

Approved: February 22, 1995
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 21, 1995 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:
Bill Jarrell, Governmental Affairs, Boeing Airplane Company
Mark Turman, Raytheon Aircraft
Kevin Polian, Director of Personnel, Learjet
Roland Smith, Executive Director, Wichita Independent Business Association
Gary Strodman, Director of Human Resources, Coleman Company, Inc.
Mark B. Russell, President, LaSiesta Foods, Inc.

Others attending: See attached list

Upon motion of Senator Steffes, seconded by Senator Downey, the Minutes of the February 20, 1995 meeting were unanimously adopted.

SB 106 - Employment security, benefit disqualification for leaving work voluntarily or misconduct

Bill Jarrell, Boeing Aircraft Company, informed the Committee of a coalition of businesses formed last year to work toward legislative changes in the area of unemployment compensation decisions, particularly SB 106 makes the changes sought by the coalition: absenteeism and drug related terminations.

Mark Turman, Raytheon Aircraft, stated the Coalition employs 48,000 persons and shares common employment problems. Members of the Coalition would be testifying to express reasons for their support of SB 106.

Kevin Polian, Learjet, testified the changes proposed in SB 106 more accurately reflect the working conditions prevailing within work places. This legislation shifts some responsibility for the preservation of jobs to the individual. There are primarily two areas of concern: (1) absenteeism and (2) substance abuse. Absenteeism is one of the biggest issues faced by employers when dealing with employee problems. It is the primary reason employees lose their jobs with major manufacturing employers in Wichita. Substance abuse is the second largest issue. It is not right that an employee who loses his/her job due to absenteeism or substance abuse, knowing the policies of the company, should be afforded the same benefits available to those who are unemployed through no fault of their own. See attachment 1

Roland Smith, Executive Director, Wichita Independent Business Association, appeared in support of SB 106. There is an attitude on the part of administrators of unemployment compensation that the amount of money involved is small; to the small businessman, this attitude is most distressing. Small business employers want to help the employee that has lost his or her job due to no fault of their own; however, those who lose jobs due to their own responsibility and then look to relief, and generally obtain it, through the "system", have great impact on the cost of doing business, and on their fellow workers. See attachment 2

Gary Strodman, Human Resources Director, Coleman Company, Inc., testified in favor of the proposed changes contained in SB 106 which shifts responsibility of employment to the employee. The unemployment system is abused by those that don't want to work, who contend that if they stop coming to work and are fired, they will get unemployment. This happens frequently and the employee is awarded benefits by the administrator due to a finding of "good cause" even though there is a history of absenteeism. The burden of proof should rest with the employee. See attachment 3

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on February 21, 1995.

The Committee inquired of the Conferees, methods by which they inform employees about policies relating to absenteeism and substance abuse. Mr. Polian, Learjet, advised that all major manufacturers in the Wichita area conduct orientation sessions with new employees relating to policies and rules and regulations. Employees are informed of substance abuse programs available for rehabilitation and about random testing. The Committee was advised that random drug testing is a policy followed at every level of the company's organization.

The Chair referred to material prepared by the Division of Employment Security relating to disqualifications due to misconduct. Linda Tierce, Chief of Benefits, explained the Tables reflect the number of 1994 claims that were denied or were cleared for payment. However, Ms. Tierce responded to questioning that the data does not reflect decisions made by appeals referees. See attachment 4

Mark B. Russell, President, LaSiesta Foods, Inc., testified in support of SB 106 which classifies absenteeism as misconduct for purposes of awarding unemployment benefits. Mr. Russell explained that his employees are given a policy manual when hired that explains attendance policy. They are allowed 5 absences in a 6 month period before the absences are considered excessive and warnings are issued. The first warning issued to an employee is a verbal consultation, followed by a written warning, a second written warning with a 3 day suspension, and finally a third written warning with the employee's termination. The company still has difficulty disqualifying employees that are discharged for excessive absenteeism for unemployment benefits that. Mr. Russell requested that the legislation require that all absences leading up to the termination be considered not just the final incident that results in termination, in the award of benefits, and that the employer has a right to expect good attendance from their employees regardless of the reasons for absences. See attachment 5

The Chair advised the Committee that Hearings on SB 106 will continue Wednesday. The Chair requested additional information on denial or clearance of Referees' decisions relating to absenteeism and substance abuse be prepared.

