IN THE MATTER OF PETITION
FOR REPRESENTATIVE ELECTION

City of Minneapolis, Minnesota
and
Minnesota Public Employees Association, Roseville, Minnesota
and
American Federation of State, County and Municipal Employees, Council 5, South St. Paul, Minnesota
and
Minnesota Teamsters Public and Law Enforcement Employees Union, Local 320, Minneapolis, Minnesota

BMS Case No. 14PRE0167
VOLUME II


DIRECT EXAMINATION
BY MR. CORWIN:
Q Please state your name for the record.
A Eliot Seide, S-E-I-D-E.
Q And what is your position?
A I'm the executive director of AFSCME Council 5.
Q Okay. Would you please state your experience in the labor movement.
A I'm in my 36th year working for AFSCME in various positions. I started in 1978. I worked in
I worked in legislation for the national union, I worked directly for our legal and financial president Jerry Worp for a year.

I came to Minnesota on a special assignment in 1980 as a result of PELRA changes that were made in 1980, created the right to strike, created broad horizontal units that I was sent here to help out with. I became the acting area director later that year, and the permanent area director in 1981.

I have organized workers in Illinois, Alaska, New York, Florida, I am missing a place, but a number of places. I have been a business agent for Council 14.

I have been a legislative of director for AFSCME Council 6, the old State employee's council. I was international area director for AFSCME in New York. I have also served as the administrator of Council 82, corrections law enforcement council there. I was a deputy administrator of District Council 37 in New York City, 125,000 member union, and I was -- I came here as director over Council 14. I have been director of Council 5 since it was created in 2004.

Q What is your educational background?
A I have a high school degree from (inaudible) High School in New York; a bachelor's degree and magna cum laude, phi beta kappa from NYU; a master's degree from the University of Toronto; and I have completed all my coursework to my Ph.D. at the University of Toronto, but did not write my thesis.

Q What is your job title at AFSCME Council 5?
A I am the executive director of AFSCME Council 5.

Q What are your job duties?
A I am the chief executive officer of AFSCME Council 5 pursuant to the constitution. I am responsible for hiring and firing staff, for carrying out the direction of the executive board of the union. I am chief administrator for the union and a person who has to -- does all the assignments. I have people who I appoint as department directors and heads, and they also hire their own staff who work for them. We have about 68 or so staff.

Q Do you hold a position with the international union?
A I'm the international vice president for the North Central District, which covers Minnesota, North and South Dakota. I was elected in 2006.

Q Do you presently serve in that position?
A I am presently the international vice president this district.

Q And what are the duties and responsibilities of that position?
A The national executive board sets the policy for the national union in between conventions. Conventions are held every two years. We meet quarterly.

We also have assignments as assigned by the international president. I have been assigned to do investigations in Southern California, I have been assigned to -- right now I am assigned to help with a major retreat we are doing, we are planning a conference of all Council directors around the country in Baltimore coming up later this month. We have been to Paris and things.

Q Okay. You understand the purpose of this hearing is to determine whether or not MNPEA is an employee organization under the statute. First of all, will you talk or give us your opinion as to the importance of lobbying closeness within the Minnesota Legislature with respect to the role of a union in the public sector.
A Well, you know, in Minnesota there is the collective bargaining law, which is the Public Employee Labor Relations Act, defines where there is mandatory and permissive subject of bargaining. A prohibitive subject of bargaining is pensions, and so pensions have to be legislative. You can't be a public sector union and truly represent your people if you're not also going to defend their retirement benefits.

Retirement benefits are a contract between that person and the State or the local government body, there is MSRS, PRA, PERA, and it's a contract per wages in the future, and our defined benefits plans are not something we can negotiate. It is something that has to be legislated.

There is a Pension Commission that is set up with members from both bodies. You need to work with that Pension Commission. You also need to work administratively with the Minnesota State Retirement Board, the Public Employee Relations Board. If one would have members in the teachers, you would deal with the PERA board.

The formula for a defined benefit, and the very fact that there is a defined benefit, is defined in statute. There have been a number of attacks in the last decade and even before that going back to 1982 to fight over the 2 percent contribution by the
State, which was a massive fight to make sure that the State made that contribution. They missed that contribution, but has never missed a contribution since because of the pressure of the unions in the State, and AFSCME was a leader in that, to make sure those contributions are being made. That is why we are not Illinois, we are not New Jersey, we are not one of those states because of our activity in that regard.

