make more than they currently make. I'm for and we are for putting the control and the responsibility back in the elected officials' hands... [LB664]

SENATOR HARR: And I understand. [LB664]

JIM KRIEGER: ...so that they can manage what we ask them to manage. [LB664]

SENATOR ASHFORD: Jim, could I follow up? [LB664]

SENATOR LATHROP: Certainly. [LB664]

SENATOR ASHFORD: First of all, thank you for all you do and what your company does for our state, and I sincerely mean that, as you know. But what I'm struggling with is, what is the right remedy? I think that there does need to be systemic change...systematic...systemic change in how we address these issues. In all my research, and certainly the chamber has taken a very active role in helping the city with the Bates Commission in coming up with what are the facts in dealing with the pension problems that we have had in Omaha, resulting primarily from two things: one, the underfunding over a period of 30 years, but also the dramatic decrease in the value of the assets of a pension resulting from the, you know, the recession and its related economic impact. But so what I'm struggling with is, as Steve and I said that day at the chamber was, let us have a chance to work out a plan that will work and that will address some of these issues, and that's what we're engaged in doing. So I assume by supporting this measure you haven't seen the measure that Steve and I and Senator Utter and others are working out, so you stand open to looking at that, I assume, knowing what you do professionally. (Laugh) [LB664]

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

Business and Labor Committee
February 07, 2011

JIM KRIEGER: Actually, Senator, I've been here and witnessed all day... [LB664]

SENATOR ASHFORD: Yeah. [LB664]

JIM KRIEGER: ...and have read excerpts from all the bills. [LB664]

SENATOR ASHFORD: But you haven't seen what Senator...what I'm getting at is Senator...Bill Harding and others and I and Senator Lathrop have been working on for six months, pretty much solid, to come up with something that addresses the issues. You haven't seen that or any part of it or even any inkling of it. So what I'm suggesting to you is, and I know the answer is yes, but are you willing to keep an open mind on that? [LB664]

JIM KRIEGER: Oh, I think we have an open mind. With what we've seen to date, we formed a conclusion that LB664 would be correct. [LB664]

SENATOR ASHFORD: Fair, but we haven't seen what we've addressed. I guess so I would ask you to, as the chamber does, I know tries to do, is keep an open mind and we are going to have something else that you haven't seen, so I think it's important that we do that and think about that. But I...that's enough. That's enough. Thanks. [LB664]

SENATOR LATHROP: All right. Senator Smith. [LB664]

SENATOR SMITH: Thank you, Senator Lathrop. Mr. Krieger, again as Senator Ashford said, thank you for all the good things that you and your company do in Nebraska and for the community. Do you have collective bargaining at your company? [LB664]

JIM KRIEGER: No. [LB664]

SENATOR SMITH: Okay. And it seems to me that Gallup always ranks very high as one of the most desirable places to work and to be a part of, and that must mean that you're making certain your employees receive competitive wages and benefits and that you have high retention. So that is possible out there without a bargaining unit. [LB664]

JIM KRIEGER: Yes. We believe we are competitive and we believe that it's leadership and management that helps develop engagement of the employees. [LB664]

SENATOR SMITH: Thank you. [LB664]

SENATOR ASHFORD: Let me... [LB664]

SENATOR LATHROP: Senator Ashford. [LB664]

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

Business and Labor Committee
February 07, 2011

SENATOR ASHFORD: Sorry, Mr. Chair, but this... [LB664]

SENATOR LATHROP: That's all right. No, you don't need to apologize. [LB664]

SENATOR ASHFORD: ...this is important stuff and I think Jim makes good points here. But if we...I think you made your point, and rightly so, that what you are striving for is giving elected officials the ability to manage their employees in a more efficient, fair or whatever manner, and I think that's a fair comment. I'm wondering what's really stopped them up till now. I mean the collective bargaining process goes on in the private sector all the time in Omaha and throughout the country, and it doesn't...I mean it continues to go on. It seems to me that is it really...is the issue really, and this is what I'm really trying to understand, is the issue the CIR or is it the lack of judgment by elected officials over the years in making decisions on the local level that have resulted in underfunded pensions, is that for example? Which is really the elephant in the room. That's what caused...I mean what...I'm trying to...when we try to get at the root cause of what we really need to address in our state, what do we need to address? Is it we need to give some sort of competency test to people who run for office, which maybe we should do, or that run companies or...and that's what happens from their board of directors. So I don't know the answer but, I mean, it's a serious question. What has caused the problem that we're in? Is it the CIR or is it lack of political will and courage and in underfunding pensions? [LB664]

JIM KRIEGER: I don't know. I don't know about the funding of the pension but I do know if I were an elected official and I have 70 percent of my budget for my department is compensation or related expense and 30 percent is stuff, okay, that if I can't manage that 70-some percent in its totality I have a very difficult time managing my budget that the community has elected me to do. And so I think there's a separation between expectation and authority to complete expectation. I'm not going to pass judgment on the past, but the outcomes that are being achieved have not been positive financially. [LB664]

SENATOR ASHFORD: On wages, I would suggest that the wages that are paid to public employees generally over the last 25 or 30 years have not been out of sync but that the pensions have driven...over the last three years, have created a crisis in the city of Omaha. That's what has driven this and I...this sort of financial sort of crisis that we're in with public employees. So I don't know if getting rid of the CIR is going to solve the pension problem but...so I guess is it the chamber's position then that we're better off without having public employee unions at all? Is that what you're saying? [LB664]

JIM KRIEGER: It's the chamber's position that we support LB664. [LB664]

SENATOR ASHFORD: But does that...you're getting rid of...you're suggesting that the

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

Business and Labor Committee
February 07, 2011

CIR be abolished. Is that...how do you solve those disputes then? If there is any kind of a labor dispute, it just doesn't get resolved in any...? This is not a gotcha question. I'm just trying to understand. [LB664]

JIM KRIEGER: Well, I think about 90-95 percent of Nebraska businesses resolve their disputes before they go anyplace else. [LB664]

SENATOR ASHFORD: Right. [LB664]

JIM KRIEGER: And I think partly the CIR being available out here is, excuse me, an escape, okay,... [LB664]

SENATOR ASHFORD: Okay. [LB664]

JIM KRIEGER: ...gives you and I, for example, this opportunity out here, which if it didn't exist, perhaps you and I as reasonable people would figure this out. And, yes, the employees are valuable and, yes, they perform a valuable service. [LB664]

SENATOR ASHFORD: And I know you're not saying they aren't. [LB664]

JIM KRIEGER: Yeah. [LB664]

SENATOR ASHFORD: I understand you're not saying they are. I'm not...there's no ulterior motive to any of this. You're taking a position that you believe is the correct one and I respect that. I'm just trying to see if abolishing the CIR is going to make our property taxes go down, our ability to manage the city better--I don't know--or if it's something else--if its defined benefit plans are out of whack. [LB664]

JIM KRIEGER: Yes, they are. [LB664]

SENATOR ASHFORD: They are. The CIR doesn't have much to do with that so I don't know if we're going to solve that. But I appreciate your candor, Jim. [LB664]

JIM KRIEGER: Yeah. Thank you. [LB664]

SENATOR LATHROP: Looks like that's it. Thank you for your testimony and taking the time to come down here today. [LB664]

JIM KRIEGER: Thank you very much. [LB664]

MARK SCHORR: Obviously, it's my third time up. I'll be brief. I should have probably said it all when I was up before. My name is Mark Schorr, S-c-h-o-r-r. I'm appearing today on behalf of the Lincoln Chamber of Commerce. Obviously, as I've said, I've

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

Business and Labor Committee
February 07, 2011

testified on two other bills today, LB482 and LB564. It is the position of the chamber that we need substantial and meaningful relief, but in the absence of a bill coming out of the committee for substantial and meaningful reform of the CIR, we would join the State Chamber and the Omaha Chamber in believing that LB664 would not be the worst thing in the world because there are 10 or 12 states out there, we heard some of them tonight, that don't have public employee collective bargaining and it has not been total chaos in those states. But obviously, our first choice would be substantial and meaningful reform, and we believe the time is now to give some guidance to our commissioners at the CIR with some definitions and some reform that takes part of this out of the formula that we have now that is literally a unique, one-of-a-kind formula in the nation. That's all I have. [LB664]

SENATOR LATHROP: Very good. Mr. Schorr, we're going to deliver on that. This committee will come up with the meaningful change that people are asking for without having to resort to eliminating the CIR and collective bargaining in the state. [LB664]

MARK SCHORR: Thank you. [LB664]

SENATOR LATHROP: So I appreciate your comments today. [LB664]

MARK SCHORR: And I should have added that to my earlier testimony... [LB664]

SENATOR LATHROP: That's fine. [LB664]