The Committee adjourned at 9:00 a.m.

The next meeting is scheduled for Wednesday, February 22, 1995.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: 2-21-95

NAME	REPRESENTING
Calvin Smith	WIBA
Anita Kirkpatrick	Lessna Aircraft
Bill James	BOEING
Larry Struttman	Coleman
KEVIN FOLIAN	LEARJET
MARC TURMAN	RAYTHEON
DICK RADER	BOEING
Christy Young	Topeka Chamber of Commerce
Jackie Summerson	
Mark Barcellina	KDOC & H
Reggie Davis	KDHR
Bill Cayes	KS. Dept. Human Resources
John Peterson	Raytheon Aircraft Corp
Art Brown	Mid-Am Computer ASSN
Linda Tierce	KDHR
PAUL BICKNELL	KDHR
Sharon Belyard	SRS
A.J. Korch	KDHR
Dick Dilsaver	The Coleman Co.

TESTIMONY OF KEVIN POLIAN LEARJET DIRECTOR OF PERSONNEL, WICHITA, KANSAS,
IN FAVOR OF SENATE BILL NO. 106, BEFORE THE SENATE COMMITTEE ON COMMERCE

TUESDAY, FEBRUARY 21, 1995

GOOD MORNING SENATORS, LADIES AND GENTLEMEN, I'M KEVIN POLIAN, DIRECTOR
OF PERSONNEL FOR LEARJET INC. IN WICHITA.

I'M HONORED TO HAVE THIS OPPORTUNITY TO OFFER COMMENTS REGARDING SENATE
BILL 106. I BELIEVE THAT THE CHANGES PROPOSED IN THIS BILL MORE ACCURATELY
REFLECT THE WORKING CONDITIONS PREVAILING WITHIN KANSAS' WORK PLACES
TODAY. I ALSO BELIEVE THAT GREATER RESPONSIBILITY WILL BE SHIFTED TO THE
INDIVIDUAL TO INSURE PRESERVATION OF THEIR JOB. THE PROPOSED CHANGES ARE
NECESSARY FOR TWO REASONS:

1) KANSAS EMPLOYERS SHOULD NOT BE UNDULY BURDENED WITH HIGHER
UNEMPLOYMENT TAX RATES BECAUSE EMPLOYEES DO NOT EXERCISE NORMAL CARE
IN THE PRESERVATION OF THEIR JOBS.

2) KANSAS EMPLOYEES MUST RECOGNIZE THAT THEY HAVE AN EQUAL
RESPONSIBILITY IN BOTH JOB CREATION AND JOB RETENTION. EMPLOYEES ARE AN
INTEGRAL PART OF THE OVERALL ECONOMIC PROCESS AND MUST RECOGNIZE THEIR
RESPONSIBILITIES FOR IT'S SUCCESS.

February 21, 1995
Commerce

Attachment 1-2-95

PLEASE NOTE THAT THE CHANGES PROPOSED IN SENATE BILL 106 WILL HAVE NO AFFECT ON EMPLOYEES WHO LOSE THEIR JOB THROUGH NO FAULT OF THEIR OWN.

EMPLOYEES WHO ARE LAID OFF DUE TO ECONOMIC CONDITIONS, WHO LEFT A JOB DUE TO HARASSMENT OR UNSAFE WORKING CONDITIONS, WHO LEFT THE JOB DUE TO A PERSONAL EMERGENCY, OR WHO JUST CAN'T PERFORM THE WORK, DO NOT LOSE THEIR ELIGIBILITY FOR UNEMPLOYMENT COMPENSATION UNDER THIS BILL.