Over the years we have advocated for things like the Rule of 90. We have also advocated to protect pensions from being undermined.

For instance, there was an attempt to move from defined benefit to defined contribution while Tim Pawlenty was the governor. There was also a number of attempts, multiple attempts to do it while the key party ran the Minnesota Legislature. There were a number of direct attacks and assaults to undo the defined benefit plan, and it was only the intervention of AFSCME and other unions like my union that was able to stop that attack.

Additionally, there is -- coming up there are people who need pension benefits, and amongst those are 9-1-1 operators, probation officers. These folks are not currently in the early corrections,

early retirement plans at PRA, and we need to include them, and so our council has passed a resolution to support those attempts to improve that.

You can only approve -- you can only approve or protect pension benefits by acting in the Legislature. You can't do it at the bargaining table. You can't do it by wishing it away. You have to be involved in order to protect the benefits of public workers and improve the benefits of public workers, otherwise they are going to go away. That is just one area.

The whole notion of collective bargaining is define in the Legislature. So PELRA always sets out the right to strike, the right to arbitrate. This is not the private sector. If PELRA does not set up the right strike, there is no common law background. You do not have the right to strike if the right to strike was taken away. The same thing with interest arbitration, you would lose that opportunity for the essential units.

So protecting the right to bargain, and this is not academic, not at all, I mean it is absolutely real. In the 2003, 2004 legislative session, Tim Pawlenty made a number of concerted attempts and there were actual pieces of legislation introduced to remove our right to bargain over wages, to freeze our right to bargain over health insurance, to take away our right to bargain completely over successive years. These fights took place over a whole number of years.

And, of course, over the last ten years there were two State shutdowns. State shutdowns not only affect State employees, they affect local government employees. There were Ramsey County employees had to watch out for the shutdown pieces in both those shutdowns, so did Hennepin County, so did every county in the State because counties receive State money, and when there is a shutdown that affects the subdivisions in the State as well. So, you know, you have the shutdowns.

And the budget of the State of Minnesota funds not only State agencies, but it funds local governments, county programming aid, social service aid, local government aid. You cannot say you represent workers if you aren't fighting to get the jurisdictions, the finances they need so the workers can have a stable staffing environment and also get the wages, hours and working conditions that they deserve. That faucet, if you will, gets turned on at the Legislature. It's impossible, impossible to represent public workers if you're not involved in the Legislature.

We are proud of the fact that AFSCME got an award, from all of places, the League of Greater Minnesota Cities for our work to fight for local government aid for our cities.

Last session we fought to improve the tax system so that there would be money to invest in higher education, local government aid, county program aid. We helped deliver those. We met with editorial boards around the State, we lobbied legislators.

Those are key pieces that one needs to do if one is going to protect the public sector and protect the people who work in the public sector.

To say that you can somehow represent the public sector and not do all these things legislatively is at best disingenuous and at worst is a cynical comment.

Q Would it be fair to say that, unlike the private sector, the rights of public employees are defined by statute rather than common law?

A Well, no question. In fact, the right to strike is defined in the Public Employee Labor Relations Act. The right to -- in fact, the right to interest arbitration is defined in that. Without
Those definitions in the law, in 179, there would be no right to strike in Minnesota. In fact, that is really how PELRA was created.

Q Okay. And you’re aware of what happened in the State of Wisconsin with public employees?
A Absolutely. In the State of Wisconsin Scott Walker changed the law, introduced the law, got it passed by the Legislature that took away the right to bargain for public workers in Minnesota.

Q In Wisconsin?
A In Wisconsin, pardon me, in Wisconsin. It destroyed the right to bargain. It allowed the Governor or and public employees to unilaterally, capriciously and arbitrarily set the terms and conditions of employment. It’s one of the most heinous laws in the country. Scott Walker is now talking about running for president. That attempt to replicate that was done in Pennsylvania. It was attempted here in the first few years of the Dayton administration by members of the Minnesota Legislature.

Currently Dave Thompson is running for governor, Jeff Johnson is running for governor, and most of the other candidates running for governor, frankly, on the republican side are calling for the end of collective bargaining with the introduction of bargaining rights, so that we wouldn’t have the right to strike, and only would have the right to arbitrate. Those are real issues that are coming up in the gubernatorial campaign because of what Scott Walker did in Wisconsin.