MARK SCHORR: ...but I didn't know you wanted testimony on more than one bill. [LB664]

SENATOR LATHROP: No. Thanks so much. [LB664]

MARK SCHORR: Thanks. [LB664]

SENATOR ASHFORD: And if I just might add one thing to my friends in the Omaha Chamber, when we came in front of the chamber we didn't give them...we didn't say it would be done on an exact date, and nor did they tell us that we had to have it done by an exact date. So it's a work in progress. (Laugh) [LB664]

MARK SCHORR: And I will not be back on LR29CA. I said what I said. [LB664]

SENATOR LATHROP: Thank you. Thank you. I think we've got it. Anyone else here in support of LB664? You may come forward. [LB664]

JERIE QUINTY: (Exhibits 42 and 43) Hi. Thank you for letting me come here. This is my first time ever testifying. [LB664]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Let me tell you, you can come here any time you need to. [LB664]

JERIE QUINTY: (Laugh) Well, my name is Jerie Quinty and I'm from the Nebraska Tea Party Patriots. I'm one of the state coordinators. Jim Mason is the other one. He was here earlier but he bailed on me. [LB664]

SENATOR LATHROP: Can you spell your last name for us. [LB664]

JERIE QUINTY: Sure. It's Q-u-i-n-t-y. [LB664]

SENATOR LATHROP: All right. And you may... [LB664]

JERIE QUINTY: My first name is J-e-r-i-e. [LB664]

SENATOR LATHROP: Very good. [LB664]

JERIE QUINTY: Anyway, I'm just coming here today because one of the...a lot of the things that have been going on in the testimony and stuff have been touched upon, but one of the things that as a tea party member that we see in our country right now is the rapid growth of public sector employment and wages, and the burden on the private sector because of that, and that they're rapidly outpacing in benefits and wages and basically creating problems with budgets and actual states just becoming insolvent over trying to support this heavy public sector. And I was looking over some stats in the Bureau of Labor Statistics in the 2010 release and I was really surprised to see that public sector workers were 36.2 percent and the private sector was 6.9 percent in union employees, and local government workers had the highest union membership of 42.3. Earnings for a union member, weekly medium, was \$917, and for a nonunion-represented person was \$717. The government...well, I'm already running out of time here, so I'll guess I'll just get down to the point. The problem is that the government is growing too fast for us to support and it's becoming a burden on the everyday taxpayer. The CIR doesn't afford us the local flexibility to be able to deal with our budgets on a local level. The taxpayer goes in and they shut the doors when they negotiate stuff. We have no redress when we don't like it as a taxpayer going in with our city council members. You could say, well, we elect them, but we still don't have any redress or any ability to say, no, we are not going to raise our taxes and you're not going to make us do this, and we're the ones paying your salaries. And we feel that's really wrong that we're in that position. And we feel that, unfortunately, collective bargaining is part of the problem for public employees. I personally saw the Platte Institute had a good model out on voluntary collective bargaining and they laid out a few things and it's in my notes in here that basically they said that the local control should be...over city employment should be basically on their wages at the local...sorry, I'm

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

Business and Labor Committee
February 07, 2011

nervous...the local level and we should...they should be allowed to negotiate if they want to, okay, and that compensation should be conducted in public, in front of the taxpayer, not behind closed doors. And we should be able to repeal any employment agreement in a special election. And we just feel like that in order to get our budgets under control, we have got to abandon this idea of collective bargaining or forced collective bargaining, should I say, because it's just too burdensome on the taxpayer. [LB664]

SENATOR LATHROP: Okay. Thanks, Jerie. Any questions? I don't see any. You came all the way from McCook? [LB664]

JERIE QUINTY: Yep, I did. [LB664]

SENATOR LATHROP: Well, thanks for doing that and for spending all day with the Business and Labor Committee. [LB664]

JERIE QUINTY: Yeah, and I think CIR repeal is actually an honest answer to a lot of our problems in Nebraska. [LB664]

SENATOR LATHROP: Oh, we appreciate that you're sincere in your comments. [LB664]

JERIE QUINTY: Right. Thanks. [LB664]

SENATOR LATHROP: The next supporter. I can't tell with the movement if there are supporters? Okay. Are there folks here in opposition to LB664 who care to testify? [LB664]

SENATOR ASHFORD: Has Mark been excused? I don't know if...no. (Laugh) [LB664]

SENATOR LATHROP: Pardon me? Oh. [LB664]

SENATOR ASHFORD: All the lawyers are leaving. I'm just kidding you. [LB664]

SENATOR HARR: It's all about the (inaudible). [LB664]

SENATOR LATHROP: Hello. [LB664]

JULIE DAKE ABEL: Good evening, Chairman Lathrop and members of the committee. I will try and keep my testimony short. My name is Julie Dake Abel, D-a-k-e A-b-e-l. I am the executive director of the Nebraska Association of Public Employees, AFSCME Local 61. We represent the majority of state employees, as well as support staff at the state colleges and some county and city employees. I am here to testify in opposition to

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

Business and Labor Committee
February 07, 2011

LB664. It was about some 80 years ago that the Industrial Relations Act was created in the state of Nebraska. Why? Because it was needed. It was needed so employees had the right to collectively bargain with their employer. It was needed so employees could obtain respect and dignity in the workplace. It was needed so there was workplace safety for state employees who were and still are not covered by OSHA. It was needed so employees could only be terminated with just cause. It was needed so employees could have grievance rights if their rights were being violated. It was needed so labor-management meetings could be formed and so that the union and its stewards could work out issues with management so they do not escalate. It was needed so women could have equity in the workplace, to resolve issues and settle disputes. It is still needed. With antigovernment groups rising up, with higher workloads and employees expected to do more, the economy still in trouble and many people experiencing layoffs and other financial stress, it is clearly still needed. I have never seen the stress on people as high in my lifetime as it is now. So not having a way to reasonably collectively bargain and settle disputes is clearly something that would create many more disputes on many different levels. Without collective bargaining there would be no reasonable way to settle disputes. While we have been to the CIR, it has been with a couple of bargaining units and it has been mostly the state that has appealed the Special Master decision to the CIR. We do everything we can as an organization and our members to avoid going to the CIR. In fact, this past fall when we negotiated our state contract, we were able to reach a fairly quick agreement, as our members realized the budget problems of the state and are not taking a pay raise in the next fiscal year. When our members negotiate contracts, they act in a reasonable manner and bargain in good faith, which is how it should be. To take away the right of the employee to collectively bargain strips away the basic right of the employees. On behalf of the 11,000 employees we represent, I would urge you to vote in opposition of LB664. [LB664]

SENATOR LATHROP: Thanks, Julie. Any questions? [LB664]

SENATOR ASHFORD: Julie, just...you're taking...you're flat going forward. You're taking no increase. You've negotiated... [LB664]

JULIE DAKE ABEL: Yes, we have. [LB664]

SENATOR ASHFORD: And where do you work? You work for the state so... [LB664]

JULIE DAKE ABEL: I actually work for the union. [LB664]

SENATOR ASHFORD: You work for the union. [LB664]

JULIE DAKE ABEL: Yes. [LB664]

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

Business and Labor Committee
February 07, 2011

SENATOR ASHFORD: But state employees generally are on defined contribution plans, is that correct? [LB664]

JULIE DAKE ABEL: Yes, state employees are on a defined contribution plan. [LB664]

SENATOR ASHFORD: Right. [LB664]

JULIE DAKE ABEL: And that is something that is not negotiable. It's set out in state statute for the state employees. [LB664]

SENATOR ASHFORD: Right. And then...and prior to this year, in the last biennium, do you recall what the pay increases were in the last biennium? [LB664]

JULIE DAKE ABEL: In the last biennium we did have one bargaining unit that did go through to the CIR because the state had appealed the decision. [LB664]

SENATOR ASHFORD: Okay. [LB664]

JULIE DAKE ABEL: And in that unit there were raises that were at various levels based on comparability but they did take a cut in their benefits, and those were individually based upon comparability as well. For some of the other employees, I believe it was 2, 2.5 percent. [LB664]

SENATOR ASHFORD: All right. And it's flat going forward. [LB664]

JULIE DAKE ABEL: Yes. [LB664]

SENATOR ASHFORD: Okay. Thank you. [LB664]

SENATOR LATHROP: I think that's it. Thanks, Julie. [LB664]

JULIE DAKE ABEL: Thanks. Uh-huh. [LB664]