THE PROPOSED CHANGES DO AFFECT THOSE WHO DON'T WANT TO COME TO WORK, THOSE WHO DON'T SEEK WORK, AND THOSE WHO ENGAGE IN SUBSTANCE ABUSE TO THE DETRIMENT OF THEMSELVES AND THEIR EMPLOYERS.

AS I'M SURE YOU HAVE HEARD BEFORE, ABSENTEEISM IS ONE OF THE SINGLE BIGGEST ISSUES WE FACE WHEN DEALING WITH EMPLOYEE PROBLEMS. ABSENTEEISM IS THE PRIMARY REASON EMPLOYEES LOSE THEIR JOBS WITH THE MAJOR MANUFACTURING EMPLOYERS IN WICHITA.

I SHOULD ADD HERE THAT THE TERMINATION OF AN EMPLOYEE FOR ANY REASON IS NOT TAKEN LIGHTLY OR DONE ARBITRARILY. THE PROTECTIONS AFFORDED EMPLOYEES TODAY IN KANSAS AT THE FEDERAL STATE AND LOCAL LEVELS LITERALLY FILL BOOKSHELVES IN ATTORNEY'S OFFICES.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AGE DISCRIMINATION ACT, AMERICANS WITH DISABILITIES ACT, KANSAS ACT AGAINST DISCRIMINATION AND THE FAMILY MEDICAL LEAVE ACT ARE AMONG THE STATUTES THAT OFFER PROTECTION TO EMPLOYEES FROM ARBITRARY ACTS BY THE EMPLOYER. ADD TO THESE THE LABOR AGREEMENTS IN EFFECT AT MOST MAJOR MANUFACTURERS AND YOU HAVE A

VERITABLE SUIT OF ARMOR FOR PROTECTION AGAINST UNFAIR OR ARBITRARY TREATMENT.

BUT PERHAPS THE MORE IMPORTANT REASON WHY EMPLOYERS TREAT A TERMINATION AS A VERY SERIOUS EVENT IS BECAUSE WE DON'T WANT TO LOSE SKILLED PEOPLE. THE COMPETITION FOR QUALIFIED EMPLOYEES IS FIERCE. CONSEQUENTLY WHEN AN EMPLOYEE BEGINS TO HAVE PROBLEMS, ALL MAJOR EMPLOYERS HAVE POSITIVE METHODS FOCUSED ON TRYING TO IMPROVE THE EMPLOYEE'S PERFORMANCE.

INTERVENTION, EMPLOYEE ASSISTANCE PROGRAMS, COUNSELING AND PROGRESSIVE DISCIPLINARY POLICIES ARE AVAILABLE TO ALL EMPLOYEES.

SUBSTANCE ABUSE CONTINUES TO BE ANOTHER MAJOR PROBLEM IN THE WORKPLACE. BUSINESSES IN THE TRANSPORTATION OR AVIATION FIELDS HAVE HAD MANDATORY DRUG PLANS IN PLACE SINCE 1988. THE CHANGES MADE TO THE EMPLOYMENT SECURITY LAW IN THE LAST TWO YEARS RECOGNIZE THIS REALITY.

LET ME CONCLUDE BY SAYING FIRMS ARTICULATE AND PUBLISH SUBSTANCE ABUSE POLICIES FOR THE PROTECTION OF THEIR EMPLOYEES, THEIR CUSTOMERS AND THEMSELVES. AN EMPLOYEE WHO VIOLATES A PUBLISHED SUBSTANCE ABUSE POLICY AND WHO SUBSEQUENTLY LOSES THEIR JOB HAS KNOWINGLY COMMITTED SUCH AN ACT AND HAS ASSUMED RESPONSIBILITY FOR HIS OR HER ACTIONS. THAT PERSON SHOULD NOT BE AFFORDED THE SAME BENEFITS AVAILABLE TO THOSE WHO ARE UNEMPLOYED THROUGH NO FAULT OF THEIR OWN.