As a result of what Scott Walker did, when a contract expires everyone should picture that. I mean we have collective bargaining agreements, you go to sleep one night and wake up the next morning and you have no right -- your agreement is expired and you don’t have the right to bargain a new one. You don’t have a right to have a say in your wages, hours and working conditions.

To say that politics doesn’t matter is the most runtiness and disingenuous concept you can possibly have.

If it wasn’t for 8,100 votes in this state, then we would not have Mark Dayton as governor. We would have Tom Emmer, and it would make Scott Walker in Wisconsin like look Minnesota would be Scott Walker on steroids because Mr. Emmer wanted to destroy collective bargaining rights.

AFSCME was the first union to endorse Governor Dayton. I am proud of that, I will brag about that anywhere. If it wasn’t for our activity, Mark Dayton, in my opinion, would not be governor today; and if Mark Dayton hadn’t been governor today, then we would have been Wisconsin, and instead when Scott Walker did that in Wisconsin, we had a huge rally at the Capitol. Thousands of union members, private sector, public sector showed up at the Capitol right after President’s Day after Walker did this, and I was the emcee of that rally. And I personally called over to Dayton to come; and unlike Scott Walker, he came up in front of the press corps, the whole State of Minnesota and said what happened in Wisconsin won’t happen here because I’m here, I will veto any legislation that tends to take away the right to collective bargaining. How anyone, any sane person who wants to represent public workers says that doesn’t matter to public workers, they either don’t care or they are just not real bright.

Q So the right to strike, the right to collectively bargain, the right of fair share, the right to -- all the rights public employees have are statutory rather than common law; is that correct?
officers going on at various parts of the country.
There was just a complete agitational piece in the
'60s because public workers could try to move from
civil service protections and collective
begging to a true notion of collective bargaining by
creating collective bargaining laws.
It was the context of that naturally and
then the specificity of Minnesota with the teachers’
strike that led to the formation of PELRA in the early
'70s.

It was then amended in 1980 because the
right to strike was not in the original bill, and then
it was amended, but the power amendments of 1980 gave
local and -- State workers and local level workers the
right to strike. We organized the bargaining units in
state service and then set up certain procedures on
local government. They are very important amendments
of 1980 that actually for the most part improved the
Public Employee Labor Relations Act. We have been
fighting the deterioration of that pretty much ever
since.

Q So the statutes that give rise to the
rights that public employees have today were
accomplished through political lobbying at the
Legislature and the executive branch?

A Most definitely, with the help of the
AFL-CIO, AFSCME, and, you know, there were a number of
unions around the State that introduced the Public
Employee Labor Relations. We have a picture in our
office of the signing of that bill. It involved the
unions, it involved legislatures. It's a magnificent
moment in the history of the State for public workers
because instead of collective begging, instead of
having no voice, they now had an instrumentality for
voice at the table.

Q Does AFSCME have a political arm?
A It's called the People Public Employees
Organization to Promote Legislative Equality.

Q What does it do?
A We have pursuant to our constitution of
Council 5 and pursuant to the national union
constitution, we have a National People Committee, and
we have a State People Committee here. The People
Committee in Minnesota is chaired by the president of
the Council. We have subcommittees around the State,
rank and file members and retirees, we now have a
retiree chapter who is retirees, and those folks
screen candidates, so it's rank and file, they screen
candidates; putting out questionnaires, engaging
candidates in what their positions are on everything

right now in some of the districts where there are
some controversial races.

Q How does People get its funding?
A People gets its funding through the -- in
Minnesota we are a soft money state, so People gets
its money by the type year we are in. Here we're in a
election year, and so, you know, we budget a
certain amount of money to do politics every year
through the budget process of the executive board of
the Council.

Q And to the extent that you haven't just
tested, how does People --
A It's (inaudible) on the Hill, I should say
that too. The People Committee also has a major day
on the Hill every year. We have been doing this since
19 -- we have multiple councils. We started it and I
started it with a guy named Rick Scott in 1982 at the
old Prom Center on University. We now have the
biggest legislative event of the year at the Capitol
every year. We have not had less than 1,000 people.
We have had as many as 1,500.