JOSEPH BROWN: My name is Joseph Brown, B-r-o-w-n. I'm the vice president of ACLU-Nebraska and a union worker. The ACLU's position on this bill and the one that follows it is fairly straightforward. We oppose both bills on the grounds that we believe them to be unconstitutional. The First Amendment provides free association and it's long settled law that includes the right to unionize and bargain collectively. Now, of course, even the First Amendment can be set aside if there's sufficient showing of compelling state interest, but it's fair to note that numerous courts, including the U.S. Supreme Court, have made rulings that suggest that proposals considerably less Draconian than this do not meet the standard for constitutional muster. So we believe this is both wrong and bad law. It's wrong to select a single group of people and remove

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

Business and Labor Committee
February 07, 2011

from them a core constitutional right. It is bad law because, in fact, the most likely upstart of this is to waste state resources in a court case in defending it. My personal feelings about this issue are a bit more emotional. I mean, when someone is convicted of a crime, we temporarily remove some of their constitutional rights. And in order to remove even a small fraction of those rights permanently, you have to commit a particularly egregious crime. The framers of this bill want to remove core constitutional rights from teachers, from social workers, from office workers, from policemen, from firemen, and I guess I want to know, what did we do? What particularly egregious crime did we commit that makes us less worthy of citizenship than, say for instance, a state legislator? And how can someone stand before an elected body and say, let's single out a single group of people to remove a core constitutional right from them? In short, the ACLU finds these positions to be bad law. I find them unconscionable. [LB664]

SENATOR LATHROP: Thank you, Mr. Brown. Any questions? I see none. Thank you for coming down. And I appreciate many of you who are testifying now have been here for a long time, as have we, but we appreciate your hanging in there. [LB664]

BRUCE TRAUTWEIN: Senators, I appreciate this time. My name is Bruce Trautwein, B-r-u-c-e T-r-a-u-t-w-e-i-n. I'm the president of the Greater Lincoln District NAPE/AFSCME Chapter, Local 61. I worked as an IBEW electrician for 15 years. Because of the labor market, I came to work for the state. I've looked at...what I looked at when I came to work for the state was not a salary but the security of employment that would be stable. I've been an active member, representing the 5,000 to 6,000 members in the greater Lincoln area. We are solidly against LB664. This would take away the security public employees have worked long and hard to achieve. Please do not advance this backward device of legislation. [LB664]

SENATOR LATHROP: Thank you, sir. [LB664]

BRUCE TRAUTWEIN: Thank you. [LB664]

SENATOR LATHROP: Are there any questions? I see none. Thank you for coming down and again for your hanging in there. [LB664]

BRUCE TRAUTWEIN: Thank you. [LB664]

WALTER RADCLIFFE: Senator Lathrop, members of the committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e. I'm appearing here on behalf of the State Troopers Association in opposition to LB664. The only thing new that I would have to add is I find this rather ironic in that many of the proponents are avid supporters of Nebraska's right to work law and I would submit that LB664 violates Nebraska's right to work law, among the constitutional provisions that the ACLU raised. I'd be happy to answer any questions. [LB664]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Are there any questions for Mr. Radcliffe? I see none. [LB664]

WALTER RADCLIFFE: Thank you. [LB664]

SENATOR LATHROP: Thank you for your testimony. [LB664]

LYNN REX: Senator Lathrop, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We do oppose this measure. We do think it's unconstitutional. In addition, we have a concern that even though most of our cities in this state are not unionized that there's a right for collective bargaining. We think that's fundamental. I'd be happy to respond to any questions that you might have. [LB664]

SENATOR ASHFORD: Just generally, Lynn,... [LB664]

SENATOR LATHROP: Senator Ashford, you're recognized. (Laugh) [LB664]

SENATOR ASHFORD: Thank you, Mr. Chairman. (Laughter) What was that? (Laughter) [LB664]

SENATOR LATHROP: It's a long day. [LB664]

SENATOR ASHFORD: Yeah, it has been a long day but it's been a great day and especially with everybody on all sides of this have done a great job, in my view, because we're trying to get to this. We're trying to understand, is it the CIR that's creating this financial crisis or is the CIR a potential solution and how do we get there. And maybe you could comment on that generally. I assume that you believe it's something that we can reform and make better and still get at responsible financial decisions on the local level. [LB664]

LYNN REX: Well, our board strongly believes that the CIR needs significant reform and that's what I think Senator Lathrop's group has been working on, is significant reform. And I don't think that we would support anything less than significant reform. But that being said, I also think that there's a line where one doesn't cross and the constitution is one line. Another one is just basic rights for folks to basically voice their concerns to their employers. And we, again, the overwhelming majority of the 532 cities, I would say roughly 490 of them do not have unions, but that doesn't mean that they shouldn't have the right to do that if they choose to do that at some point. [LB664]

SENATOR ASHFORD: The ones that are not, and help me out here, the ones that are on...there's a pension or there's a health...did I mix this up with teachers? I think I may have. But is there...there is a health plan that many cities are under that's the same

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

Business and Labor Committee
February 07, 2011

plan. Is that... [LB664]

LYNN REX: No. [LB664]

SENATOR ASHFORD: Or is that a pension? That's pension. [LB664]

LYNN REX: No, we have...that would be pension. The cities of the first class, effective 1983-84, negotiated to basically, with firefighters and police officers, to switch from a defined benefit plan to a defined contribution plan. [LB664]

SENATOR ASHFORD: And how many cities of the first class are there? [LB664]

LYNN REX: Thirty. There are 30 cities of the first class and... [LB664]

SENATOR ASHFORD: And are all those unionized? [LB664]

LYNN REX: No. And those are municipalities with a population of 5,000 and up... [LB664]

SENATOR ASHFORD: Okay. [LB664]

LYNN REX: ...so we're not really dealing with great big cities but those are cities of the first class. Then, of course, there's Lincoln and Omaha and they're under defined benefit plans. [LB664]

SENATOR ASHFORD: Correct. But of the 30 first-class cities, some of those are unionized, some are not. [LB664]

LYNN REX: That's correct. [LB664]

SENATOR ASHFORD: But they're all under the same pension plan. [LB664]

LYNN REX: That's correct. However, there's a case involving the city of Bellevue and that's still in the court system... [LB664]

SENATOR ASHFORD: Okay, involving that. [LB664]

LYNN REX: ...in terms of whether or not they've got the authority to go to a defined benefit. [LB664]

SENATOR ASHFORD: Okay. All right. And on insurance, there's not a...each individual city in your group... [LB664]

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

Business and Labor Committee
February 07, 2011

LYNN REX: No, there is not. [LB664]

SENATOR ASHFORD: ...has their own plan. [LB664]

LYNN REX: Oh, I mean there are a number of...Blue Cross Blue Shield I'm sure has a lot of municipalities in the state. There are other providers as well, United HealthCare and many others. So there's not one uniform plan. The schools are different. The schools I think do fundamentally have a very high penetration of every school district in the same plan. [LB664]

SENATOR ASHFORD: Okay. Thank you, Lynn. [LB664]

LYNN REX: You're welcome. [LB664]

SENATOR LATHROP: I just have one, maybe a point to make, and that is you're the executive director of the League of Municipalities? [LB664]

LYNN REX: Yes. [LB664]

SENATOR LATHROP: Tell us, when you come here today and say my organization, our organization is not in favor of repeal or of LB664 but you want to see reform of the CIR, tell us who the League is. [LB664]

LYNN REX: The League is a nonprofit organization. We represent municipalities from across the state of Nebraska. We represent 99 percent of the urban population, urban being anybody even living in a village, in other words, an incorporated city or village. We are...the policies of the board are set by a 15-member board which is elected by our membership every year. There are 12 elected officials on that board and, under our bylaws, that would include the mayor of Lincoln and the mayor of Omaha automatically. The other ten members are from cities of the first class, second class, and villages. And then we also have three representatives representing city manager administrators, utility personnel, and city managers. [LB664]

SENATOR LATHROP: So these are the people on the front line dealing with the negotiations that, if you get to impasse, end up before the CIR. [LB664]

LYNN REX: That's right, and also many of them who are not involved in a negotiation, per se...to be really fair about it, that's really not what happens. In those cities that...in most of the cities in the state of Nebraska, they get information from the League of Nebraska Municipalities that provides them comparability information. We don't sell that to anybody. That's just...we actually don't even have it in our office. It's a contracted service that we have. But if you're a league member, other than Lincoln or Omaha, because Lincoln and Omaha have a lot of other complications, you get that information.