I ASK THAT YOU GIVE FAVORABLE CONSIDERATION TO THE CHANGES IN SENATE BILL
106. THESE CHANGES WILL BENEFIT KANSAS EMPLOYEES AND KANSAS BUSINESS.
TOGETHER WE CAN CONTINUE TO BUILD A BETTER KANSAS.

THANK YOU,



WICHITA INDEPENDENT BUSINESS ASSOCIATION

Riverview Plaza Suite 103 • 2604 W. 9th St. N. • Wichita, Kansas 67203-4794
(316) 943-2565 FAX (316) 943-7631 1-800-279-WIBA or 1-800-279-9422

February 21, 1995

ROLANDE E. SMITH, *Executive Director*

STATEMENT TO THE SENATE COMMERCE COMMITTEE IN SUPPORT OF SENATE BILL 106

by Roland Smith, WIBA Executive Director

Madam Chairperson, Members of the Committee and Staff... Thank You! for the opportunity today to express WIBA's support for passage of SB 106.

I am, Roland Smith, Executive Director for the Wichita Independent Business Association. WIBA is an association of around 800 very diversified types of businesses in the Wichita trade area. One thing they have in common are the problems with the burden of proof in unemployment compensation claims as the process is not properly balanced between the employer and the employee in the vast majority of cases. Many small employers do not even contest their claims, even when they know it is an invalid claim, because they always lose. Employers want to keep good employees and help those that have valid claims, but the system is so skewed that those that work the system are being helped by those operating it. Even the preamble to the unemployment compensation section in the statutes paint all employers as the bad guys. This preamble language is not being addressed in this bill, however a number of problem areas are addressed in this bill to help balance the burden of proof between the employee and the employer. I have been working with the South Central Kansas Coalition For Unemployment Compensation Reform as a representative for small businesses to help develop and support some needed changes in the statutes that we believe would be a first step towards a more balanced system. I believe SB106, if passed, would help do that.

Anyone involved in the unemployment areas realizes that changes in the statutes are only part of the solution. There are needed changes in the administration of unemployment compensation claims. Discussions have been held with the past administration regarding inconsistent rulings and apparent outright fraud in some cases with little success. A prime example of the prevailing attitude of those operating the system was the statement by the Chief Referee in a meeting with him when he stated "Unemployment Compensation was small potatoes". Frankly this infuriated a WIBA member business owner present who has 400 employees and pays a great deal of money into the unemployment compensation fund. This is but one example of the attitude problem employers are facing in dealing with unemployment compensation claims. There is a meeting scheduled with the new Secretary today and we are trusting that he will be willing to make the necessary administrative changes to help correct the unbalanced and many times unfair situation many employers in Kansas face today.

Other speakers this morning will address and discuss the major areas of concern addressed in SB106 including absenteeism, drug testing, misconduct and others so for the sake of time I will not address the specifics in the bill.

We all want to create jobs, improve employee benefits for the producing and valuable employees. The costs in many small businesses for unemployment compensation and workers compensation cut into their ability to increase employee benefits. All the employers I know want to help the employee that have lost his or her job due to no fault of their own. It is sad and unfortunate that under the current system many abuse it and drive the cost of doing business up resulting in the actual loss of some jobs. One of the common fears I hear from the self-employed business I deal with is that they will not put on any employees on until they are forced to because of all the requirements and related costs of which unemployment compensation is one.

Thank You! again and I ask on behalf of WIBA for you to pass SB106 out of committee favorable for passage and support it with your vote in the Senate.

*February 21, 1995
Commence*

TESTIMONY OF GARY STRODTMAN, ON BEHALF OF SENATE BILL NO. 106,
BEFORE THE SENATE COMMITTEE ON COMMERCE.

TUESDAY, FEBRUARY 21, 1995

GOOD MORNING. MY NAME IS GARY STRODTMAN, DIRECTOR OF HUMAN RESOURCES WITH THE COLEMAN COMPANY, INC., IN WICHITA.