Those members come up, they give
presentations about the budget, about collective
bargaining issues, privatization issues, pension
issues, and then they go forth and do a rally at the

officers going on at various parts of the country.
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presentations about the budget, about collective
bargaining issues, privatization issues, pension
issues, and then they go forth and do a rally at the
part, you have got to do federal lobbying too, that is
the other part. A union that is not doing federal
lobbying, the tap is turned off in the states at the
federal level.

   I mean right now, for instance, you know,
food stamps, the Staff program is under attack. There
is going to be 100 layoffs at the University of
Minnesota as a result of the cut at the Staff program.
So these are bread and butter issues that get dealt
with at the federal level.

   So we have our federal legislative
director or the assistant director comes to our event,
makes a presentation about federal issues, brings
people up-to-date on that.

   Our chief lobbyist here makes a
presentation about the issues that are coming up. We
have folders with fact sheets on each of the issues.
We make appointments with all the legislators, with
all the legislators for all the members that are
there, and we tally our members in every legislative
district or near every legislative district when we
get up there.

   After the plenary they break into groups.
They (inaudible-static) meetings with their
legislators. They do that by legislative district.

Q Tell us a little bit about Dan Hill.

A And they also get beat.

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1982 we have a -- prior to Council 5, the AFSCME
councils have a joint event. Dan Hill started out as
a couple hundred people in 1982. It blossomed over
the years to be more and more. Since our merger we
have not had less than 1,000 people at the Capitol.

   We start at 10:00 in the morning. There
is a plenary that we have. We usually have, like I
say, we have not had less than 1,000 people. We have
had as many as 1,500 people. We have a plenary. Our
president of our council sets the direction of the
union at the Legislature. We have a report from our
national legislative department, our federal lobbying
program, which, by the way, Gregg, that is the other
employee group insurance plan and the rules and
regulations thereof. Some of that is bargained.
Other of that is defined in 43A pursuant to the law.
So, again, it is impossible to represent
public workers and not do work at the Legislature.
One must do that, and you can't do effective work at
the Legislature if you're not involved in politics
because it's a democracy and these folks get elected.

Q Okay.

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union at the Legislature. We have a report from our
national legislative department, our federal lobbying
program, which, by the way, Gregg, that is the other.
hours total the first day how AFSCME works, how AFSCME
does things. We are here to determine how MNPEA is
somehow not a union. None of this is relevant or
addresses that is fact, and I don't want to be here
all day.

Mr. Corwin: Obviously we have a
different opinion. Quite frankly, we believe MNPEA is
not a union because it has no political function, and
in the private -- in the public sector it's impossible
to be a public sector union without having a political
function, so we believe it's essential to our argument
that MNPEA is not a union, but is some kind of
corporate structure to benefit a law firm.

Mr. Fowler: Mr. Arbitrator, I would
like a ruling on --

Mr. Corwin: I don't think Mr.
(inaudible) ought to able to comment.

Mr. Fowler: I would like a ruling
as to whether that is germain to either of the two
statutes, 179 or 179A because, again, this is
cumulative, and this is not an opportunity for AFSCME
to pop out how great it supposedly is. This is
whether or not MNPEA fails to meet those two
definitions, and I would like a ruling.

Referee Beafort: I think it's
permissible for --
(inaudible) ought to able to comment.

Referee Beafort: -- testified very
eloquent when he was on the stand very much of the
same thing and is --

Mr. Corwin: This is our last
question.

Unidentified Male: (Inaudible) is
very eloquent.

Referee Beafort: He is very
eloquent, right.

Mr. Corwin: This is our last
question.

By Mr. Corwin:

Q Just talk about the 35W bridge.

A So the 35W bridge crush, we had been
arguing to the State up at the Legislature that, in
fact, we had a number of deficient bridges in the
state. We represent bridge inspectors, we represent
the (inaudible) people, we represent the highway
inspectors, we represent people who do the maintenance
on the roads, and so we had done -- testified up in
front of the Legislature that, in fact, we need to be
aware of these things.

(Long inaudible due to static.)