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

Business and Labor Committee
February 07, 2011

The purpose of that is to say to municipalities, here's how you can meet or at least try to meet the statewide mandate of comparability. So the purpose is to stay out of the CIR. The purpose is to provide fair compensation to employees, because it's our belief that municipal employees should not be a training ground. We are dealing with important issues: when you turn on the faucet to have safe drinking water, when you turn on the lights to make sure that that is safe. So municipal employees should not be a training ground. By the same token, we don't believe that they need to be the highest paid individuals in the world either--but they're not. So we're looking at basically fair compensation. But our plea to this committee has been for a number of years--and that's why we so appreciate the time and effort of you, Senator Lathrop, Senator Ashford and others on this very important issue--is to have some definitive standards so that municipal officials can really know whether or not they're meeting the test. In other words, if you're going to play monopoly, what are the rules? We want to know what the rules are. We want them in statute. We want consistency and predictability, and we think that can be had with significant reform in the CIR, and that's why we strongly support that. We think that there needs to be a very serious impasse procedure put in place and we think that that is with the CIR, and we think collective bargaining is a fundamental right that should be there. [LB664]

SENATOR LATHROP: Very good. [LB664]

SENATOR ASHFORD: Right, and just...and there are, just so to be clear, there's comparability data that you gather from across the state from your cities,... [LB664]

LYNN REX: Absolutely. [LB664]

SENATOR ASHFORD: ...small and large,... [LB664]

LYNN REX: Absolutely. [LB664]

SENATOR ASHFORD: ...I assume, or wage data and other fringe benefit data that you keep. [LB664]

LYNN REX: Yes. [LB664]

SENATOR ASHFORD: And that's...and the 30 cities that are first-class cities, you have comparability data on them. [LB664]

LYNN REX: Yes. [LB664]

SENATOR ASHFORD: And I assume that that comparability data...and some of those are unionized and some are not, correct? [LB664]

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

Business and Labor Committee
February 07, 2011

LYNN REX: That's correct. [LB664]

SENATOR ASHFORD: And that comparability data is utilized in formulating wages for those that are unionized and those that are not, I assume, both. [LB664]

LYNN REX: That is correct. [LB664]

SENATOR ASHFORD: Okay. [LB664]

SENATOR LATHROP: I think that does it. Lynn, thank you very much... [LB664]

LYNN REX: Thank you. [LB664]

SENATOR LATHROP: ...for your testimony... [LB664]

LYNN REX: Thank you for your time. [LB664]

SENATOR LATHROP: ...and for your work on our working group. [LB664]

LYNN REX: Thank you. Thanks for your time. [LB664]

LARRY SCHERER: (Exhibit 44) Good evening, Senator Lathrop. My name is Larry Scherer, S-c-h-e-r-e-r, and I'm the director of bargaining and research for the Nebraska State Education Association. I help about 275 locals negotiate contracts every year or every two years, hopefully they're two years. But the main point I want to make is you have my testimony. It's basically the bargaining we do is voluntary. People choose to create a bargaining unit. They choose to request bargaining. And they have been very cognizant of the condition of the state and will take that into consideration in the coming year. In no stretch of the imagination will this bill take us out of the revenue shortfall that we're looking at. And I do also have some serious problems, I guess, with taking away a right to get together, negotiate, talk about problems, the right to associate for this purpose. So you have my testimony and I know it's tired. I've sat on the other side as a staffer and it's a long day. Congratulations. Thank you for your work. [LB664]

SENATOR LATHROP: All right. Thanks, Mr. Scherer. Any questions? I don't see any. We seem to have fewer questions the later it gets. Are there any other persons here to testify in opposition to LB664? Anyone here in a neutral capacity? And with that, we'll have Senator Nelson approach to close on LB664. And then I got some things to put in the record when you're done. [LB664]

SENATOR NELSON: All right. Thank you, Senator Lathrop, members of the committee. I really do appreciate your taking the time and the questions here, even though we are getting a little late. I do want to refute some of the contentions by the opposition that this

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

Business and Labor Committee
February 07, 2011

is an unconstitutional bill. There is nothing in our constitution that says that public employees have the right to collective bargain. They have the right to organize. This bill does not do away with unions. They still can organize. We're simply saying here that they cannot be a bargaining agent for public employees. And as far as a fundamental right to collective bargain, I would disagree with that. Federal employees, for instance, cannot strike, and the Supreme Court, so far as I know, has never overturned the state decisions to in several instances, specifically in North Carolina and in Virginia, the states' decision to prohibit collective bargaining by the state or its governmental subdivisions with its employees. I think that would be the extent of my closing comments. You've heard a lot of testimony today. You have a lot of work ahead of you certainly if you're going to try and substantially reform the CIR. I wasn't here. I was testifying on another bill at 1:30 and my understanding is that your bill, Senator Lathrop, is a work in progress yet. [LB664]

SENATOR LATHROP: It is. It's a shell bill so that when we get to a solution, that I am confident we will get to with more meetings and more work and more time,... [LB664]

SENATOR NELSON: Uh-huh. [LB664]

SENATOR LATHROP: ...that we'll incorporate it into my bill and it will come to the floor and enjoy what I expect to be a great deal of broad-based support. [LB664]

SENATOR NELSON: Very good. We appreciate that and certainly will hold you to that. If it proves that you simply cannot come up with anything, then I have a clear solution here for you in LB664. [LB664]

SENATOR LATHROP: It's clear. It's crystal-clear, Senator Nelson. Before you get away, John. [LB664]

SENATOR NELSON: I'm sorry, was there a question? [LB664]

SENATOR ASHFORD: He has to come back right away, too, doesn't he? [LB664]

SENATOR LATHROP: Yeah. And you're the next bill too so... [LB664]

SENATOR NELSON: All right. [LB664]

SENATOR LATHROP: But Senator Smith has a question for you on the last... [LB664]

SENATOR NELSON: All right. And then you had something you wanted to put in the record. [LB664]

SENATOR LATHROP: I do. We're still on LB664 and Senator Smith has a question for

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

Business and Labor Committee
February 07, 2011

you. [LB664]

SENATOR SMITH: Okay. Thank you, Senator Lathrop. Senator Nelson, just...I don't want to play gotcha. I'm really honestly trying to understand. I just...the exchange you just had with Senator Lathrop, you said that if we cannot have meaningful reform that comes out of the Executive Committee and the discussion here, you have a solution, which would be LB664 or LR29CA. Are you saying then that would be an acceptable alternative, to have meaningful reform that would fall short of that total repeal? [LB664]

SENATOR NELSON: Am I agreeing that if we... [LB664]

SENATOR SMITH: Yeah. [LB664]

SENATOR NELSON: ...have meaningful reform? [LB664]

SENATOR SMITH: Or do you still want to see a parallel bill come out that's total repeal? [LB664]

SENATOR NELSON: Senator, I'd simply say if the committee can't come up with reasonable agreements on what we can do to substantially reform the CIR and the way it operates and, in the minds of our constituents, come up with a more equal playing field, let's...in their minds then, then I would say let's do away with the CIR. I might add if we do away with the CIR, collective bargaining, if you look at the fiscal note we would save about \$320,000 a year, I believe, I mean and that would be over...that would be the second year, a little less during the first year. So there would be a savings to the state of Nebraska. But the theory is and my argument is that at this time, in light of all the testimony we've heard and all the problems that we have with the CIR and the difficulties, that perhaps it might be simpler to just send LB664 out to the floor where we can discuss it there. [LB664]

SENATOR SMITH: Thank you. [LB664]

SENATOR LATHROP: John, I'm still confident. (Laughter) We're going to work on it. But I do appreciate, because I do hear you say that if we can't come up with something as a committee, that this is your answer. [LB664]

SENATOR NELSON: Right. That's correct. [LB664]

SENATOR LATHROP: (Exhibits 46, 47, 48, 49, 50, 51, 52, 53, and 54.) Okay. Fair enough. Before we close this hearing, I want the record to reflect that I have a letter of support from Marjorie Souder from Wilber, Nebraska, and then letters in opposition from IBEW Local 763, from Change to Win, from IBEW 1483, the General Drivers and Helpers Local 554, IBEW 1597, IBEW 1536, and the Omaha Police Officers'

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

Business and Labor Committee
February 07, 2011

Association. And with that, we'll close the hearing on LB664 and go to the bill we've been looking for all night, which is the last one, which brings us again to Senator Nelson and LR29CA. [LB664]

SENATOR ASHFORD: It's a very short bill, too, Senator Mr. Chairman. [LR29CA]

SENATOR LATHROP: Welcome once again, Senator. [LR29CA]

SENATOR NELSON: Thank you, Senator Lathrop and members of the committee. I wish you would have left off the last few words there about this being the final bill. I thought maybe this was the solution as far as you were concerned. LR29CA is a constitutional amendment which bans the government of the state of Nebraska and all political subdivisions from engaging in collective bargaining. If passed by the Legislature, the people of Nebraska would have an opportunity to vote on this proposal in the general election of 2012. So this might be appealing to the committee as well. And I won't repeat what I said before, but if you find that you have an insurmountable problem here and you want to make things a little simpler and you don't feel that it should be debated on the floor through LB664 and passed by the members of our Legislature, then you can send this out so that we can vote to send it out to the people of Nebraska and let them make the decision. I'm not going to repeat any of my previous comments but I encourage you to put this proposal before the people of Nebraska so they can have a vote on this issue pivotal to their interests. Thank you, Chairman Lathrop and members of the committee, and I will answer any questions that you may have. I'll sit still here. [LR29CA]