THANK YOU FOR THIS OPPORTUNITY TO COMMENT ON SENATE BILL NO. 106. THE PROPOSED CHANGES WILL SHIFT SOME OF THE RESPONSIBILITY OF EMPLOYMENT TO THE EMPLOYEE. I FEEL THESE CHANGES ARE ESSENTIAL TO PRESERVE THE WORK ETHIC THAT KANSANS ARE KNOWN FOR.

AN EXAMPLE IN THIS SHIFT IN RESPONSIBILITY IS THE DEFINITION OF MISCONDUCT; A VIOLATION OF A DUTY OR OBLIGATION REASONABLY OWED THE EMPLOYER AS A CONDITION OF EMPLOYMENT. THIS DEFINITION ISN'T NEW, BUT IT DOES OMIT QUALIFIERS SUCH AS; (WILLFUL AND INTENTIONAL ACTION, SUBSTANTIALLY ADVERSE TO THE EMPLOYER'S INTEREST, RECURRENCE AS TO SHOW WRONGFUL INTENT OR EVIL DESIGN), WHICH ARE ALL UNNECESSARY.

I FEEL OUR UNEMPLOYMENT SYSTEM IS GETTING ABUSED BY THOSE THAT DON'T WANT TO WORK. I HAVE HEARD STATEMENTS LIKE, "IF I STOP COMING TO WORK AND YOU FIRE ME I'LL GET MY UNEMPLOYMENT, IF I QUIT I WON'T". UNFORTUNATELY THAT SAME EMPLOYEE WILL CREATE A REASON FOR NOT COMING TO WORK, WHICH MAY BE CONSIDERED "GOOD CAUSE" AND AWARDED BENEFITS, THE BURDEN OF PROOF SHOULD REST WITH THE CLAIMANT.

I FULLY SUPPORT THE PROPOSED CHANGES IN THE CHEMICAL TESTING AREA. WITH AN E.A.P., A SUBSTANCE OF ABUSE POLICY AND THE INTENT OF A DRUG FREE WORKPLACE, I FEEL UNEMPLOYMENT LEGISLATION SHOULD SUPPORT THESE EFFORTS. IN MOST CASES WE ARE NOT LOOKING AT THE LEVEL OF IMPAIRMENT, JUST THE FACT OF A POSITIVE TEST OR REFUSAL TO SUBMIT TO SUCH A TEST.

PLEASE UNDERSTAND THE PROPOSED CHANGES ARE NOT TO TRY AND REMOVE ALL EMPLOYER LIABILITY, JUST TO REFINE THE SYSTEM SO ONLY THOSE EMPLOYEES THAT TOOK THE RESPONSIBILITY TO PRESERVE THEIR JOB ARE AWARDED BENEFITS. IN THESE CASES, AS AN EMPLOYER, WE DO NOT PROTEST THESE CLAIMS.

I APPRECIATE YOUR TIME AND ASK YOU TO CONSIDER THESE CHANGES. IF YOU HAVE FURTHER CONCERNS YOU MAY CONTACT ME. THANK YOU.

GARY STRODTMAN

February 21, 1995
Cannell

Attachment 3



Kansas Department of Human Resources

Bill Graves, Governor
Wayne L. Franklin, Secretary

DIVISION OF EMPLOYMENT SECURITY BENEFIT SECTION

401 S.W. TOPEKA BOULEVARD, TOPEKA, KANSAS 66603-3182
(913) 296-5074

M E M O R A N D U M

DATE: February 21, 1995

TO: Senate Commerce Committee

FROM: Linda Tierce *Linda Tierce*
Chief of Benefits

SUBJECT: Senate Bill 106

Attached is a series of tables which present determination activity for state fiscal year 1994 concerning unemployment insurance disqualifications handled under K.S.A. 44-706(b) *misconduct*.