SENATOR LATHROP: Okay. Any questions for Senator Nelson? Doesn't look like it. Are you going to stay to close, I expect? [LR29CA]

SENATOR NELSON: I will. I will stay. [LR29CA]

SENATOR LATHROP: Okay. Thanks, John. [LR29CA]

SENATOR NELSON: Thank you. [LR29CA]

SENATOR LATHROP: First proponent or person in support of LR29CA? Welcome back. [LR29CA]

JIM KRIEGER: Thank you, Chairman. Chairman Lathrop and members of the committee, I am Jim Krieger, K-r-i-e-g-e-r, vice chair and CFO of the Gallup Organization, and serve as chair of the Greater Omaha Chamber of Commerce. I'm here today on behalf of the Omaha Chamber and Nebraska Chamber of Commerce and Industry in support of LR29CA. Again, we thank Senator Nelson for bringing this to the committee. This is another means for achieving the result of LB664. If this is a matter to

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

Business and Labor Committee
February 07, 2011

be voted on by the people rather than the Legislature, we believe that the question should be very clear and LR29CA would provide a clear decision for the voters. Thank you very much. [LR29CA]

SENATOR LATHROP: Thank you, Mr. Krieger. Senator Harr. [LR29CA]

SENATOR HARR: Don't look so excited. [LR29CA]

SENATOR LATHROP: No, that's not it. I'm just...my brain is fried and I almost forgot your name, so (laughter) how's that? [LR29CA]

SENATOR HARR: Okay. I'll accept that. I guess what's used to...I've had a tough time with this CIR because I can see what's wrong with it. I just don't see what a lot of this reform has done to solve the underlying issue. And I thought what you said when you testified last time about if you were in charge and 70 percent of your labor or your costs for labor, you'd want to be able to control that, and that really resonated with me. And I understand that and that was kind of...I think they call it an oh moment, Mutual of Omaha does at least. But my question with this is, it takes away, if it says government shall not be allowed to engage in collective bargaining, it takes away the ability, if I'm the government, to negotiate in the manner in which I choose, because now I can't...even if I wanted to get into collective bargaining, I can't do it, and so I can't control my labor. You know, I don't want to be spending all my time as a city councilman, whatever, negotiating wages individually. There's a reason collective bargaining exists and it's to the advantage of both sides. It provides certainty and it provides it in a quick manner. And I guess I'd just ask you to address that issue of why would you turn around in the very next bill and limit the ability of a city council to negotiate? [LR29CA]

JIM KRIEGER: Well, Senator, you stated your opinion as to how you would like to manage the situation yourself. I think there would be a lot of people that would disagree; that they would enjoy, love the opportunity to manage the individuals one by one by one to gain the greatest productivity and pay them commensurately for the tasks that they perform. I think that would be...that's an honor of a manager. [LR29CA]

SENATOR HARR: Fair. But you're eliminating the ability of a city council to say, you know what, we don't want to do it on a one-by-one basis; we want to do collective bargaining. And under this, you wouldn't be allowed to. So you're doing the very opposite of what you talked about last time of being able to control labor in the way that you so choose. [LR29CA]

JIM KRIEGER: I would hope that the...I don't know how the city council and all those work. I would hope that they wouldn't manage my day-to-day, all my people under their thumb; that they would instill that confidence in me to do so. [LR29CA]

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

Business and Labor Committee
February 07, 2011

SENATOR HARR: All right. Well, thank you very much for coming down here. I really do appreciate your testimony and it has been very informative, at least for myself. So thank you. [LR29CA]

JIM KRIEGER: Yes, it has. [LR29CA]

SENATOR LATHROP: Senator Ashford. [LR29CA]

SENATOR ASHFORD: Jim, and I...let me...I'm going to try to be not verbose here, but you remind me of 1987, when we were younger, and Mike Harper came down here representing the chamber of commerce and Terry Moore came down here representing the AFL-CIO, the local Omaha AFL-CIO, and we were losing potentially ConAgra and we were losing a bunch of other companies, and we were coming out of a recession, obviously, in '82 and a farm crisis. And labor and management came down here and Mike Harper, as are you doing. And I really...this is great that you're here because, quite frankly, it hasn't happened that much. I think it's important that someone of your stature in the community, as Mike Harper had when he was...in '87 came down and said, okay, here's the deal; the deal is we're going to have to address the problems of employment, losing companies, losing corporations because of our tax environment in the state. And the Legislature reacted in a positive way with the passage of LB775. It was a labor-management coalition, collaboration, basically put together by the chamber of commerce. The Omaha Chamber really was...I can't remember if...I guess McMillan (phonetic) was still there, and it was a joint enterprise and it worked. And I'm not suggest...I disagree with you on your support of the bill, but I don't disagree with you at all on your identification of the problem. And so it's good you're here. But we used to sit, when Mike would come down, we'd sit in a room over here with Vard Johnson and Kay Orr and hammer at each other, and Dave Landis would come in and quiet everybody down and, you know, and we got a bill. And I think, quite frankly, we saved the employment base of the state to some extent, or at least in non-ag-based employment base of the state in 1987 with the help of the private sector and the labor unions. That's always stuck in my mind and that it seems to me that we are a state of...I was struck by the gentleman that testified about why he came over and worked for the state. He was an IBEW guy and he wanted secure employment and he wanted to have a good job. That's great stuff. I mean that's why we are a great state, because we want to work, we are workers, we're working people. My issue is not what you're suggesting because if you don't get something else out, if you don't see something else in front of you, then throw it out because it's just not working, and I get that. But, one, I think we are going to address the issues and, two, what I'm trying to get at and I did serve on the CIR a long time ago and it was a little different context, it was different. The rules were generally the same but the decisions weren't the same. There does need to be change. Is it the CIR that's causing this issue or is it just lack of good judgment on elected officials or anybody else working in government? I mean we see that only 30, you know, 30 out of

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

Business and Labor Committee
February 07, 2011

500 cities, I guess as to what Lynn said, are actually unionized; that the state employees are taking no wage increase going forward. The Bates Commission which the chamber was involved in was extremely helpful, an exceedingly well-done study on pensions. Had we had that information ten years ago, five years, not the chamber's fault, it's the elected officials' fault to get that kind of information. It took Bob Bates to get a group together, including David Brown. They did a great job and they identified what the pension issues were in the city of Omaha. I don't think anybody ever knew that before that came out. So I guess what I'm suggesting, in deference to your position on these bills, is thanks for coming because the more guys like you come down here that run companies and make decisions, the better it is for all of us, number one; and number two, I think a collaborative approach between labor and business has always worked best in the state; and thirdly, I want to find a solution that really gets at the problem and I'm not sure abolition or repeal is the way to get there. I think there are other ways to get there in a collaborative way. But I understand what you're saying. [LR29CA]

SENATOR LATHROP: I guess it doesn't really need an answer but it's...I appreciate the sentiment. Senator Smith. [LR29CA]

SENATOR SMITH: You remembered my name. Thank you, Senator Lathrop. Mr. Krieger, let me follow up on what Senator Ashford asked, your opinion. Is it the CIR or what is it that is creating this problem, in your opinion? [LR29CA]

JIM KRIEGER: I think the CIR is an integral part of the problem. Senator, if you and I were working on my job or your job or your people's job or my people's jobs and so forth and there was always this out, out here, this detracts from the serious relationship, the serious opportunity, and the serious responsibility of our roles. I think as long as this is out here that's going to tell us all what to do, I think as long as that's out there we're going to have difficulty. [LR29CA]

SENATOR SMITH: Okay. And then the same question I had asked Senator Nelson before and there seemed to be some discussion that if meaningful reform cannot come out of this committee and advance to the floor, that, you know, his alternative would be, and I may be putting words in his mouth, but it sounded like he said his alternative would be to...that this is a great alternative. In your opinion, is there something else that would be reasonable to come out of this committee other than the complete elimination of the CIR? Is this the only thing that you see that would fully work? [LR29CA]

JIM KRIEGER: Well, right today, from everything I've seen, this is the only thing I could see that would work, LB664 or this last one. [LR29CA]

SENATOR SMITH: Okay. Thank you. [LR29CA]

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

Business and Labor Committee
February 07, 2011

JIM KRIEGER: Thank you. [LR29CA]

SENATOR LATHROP: Okay. I think that's it. Thank you once again for your testimony and your time. [LR29CA]