These have been prepared in anticipation of the discussion generated by the amendments contained in S.B. 106.

If you have any questions, please let me know.

Attachments

February 21, 1995
Commerce

Attachment 4

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SFY 1994

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Table 3
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SFY 1994

Table 4
Drug-Related
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SFY 1994

Table 1
 Nonmonetary Determinations by Major Issue
 SFY 1994

	<u>Total</u>		<u>Cleared</u>		<u>Denied</u>	
	<u>Number</u>	<u>Per Cent</u>	<u>Number</u>	<u>Per Cent</u>	<u>Number</u>	<u>Per Cent</u>
<u>Nonmonetary Determinations</u>	<u>55,832</u>	<u>100.0</u>	<u>28,236</u>	<u>50.6</u>	<u>27,596</u>	<u>49.4</u>
Able and Available.....	18,680	100.0	4,878	26.1	13,802	73.9
Workers Compensation.....	177	100.0	75	42.4	102	57.6
Voluntary Quit.....	13,372	100.0	4,885	36.5	8,487	63.5
Misconduct.....	17,244	100.0	14,129	81.9	3,115	18.1
Refusal of Suitable Work.....	1,934	100.0	1,459	75.4	475	24.6
Back Pay/Wages.....	2,754	100.0	2,601	94.4	153	5.6
Pensions.....	1,119	100.0	0	0.0	1,119	100.0
Educational Issues.....	469	100.0	180	38.4	289	61.6
Professional Athlete.....	1	100.0	1	100.0	0	0.0
Aliens.....	41	100.0	28	68.3	13	31.7
Gross Misconduct.....	41	100.0	0	0.0	41	100.0

Kansas Department of Human Resources
 Division of Staff Services
 Labor Market Information Services
 January 1995

TABLE 2

Misconduct, Except Absenteeism and Drug-Related
Nonmonetary Determinations
Denials
SFY 1994

<u>Issue</u>	<u>Number</u>	<u>Per Cent 1/</u>
<u>Total Denials</u>	<u>1,809</u>	<u>100.0</u>
Fighting on the job.....	59	3.3
Sleeping on the job.....	24	1.3
Insubordination.....	82	4.5
Failure to comply with company policies.....	669	37.0
Damage to equipment or property.....	31	1.7
False work application.....	39	2.2
Refused to perform assigned work.....	52	2.9
Causing dissention among employees.....	7	0.4
Property use unauthorized.....	21	1.2
Work standards not met.....	69	3.8
Conduct or attitude.....	601	33.2
Converting employer's monies or property.....	92	5.1
Loss of driver's license.....	10	0.6
Fighting on the job—other than last employer.....	1	0.1
Sleeping on the job—other than last employer.....	1	0.1
Insubordination—other than last employer.....	3	0.2
Failure to comply with company policies—other than last employer.....	15	0.8
Damage to equipment or property—other than last employer.....	1	0.1
False work application—other than last employer.....	1	0.1
Refused to perform assigned work—other than last employer.....	1	0.1
Causing dissention among employees—other than last employer.....	0	0.0
Property use unauthorized—other than last employer.....	0	0.0
Work standards not met—other than last employer.....	4	0.2
Conduct or attitude—other than last employer.....	12	0.7
Converting employer's monies or property—other than last employer.....	3	0.2
Loss of driver's license—other than last employer.....	0	0.0
Earnings not verified—DOU not satisfied.....	11	0.6

1/ Detail may not sum to total due to rounding.

a/ Less than 0.1 per cent

Table 3
Absenteeism
Nonmonetary Determinations
SFY 1994

<u>Issue</u>	<u>Number</u>	<u>Per Cent 1/</u>
<u>Total</u>	2,866	100.0
<u>Total Clearances</u>	1,699	59.3
Unavoidable absenteeism.....	162	5.7
Unavoidable tardiness.....	10	0.3
Replaced while on bonafide leave of absence.....	35	1.2
Lateness—no written notice.....	78	2.7
Lateness—late with good cause.....	54	1.9
Absence—not substantially adverse to the employer.....	22	0.8
Absence—no written notice.....	524	18.3
Absence—absent with good cause.....	775	27.0
Unavoidable absenteeism—other than last employer.....	2	0.1
Unavoidable tardiness—other than last employer.....	0	0.0
Replaced while on bonafide leave of absence—other than last employer.....	4	0.1
Lateness—no written notice—other than last employer.....	0	0.0
Lateness—late with good cause—other than last employer.....	2	0.1
Absence—not substantially adverse to the employer— other than last employer.....	0	0.0
Absence—no written notice—other than last employer.....	17	0.6
Absence—absent with good cause—other than last employer.....	14	0.5
<u>Total Denials</u>	1,167	40.7
Unexcused absences.....	359	12.5
Repeated tardiness.....	29	1.0
Failed to report to work.....	148	5.2
Refused to work overtime.....	14	0.5
Attendance standards not met.....	202	7.0
Continued absence from work.....	296	10.3
Continuing to report late for work.....	86	3.0
Unexcused absences—other than last employer.....	15	0.5
Repeated tardiness—other than last employer.....	3	0.1
Failed to report for work—other than last employer.....	1	a/
Refused to work overtime—other than last employer.....	1	a/
Attendance standards not met—other than last employer.....	4	0.1

Table 3
Absenteeism (cont.)

Continued absence from work—other than last employer.....	6	0.2
Continuing to report late for work—other than last employer.....	3	0.1
Absence—no notice but adverse to the employer's interest— other than last employer.....	0	0.0

1/ Detail may not sum to total due to rounding.

a/ Less than 0.1 per cent

Table 4
Drug-Related
Nonmonetary Determinations
SFY 1994

<u>Issue</u>	<u>Number</u>	<u>Per Cent</u>
<u>Total</u>	<u>233</u>	<u>100.0</u> 1/
<u>Total Clearances</u>	<u>94</u>	<u>40.3</u>
Failed drug screening test—test did not establish drug usage connected with work 2/	38	16.3
Failed to participate in drug screening test—employer failed to justify necessity or adverse effect on work performance 2/.....	4	1.7
Failed to participate in drug screening test—employer failed to establish probable cause or that test was required by law and condition of employment (7-1-93 & after).....	10	4.3
Failed drug screening test—employer failed to establish probable cause or that test was required by law and condition of employment (7-1-93 & after).....	38	16.3
Failed drug test—test sample not collected and labeled by independent health care professional (7-1-91 & after) 3/.....	1	0.4
Failed drug test—test sample not confirmed by gas chromatography or other comparably reliable analytical method (7-1-91 & after).....	1	0.4
Failed drug test—test sample not taken timely with event establishing probable cause (7-1-91 & after) 4/.....	1	0.4
Failed drug test—test sample not collected and labeled by independent health care professional or individual authorized to collect or label test samples (7-1-93 & after).....	1	0.4
<u>Total Denials</u>	<u>139</u>	<u>59.7</u>
Consumed intoxicants on job 2/.....	2	0.9
Reported to work intoxicated 2/.....	13	5.6
Possessed controlled substance on employer's property	3	1.3
Impaired by nonprescribed controlled substance while working—probable cause to believe use, possession, or impairment (7-1-91 & after) 2/.....	7	3.0
Failed drug test—test sample established as same sample taken from claimant (7-1-91 & after).....	1	0.4
Failed drug test—test performed by approved laboratory (7-1-91 & after).....	6	2.6
Failed drug test—test sample confirmed by gas chromatography or other comparably reliable analytical method (7-1-91 & after).....	3	1.3
Failed drug test—test sample taken timely with event establishing probable cause (7-1-91 & after).....	6	2.6
Refused to submit to drug test—probable cause (7-1-91 & after) 2/.....	3	1.3
Possessed alcoholic or cereal malt beverage while working (7-1-93 & after).....	2	0.9
Used or impaired by alcoholic or cereal malt beverage while working (7-1-93 & after).....	16	6.9
Reported to work under the influence of alcoholic or cereal malt beverage (7-1-93 & after).....	26	11.2
Impaired by nonprescribed controlled substance while working—probable cause to believe use or impairment (7-1-93 & after).....	3	1.3
Possessed nonprescribed controlled substance while working (7-1-93 & after).....	4	1.7
Refused to submit to drug test—test required by law and condition of employment (7-1-93 & after).....	6	2.6
Failed drug test—test sample collected as prescribed by test mandated by law and required condition of employment (7-1-93 & after).....	34	14.6
Reported to work intoxicated—other than last employer 2/.....	1	0.4
Failed drug test—test sample established as same sample taken from claimant—other than last employer (7-1-91 & after).....	1	0.4
Reported to work under the influence of alcoholic or cereal malt beverage—other than last employer (7-1-93 & after).....	2	0.9