JIM KRIEGER: Appreciate all you're doing. [LR29CA]

DON RASKEY: (Exhibit 55) Chairman Lathrop, committee members, thank you for allowing me to testify this evening. My name is Don Raskey, D-o-n R-a-s-k-e-y, and I'm here to testify in favor of LR29CA. As a Nebraska citizen and Lincoln resident, I'm appalled by the seeming inability of our state and local officials to live within their budgets. Although public officials overspend for a number of reasons, in the mind of the public, collective bargaining between elected officials and public employee unions has become an example, if not the prime example, of this inability to rein in spending, at least on a local level. In Omaha, for example, discontent with Mayor Suttle's handling of police and fire union contract negotiations led to a recall effort. Here in Lincoln, the mayor and the city council agreed to a contract with the firefighter unions, giving the firefighters, who already made an average of \$80,000 per year, what amounted to a 10 percent raise. In both cases, the public was told that if the city had not agreed to union's demands, the union would have appealed to the CIR and extended even more from the cities and indirectly from the taxpayers. It seems to me that the entire concept of collective bargaining between elected officials and public employee unions is contrary to the principles of human nature. Collective bargaining, by definition, assumes arm-length negotiations between parties with adverse interests, each party seeking to increase to the extent he or she can control costs, with labor costs usually being the single most significant cost the employer incurs in doing business. The employer's interest is, therefore, truly immediately adverse to that of the private employee union in the collective bargaining context. The employee has a personal stake and is dealing with his or her own money. He or she is typically there for the long haul as a business in their operation. Consequently, the private employer's personal fate rises and falls with the business. On the other hand, collective bargaining in the public sector shares few, if any, of these characteristics. The elected officials occupy their positions for a set term. They are not there for the long haul. Although employee salaries are still the single highest expense item in governmental administration, elected officials are not spending their own money to pay public employees but that of the taxpayers. If they overspend, elected officials might be ousted by the voters at the next election, but that election looms far off in the future, and the electorate, as a whole, is a distant, anonymous group outside of the public officials' day-to-day experience. The voters may or may not remember a particular elected official's free-spending ways by election day. If they do, the elected officials can always attempt to shun personal responsibility by talking about how much more the CIR would give the public employees' union if the officials had not voted for the contract the union demanded. [LR29CA]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Mr. Raskey, we have your...we each have your letter...
[LR29CA]

DON RASKEY: Okay. [LR29CA]

SENATOR LATHROP: ...and we'll have an opportunity to review it further and completely. But let's see if anybody has any questions for you. I don't see any. I want you to know it's important that we not just hear from elected officials but that folks like you come forward and give us your thoughts and your perspective. So we appreciate you coming down here today. [LR29CA]

DON RASKEY: Thank you. [LR29CA]

SENATOR LATHROP: Yeah. Thank you. Anyone else here in support? Okay, you know what? We're going to take a five-minute break, if you don't mind. [LR29CA]

BREAK

SENATOR LATHROP: Good evening. [LR29CA]

SHELLI DAWDY: (Exhibit 56) Good evening. I don't mean to scare you with the handout. I'm not going to read all those pages out loud to you, I promise. Those are just supporting pieces of information to some figures that I'm going to cite. My name is Shelli Dawdy, S-h-e-l-l-i D-a-w-d-y, and I'm here to talk about asking you to support LR29CA and please send it out to the floor and let the Nebraska citizens vote on this whole subject. State and local public employees currently make up 17 percent of Nebraska's work force. In other words, one in almost...one in every six Nebraskans work for state or local government. In Omaha, it's one worker in approximately seven. In Lincoln it's worse. One out of every four people employed in Lincoln works for state or local government. In a 2009 study, only nine states had a higher percentage of state and local government workers than Nebraska. Between the 2000 and the 2010 federal censuses, the population of Nebraska increased by 6.7 percent. During that same period, Nebraska state government expenditures increased by 57 percent. That portion of state funds paid for salaries and wages of its employees increased by 40 percent. At the same time, Nebraskans' median household income only increased by just over half that much. And as I said, I did provide documents to go with it. These are figures from the United States Census Bureau, the National Bureau of Labor Statistics, and of course some of them are reported by the state of Nebraska. The increase in salaries that I mentioned, that doesn't take into account increases in benefits and pensions--just salaries and wages. There is a greater disparity between the benefits and pensions earned by public employees and private employees. Such benefits are more likely to be provided to public employees than private. Those benefits are more generous, and a larger share is likely to be paid for by the employer, including medical insurance

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

Business and Labor Committee
February 07, 2011

provided for single or family coverage. So what does this mean? When one out of seven or one out of four people work for government, it means government is too big. When the growth rate on spending on compensation for those workers is nearly double the growth rate of household incomes, government is too big. When overall growth in government spending is almost nine times the growth in the population during the same period, government is too big. The result has been an increasing tax burden on Nebraskans; budget shortfalls or deficits, depending upon whether we're talking about the state or local entities; and an increased dependence on federal funding. In addition to Nebraska's already high taxation, and again I've provided some information to support what I'm saying, in the past two years our two largest municipalities have imposed some very burdensome taxes on citizens and noncitizens alike, for instance, Lincoln's telecom tax and fee structure that is the highest in the country--that 24 percent of the bill you pay is taxes and fees. Revenues are down because Nebraskans are feeling the effects of a lasting economic downturn, yet bills have been introduced proposing to double the gas tax and increase income and sales taxes. And I see the light is on. [LR29CA]

SENATOR LATHROP: It is. [LR29CA]

SHELLI DAWDY: And it's been a long day for everyone. All the figures are there and perhaps you'd like to finish reading what I gave you and look over the notations and attachments that go along with them. Contact information is included on the letter. [LR29CA]

SENATOR LATHROP: Perfect. Thanks, Shelli. [LR29CA]

SHELLI DAWDY: Yes. [LR29CA]

SENATOR LATHROP: You know what? We appreciate the information. We almost can't get enough. So the stuff that you've given us... [LR29CA]

SHELLI DAWDY: Well, you have plenty to go around. Yeah. [LR29CA]

SENATOR LATHROP: The stuff that you've given us is helpful and we'll take a look at it. [LR29CA]

SHELLI DAWDY: Thank you. [LR29CA]

SENATOR LATHROP: Before you get away, let's make sure no one has any questions for you. [LR29CA]

SHELLI DAWDY: Oh, yes. [LR29CA]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: I see none. A lot of good information for the committee.
[LR29CA]

SHELLI DAWDY: Thank you. [LR29CA]

SENATOR LATHROP: Thank you, Shelli. [LR29CA]

SENATOR SMITH: And just real quick. [LR29CA]

SENATOR LATHROP: Oh, I'm sorry. Senator Smith. [LR29CA]

SENATOR SMITH: No, just...Ms. Dawdy, who do you represent again? [LR29CA]

SHELLI DAWDY: I'm not here representing an organization or a business. You'll notice that there's another person's name on the information,... [LR29CA]

SENATOR SMITH: Uh-huh. [LR29CA]

SHELLI DAWDY: Dr. Linda Rohman. She's a social psychologist with certification in public policy, and we're, honestly, two mothers who are concerned about our state and our government spending and we want to see something done about these issues.
[LR29CA]

SENATOR SMITH: Okay. Well, thank you. So you're just representing yourself.
[LR29CA]

SHELLI DAWDY: Well, myself and my husband and my three children. [LR29CA]

SENATOR SMITH: Oh, okay. [LR29CA]

SHELLI DAWDY: How's that? [LR29CA]

SENATOR SMITH: All right. Great. [LR29CA]

SHELLI DAWDY: Yeah. [LR29CA]

SENATOR SMITH: Thank you. [LR29CA]

SENATOR LATHROP: That's a business in itself,... [LR29CA]

SHELLI DAWDY: There you go, full time, right? [LR29CA]

SENATOR LATHROP: ...your family. Thank you. [LR29CA]

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

Business and Labor Committee
February 07, 2011

SHELLI DAWDY: Thank you. [LR29CA]

SENATOR LATHROP: Anyone else here in support of LR29CA? Are there persons here to testify in opposition? Come on forward--one at a time though. [LR29CA]

WALTER RADCLIFFE: Go ahead. [LR29CA]

SENATOR LATHROP: You're welcome to come up, sir. [LR29CA]