1/ Detail may not sum to total due to rounding.

2/ Message was deleted 01-29-94.

3/ Message was deleted 02-19-94.

4/ Message was deleted 03-05-94.

TESTIMONY OF MARK B. RUSSELL BEFORE THE SENATE COMMERCE COMMITTEE

SENATE BILL NO. 106

Madam Chair and members of the Committee, my name is Mark B. Russell, and I am the president of La Siesta Foods, Inc. in Topeka, Kansas. I appreciate the opportunity to address this Committee regarding Senate Bill 106 which classifies absenteeism as misconduct connected with the work for purposes of awarding unemployment benefits.

We have a progressive disciplinary policy at my company, and constantly explain to our employees the consequences of further absences. Our employees are given a policy manual when they are hired that completely explains our attendance policy. We allow 5 absences in a 6 month period before the absences are considered excessive and warnings begin to be issued. The first warning that is issued to an employee is a verbal consultation, followed by a written warning, a second written warning with a 3 day suspension, and finally a third written warning with the employee's termination. Basically, an employee is absent 9 days in a 6 month period before they are discharged. All verbal and written warnings state the consequences of continued absences within the 6 month period. However, we still have had difficulty disqualifying employees for unemployment benefits that are discharged for excessive absenteeism.

The rationale that is expressed in the referee's decision resulting from the hearing is that one employee's absence is not "substantially adverse to the employer's interests." Basically, having one employee out of the 250 we employ is not enough of an economic loss to warrant that employee losing their job because of the absence. Over the years we have found that if we are lax about applying our attendance policy, eventually employees become lax about their attendance. Once the employees become lax about their attendance, we have trouble running our production lines because we never know how many people are going to report for work. If we cannot run our production lines, we cannot meet our customer's orders. While one employee's absence does not adversely affect the company's operations, the inability to meet customer's orders does. That attendance policy has to be enforced instance by instance in order to be considered fair and effective. The current interpretation being applied prevents us from doing that. Further, claimants view the receipt of benefits as vindication that they did not need to follow the company's policy, which perpetuates the reason they lost their job in the first place.

I would also like to appeal to the Committee for the need to be very clear and direct in this law. While decisions always seem to consider the injustice of losing one's job, there is little consideration to the problems that the employer faces when employees receive unemployment benefits when terminated under the company's stated policy. I feel that the Legislature tried to adequately address the attendance issue two years ago. A small opening like the phrase "substantially adverse to the employer's interests" invalidated in hearings all of the legislative work that had been done. I am concerned that the phrase "absent without good cause" may become that phrase this time. I do not know of many former employees that did not have a good cause to be absent the final time when they knew it would cause their termination. The absences that are questionable are the ones that lead up to the last absence. This phrase has the potential to be interpreted against the employer, as is normally the case in hearings. I would ask that the committee require that all absences leading up to the termination be considered in the award of benefits, and that the employer has a right to expect good attendance from their employees regardless of the reasons for absences.

February 21, 1995
Commerce

Attachment 5