ROBERT STERKEN: My name is Robert Sterken, that's R-o-b-e-r-t S-t-e-r-k-e-n. I'm here as a representative of a state employees' labor union, NAPE/AFSCME, and my purpose at this point is to give a little different perspective, maybe a personal perspective on how I see this legislation that would be intended to make collective bargaining illegal for state employees and all government employees, and how my coworkers in the office where I work are reacting to this. What this says to me is...I mean we've heard a lot of stuff about what it's supposed to mean, but what it says to me is the economy is bad, we don't have enough money. Well, we've never had enough money as long as I've been coming to these meetings. There's never enough tax money to go around. But the implication seems to be state employees and other government employees are the problem--we cost too much. So we want to eliminate collective bargaining so we don't have any agreement or any contract with you; we'll pay you whatever we feel like. If we don't have enough money, we'll just pay you less. We have contracts with a lot of agencies, companies that do business for the state of Nebraska. I don't think you'll get very many of those people to do business with the state of Nebraska, sign contracts, if there was a clause in there that said, we'll just pay you every month what we can afford, not what is right, not what is fair; we'll just pay you whatever we have left. The city of Omaha might be a good example. We have people that are city employees that plow the streets, street maintenance people. We also have contracts with people that...with companies that also assist with plowing the streets when there's a lot of snow. So now we want to tell those city employees we'll pay you whatever we can afford, but those contractors will pay them what we agreed. That's not right. Do you have any questions? [LR29CA]

SENATOR LATHROP: Very good. Thank you for your testimony and your point of view. Are there any questions? [LR29CA]

SENATOR ASHFORD: No, thank you, Senator. [LR29CA]

SENATOR LATHROP: I see none. Thank you. [LR29CA]

WALTER RADCLIFFE: Very briefly, Senator Lathrop, members of the committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e,... [LR29CA]

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

Business and Labor Committee
February 07, 2011

SENATOR ASHFORD: Oh, you made it. (Laugh) [LR29CA]

WALTER RADCLIFFE: ...if I can get in the chair,...appearing as a registered lobbyist on behalf of the State Troopers in opposition to LR29CA. Simply put, the troopers believe that the CIR should remain a part of the collective bargaining process. One...just one thing for the record. The statistics that were presented to you regarding the numbers of public employees in the state, just keep this in mind when you see those: It's one of those things that's true but not accurate, in that Nebraska's public employee ratio is always skewed because, of course, we're the only state that has public power. So I know Senator Smith knows. [LR29CA]

SENATOR ASHFORD: Yeah, could I just ask Walt a question? [LR29CA]

SENATOR LATHROP: Sure. [LR29CA]

SENATOR ASHFORD: No, seriously. [LR29CA]

WALTER RADCLIFFE: Yes, you may. Yeah, obviously. [LR29CA]

SENATOR ASHFORD: Thank you, Walt. [LR29CA]

WALTER RADCLIFFE: Obviously, you may. [LR29CA]

SENATOR ASHFORD: No, I know (inaudible). [LR29CA]

SENATOR LATHROP: Think he was asking me. [LR29CA]

WALTER RADCLIFFE: Oh, I see. (Laughter) [LR29CA]

SENATOR ASHFORD: I think I was asking the Chair,... [LR29CA]

SENATOR LATHROP: You're recognized, Senator Ashford. [LR29CA]

SENATOR ASHFORD: ...but then I secondarily asked you if it's all right if I ask you. [LR29CA]

WALTER RADCLIFFE: I think it's okay with both of us if you do. [LR29CA]

SENATOR ASHFORD: Yeah. No, but just for...the State Patrol retirement age is what, 55? [LR29CA]

WALTER RADCLIFFE: 50. [LR29CA]

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

Business and Labor Committee
February 07, 2011

SENATOR ASHFORD: 50. [LR29CA]

WALTER RADCLIFFE: With years in service, yeah. [LR29CA]

SENATOR ASHFORD: And it's 25 years or... [LR29CA]

WALTER RADCLIFFE: Yes. Yes. [LR29CA]

SENATOR ASHFORD: So...and they have a defined... [LR29CA]

WALTER RADCLIFFE: They have a defined benefit plan. [LR29CA]

SENATOR ASHFORD: ...benefit plan that is solvent and not underfunded. [LR29CA]

WALTER RADCLIFFE: Yes. Well, no, it's solvent and it's actuarially sound. The Patrol has always paid their, quote, fair share, and I think this year we're looking at a 3 percent employee increase to where...now they aren't on Social Security... [LR29CA]

SENATOR ASHFORD: Right. [LR29CA]

WALTER RADCLIFFE: ...or they don't get Social...but I want to say it's going to get up to...I wish Korby...16, 17 percent. I mean it's a substantial amount. [LR29CA]

SENATOR ASHFORD: Okay. And...fine. Thanks. I just...I mean it's not out of the ordinary. I mean there are,... [LR29CA]

SENATOR HARR: Do they get a COLA? [LR29CA]

SENATOR ASHFORD: I don't know if they get a COLA. That's all right. [LR29CA]

WALTER RADCLIFFE: There is a COLA, yes. [LR29CA]

SENATOR ASHFORD: Is there? Yeah. Thanks, Walt. [LR29CA]

SENATOR LATHROP: Senator Smith. [LR29CA]

SENATOR SMITH: Mr. Radcliffe, I was already ahead of you on that one. I knew those numbers included public utility employees so that's one time I can claim that I was at least keeping up with you. [LR29CA]

WALTER RADCLIFFE: I just wanted to make sure we got it in the record, Senator Smith. [LR29CA]

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

Business and Labor Committee
February 07, 2011

SENATOR SMITH: You bet. Thank you. [LR29CA]

SENATOR ASHFORD: One thing I would...but the cost, another way to measure the size or cost of government is to look at what each taxpayer pays per taxpayer for government and take that back 30, 40, 50 years, build in inflation, and then make that calculation. And I think that's a number that I've seen tossed around to be somewhat the same, that the cost per citizen of the state to pay for government today is generally about the same... [LR29CA]

WALTER RADCLIFFE: As it was... [LR29CA]

SENATOR ASHFORD: ...as it was 40, 50 years ago. I mean there are lots of ways of evaluating it, but again I get back to the point is, you know, has the CIR caused this great...I know it needs to be reformed but has it caused this great aberration in state trooper salaries, making it much more than other troopers across the country or... [LR29CA]

WALTER RADCLIFFE: No, I think, you know, if you look at the CIR, and Bill Harding explained. I mean Terry Carpenter got the bill passed in '69. [LR29CA]

SENATOR ASHFORD: Was that today, Bill Harding? [LR29CA]

WALTER RADCLIFFE: Yeah, it was. (Laugh) [LR29CA]

SENATOR ASHFORD: Yeah. [LR29CA]

WALTER RADCLIFFE: I think it was, Senator. [LR29CA]

SENATOR LATHROP: Feels like it was a week ago. [LR29CA]

WALTER RADCLIFFE: But...and we...then there were changes made about 20 years ago or so. [LR29CA]

SENATOR ASHFORD: Right. [LR29CA]

WALTER RADCLIFFE: And 20 years have passed and there haven't been any changes that have been made, and I don't think there are very many laws of substance that are not criminal in nature and that are pretty much procedural that aren't reviewed every couple of decades. And I think that's where you're at now with the CIR because some of the things that were valid 20 years ago, today need to be reexamined. [LR29CA]

SENATOR ASHFORD: Thanks, Walt. [LR29CA]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: I think that's it. Thanks, Walt. [LR29CA]

WALTER RADCLIFFE: Thank you. [LR29CA]

LYNN REX: Senator Lathrop, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And, first of all, I'd like to thank Senator Nelson for coming in with straightforward bills because we've discussed a number of bills or you've listened to testimony on a number of bills this afternoon that, in essence, would accomplish the same thing. So I think he's approached this in a very straightforward manner and I really respect that and I, although we agree to disagree, we strongly oppose this measure. We think that the CIR is not the problem. We think that it does need reform. I think it's about process, it's about changing the statutes on process. I think the Omaha pension issue is one that's caused a lot of consternation across the state, not just in Omaha, and there are other issues that have been brought forward today as well. But it's not the CIR, it's not collective bargaining, it's not the public employees, and it's not the taxpayers. It's about establishing a process that's clear and reliable, that people understand what they need to do to comply. And we're prepared to work with this committee to accomplish that. I'd be happy to respond to any questions that you might have. [LR29CA]

SENATOR LATHROP: You know, you make a good point and we've gone all day without talking about this, and that is...and I wouldn't have appreciated this until I've spent as much time as I have in the room with the people that understand it better than I, but the pension issues up in Omaha, every contribution into a pension plan has been agreed to, not forced on anybody by the CIR. Would that be true? [LR29CA]

LYNN REX: That is true. [LR29CA]

SENATOR LATHROP: In other words, the CIR does not say, city of Omaha, you're going to pay more into a pension. That's something the cities agreed to do through somebody's administration. [LR29CA]

LYNN REX: That's correct. And, in fact, that's not just the last mayor or the last two mayors. That would be the last four or five mayors in the city of Omaha. [LR29CA]

SENATOR LATHROP: Right. [LR29CA]

LYNN REX: And that's also a function of defined benefit. I do think that the committee, your committee, has been discussing the issue of requiring an actuarial analysis before a city would make an improvement or enhance a defined benefit plan and having perhaps a dedicated revenue stream so that those kinds of issues in the future wouldn't occur. So I do... [LR29CA]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: And maybe we've...maybe it was...didn't make sense to wait till one of the last people of the night to make this point, but again, the CIR is not ordering anybody to do anything with a pension. [LR29CA]

LYNN REX: Indeed, they do not. It's a contract and so they, to date, have not been engaged in that. [LR29CA]

SENATOR LATHROP: So to the extent people have some consternation about somebody's pension plan, that's something their city council and their mayor agreed to somewhere along the way. [LR29CA]

LYNN REX: That is correct, although for first-class cities, in 1965 the Legislature... [LR29CA]

SENATOR LATHROP: It's set. [LR29CA]

LYNN REX: ...the Legislature mandated a defined benefit plan for municipalities of the first class, provided no funding. We had huge unfunded liabilities. I won't bore you with all the details other than to say by 1982-83 there was no choice but to negotiate with police officers and firefighters because the Legislature at that time was looking at cutting back on the benefit for prospective employees. You can't go back... [LR29CA]

SENATOR LATHROP: Sure. [LR29CA]

LYNN REX: ...for current employees. But at the end of the day you're exactly right. Those for Lincoln and Omaha, those were agreements that were done on the local level. For first-class cities, that's been done by the Nebraska Legislature, although there's a Bellevue issue that's outstanding. [LR29CA]

SENATOR LATHROP: Well, it reminds me a little bit of...well, I won't make that analogy because there's probably people that won't appreciate it. But when people say we need to reform the CIR, these pensions are out of hand, the reality is that was something the city council agreed to; the pension benefit is something that was agreed to. And the other thing is the spiking issue, and the spiking issue doesn't have...absolutely nothing to do with the CIR. [LR29CA]

LYNN REX: No, but it certainly has caused a lot of concern about how that happened, why that happened, and for the period of time in which that happened. [LR29CA]

SENATOR ASHFORD: And I might, if I could, Senator Lathrop,... [LR29CA]

SENATOR LATHROP: Sure. [LR29CA]

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

Business and Labor Committee
February 07, 2011

SENATOR ASHFORD: ...and we've discussed this, Lynn, and I think the Bates study set forth that the spiking in Omaha on the police side was 8 percent, had an 8 percent impact on the unfunded liability issue for the police, and it was nothing...it was not bargained. There was no spiking in the collective bargaining agreement. It was a management prerogative and the Bates study clearly says that, that the CIR did not allow for in some way to have spiking. Spiking was something...or the ability to work overtime when you're in your last year of employment is something that management agreed to or did somehow, but it wasn't...it wasn't collectively bargained, I believe. [LR29CA]

LYNN REX: And that's correct. And I do think that when you look at a bill that says we're not going to have collective bargaining or a bill that says it's whatever the employer wants to have, which I think was basically Senator Fulton's bill, and I respect those folks and what they brought forward to the committee today, but at the end of the day when you look at it, I think it's fundamental that there are certain issues where the state Legislature does have a role. And we support local control. Our major mantra, our major premise for the League of Nebraska Municipalities is local control. That's why we were formed in the late 1800s. But at the end of the day... [LR29CA]

SENATOR ASHFORD: And that's why some...in some... [LR29CA]

LYNN REX: ...there are some instances where the state Legislature needs to trump local control and that's when you get to something as fundamental as pensions, when you get to something as fundamental as bargaining, when you get to something as fundamental as basically the right of public employers to also deal with their employees. [LR29CA]

SENATOR ASHFORD: No, that's fine. It's so well said, Lynn. Thank you. [LR29CA]

LYNN REX: Well, thank you. [LR29CA]

SENATOR LATHROP: Yeah. Thanks, Lynn. [LR29CA]

LYNN REX: Thanks very much for your time. [LR29CA]

SENATOR LATHROP: (Exhibits 45 and 57-76) Anyone else here in opposition? I see no one. I have...Senator Nelson, if you want to close, I'm going to read a few things into the record while you're getting situated. We have letters of support from the Tea Party Patriots Southwest Nebraska, and that came to us from--oh, was there anybody here in a neutral capacity? I didn't mean to shut anybody off. Okay, Jerie Quinty from McCook. We have a letter of support or an e-mail of support from Bruce Desautels; also a letter of support from Gene Kelly; and a letter of support from the Platte Institute to the

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

Business and Labor Committee
February 07, 2011

committee with supporting studies that look like...I think I've seen them from the Platte Institute; and letters in opposition from the Nebraska State AFL-CIO to include Ken Mass who, thankfully, did not come up here on every single bill today--thanks, Ken; letters from the Nebraska Professional Firefighters Association in opposition; the Omaha Police Officers' Association; Nebraska Association of Public Employees; said the Omaha Police Officers' Association; IBEW 763; IBEW 1483; General Drivers and Helpers Local 554; IBEW 1597; Change to Win; IBEW 1536, and there are several letters from members of that last local union. And with that on the record, we'll turn to Senator Nelson to close on his constitutional amendment. [LR29CA]

SENATOR NELSON: Thank you, Senator Lathrop and members of the committee. I want to thank you for your perseverance during the day and hearing all this testimony on the various bills. In connection with my two bills, LB664 and the constitutional amendment, while I've been sitting here I've been hearing a lot about the pension controversy and whether or not the CIR is involved in that. Probably not, but nevertheless it's a matter of concern to my constituents and it's not the only thing. It's the matter of the level of wages that the police and fire unions are getting and the other benefits that they are. And you hear talk about...I, for instance, a constituent, am retired, not making a great deal on my pension. When I worked I made \$50,000 a year, and now we have a police officer or a fireman that's pulling down maybe a base of \$75,000 a year, plus if they retire, then they've gotten a lot. And that's part of the dissatisfaction. I have to say that the CIR is involved with wages and benefits and it still constitutes a hammer, and I think you've heard this over and over again, for the city council and the county board, that they feel if they don't make concessions that they ordinarily would not want to, then they're going to have to go to the CIR at considerable expense and they're going to wind up paying even more in the long run. That's the perception. Now, in closing, I suggested in my opening and I urged the committee to advance more than one bill, in fact even competing bills, out of this committee. I want to thank the proponents who have testified I feel very persuasively. I want to thank Lynn Rex for referring both to my bill and my constitutional amendment as being very straightforward because I feel that they are. And I want to make it absolutely clear that I believe this is the way to go, either one of those, LB664 or the constitutional amendment. If you, through Senator Lathrop's bill or Utter's or another, you can come up with something, fine, that can go out too. But I feel very strongly that these are straightforward, both the bill and the constitutional amendment, and that they ought to be referred out by the committee to the floor, not both necessarily but at least one, so that the members of the Legislature can take a look at that and discuss it in addition to any other bill that you see fit to put out. And I want to thank you for your attention. [LR29CA]

SENATOR LATHROP: Thanks, Senator Nelson. [LR29CA]

SENATOR ASHFORD: I will say one thing. [LR29CA]

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

Business and Labor Committee
February 07, 2011

SENATOR LATHROP: Senator Ashford. [LR29CA]

SENATOR ASHFORD: And that...I've been doing this a long time, I guess, relative to my colleagues, but I honestly I want to thank Senator Lathrop and his staff because this is one of the best series of hearings I've been to, even though it's 8:25 p.m., and I've been here 13 years. I thought everybody on all sides of the issue were well prepared. They had arguments that were easy to understand. I don't necessarily agree with...nor do any of us agree with everything. But I compliment you, Senator Nelson, and all the introducers on these bills but especially Senator Lathrop for his leadership. Then the last thing I would say is I believe strongly that we're going to have a responsible reform measure for the CIR, thanks to Senator Lathrop's leadership, and that in the spirit of what we did years ago when this state was in trouble, in such trouble that we were going to as far as I can recall, in 1987, that we were about ready to fold up the streets and go home. But it took a coming together of workers, hardworking state employees and local employees working for local government, coming together with businesses and chambers of commerce across the state to pass LB775, which has become really the...has become the bedrock of all business incentive legislation for our state since 1987. And I'm just very hopeful that the good people on both sides of this issue will give us an opportunity to do the right thing, which I believe we will do in this case. So thank you, Senator Lathrop, for your leadership in this matter. [LR29CA]

SENATOR LATHROP: Thank you, Senator Ashford. I think that concludes our hearing on the constitutional amendment and our hearing tonight on CIR. (See also Exhibit 77) Everybody drive safely. [LR29CA]