A So we did that in front of -- again, this
is when the key party ran the Legislature in -- pardon
me, this was when Pawlenty was governor. His
department said we were wrong. Two weeks later
Congressman Oberstar came in and the committee said,
well, we have got these facts from (inaudible), facts
from AFSCME, what do you think (inaudible-static).
The bridge collapsed, and then we worked
diligently to, as we were working all along, to
restore the bridge inspectors (inaudible-static) to
make sure the bridges because there were more bridge
inspectors, people to maintain those bridges or repair
those bridges, and we did some public relations work
about that too.

Halloween the year before, I believe the
bridge collapse was in August, Halloween the year
before we had taken whole crews of legislators under
the bridge on 494 over by --

Q Lafayette bridge?

A No, the Wacouta bridge and showed them --
if you remember, that ended up having problems after
it was built. We showed them the problems that were
going to happen.

We took them to another of series of
bridges. We did it on Halloween because we called it
the scary bridge story, and we took around a whole
group. We had a couple of vans of legislators, reporters around, and we demonstrated to them all the
different bridges.

When the collapse --
(Long inaudible due to static.)

A -- people dying because of that bridge
collapse, but then we work diligently to restore
bridge inspection and make --
(Long inaudible due to static.)

A -- in the Star Tribune and the Pioneer
Press to point out there was public workers when there
is danger, they come to protect people, they save
people -- they save lives. They are what is critical
to the safety of our society. Public workers are
beaten up every day by politicians, and someone has
got to stand up for them, that is what AFSCME does.

Q Okay. So finally my last question: Why
do you think MNPEA is not a union?

A Well, there is a whole variety of reasons
I think it's not a union. It's an entity run by a few
guys from a law firm. It's an entity that says --
that goes ahead and tells people that they don't need
to be engaged in politics, they don’t need to be engaged in legislation when you cannot protect the rights of public workers, if it’s the right to collectively bargain, the right to pensions, the right not to be privatized, all of these issues they tell them you don’t have to be involved in that.

Like I said, it’s naive at best and it’s ruinous at worst, and it’s selling a bill of goods to a bunch of people obviously for the profit of a law firm. So I think they fail to provide representation on that point.

A -- you know, there is plenty of workers to go organize to use and be unionized who are not currently unionized, but instead what they do is they are a predatory organization on other labor organizations -- on labor organizations and they attempt to undermine and discourage them.

Frankly, not only don’t I consider them a labor organization, they are the boss’s agent. MNPEA is the boss’s agent. The people who run them or work for them are the boss’s agent because what they try to do is divide workers against each other and create an environment of workers fighting against workers.

Workers need to be united to fight employers and politicians, not divide against each other. What MNPEA does -- (Long inaudible due to static.)

MR. CORWIN: No further questions.

CROSS-EXAMINATION

BY MR. FOWLER:

Q Well, Mr. Seide --

THE WITNESS: Was that a threat?

Did he say he’s got your number.

UNIDENTIFIED MALE: Yes, I did.

UNIDENTIFIED MALE: And he went like this.

THE WITNESS: He said he’s got my number, does that mean you’re going to be --

UNIDENTIFIED MALE: Politically.

THE WITNESS: You’ve got my number, you’re going to come to my house, you’re going to --

UNIDENTIFIED MALE: (Inaudible) we don’t normally go to houses?

THE WITNESS: You got my number.

MR. FOWLER: Can I start my cross-examination?

I don’t want to hear any more comments on the side if
you have to also represent then at the Legislature because there are things in the public sector that can only be done at the Legislature and cannot be done at the bargaining table. There are things that are specifically prohibited under the Public Employee Labor Relations Act and the Public Employee Labor Relations Act itself is a creature of the Legislature. But that is not the only reason I don't think MNPEA is a union. I don't think MNPEA is a union because I don't think it's a worker organization, a democratic organization that involves workers in decisions that you make. Because it tells workers that you don't have to collectively get together and act. What you have to do is just pay us dues and then we will do all of this for you instead of telling workers that power comes when workers combine to do together what they can't do separately and to act in a democratic fashion. It gives them the opportunity to gather, to vote, to get that policy and direction. You don't do any of that. I don't consider you a union. I consider you an enterprise. In fact, a for-profit enterprise.

Q Let's try and break those components and parts up. Again, I asked if you think that it's legally required in order to be a public sector union you had to (inaudible) at the Legislature, yes or no?

A I think it's morally required, and it's also if you are going to represent workers at the Legislature, maybe you can tell me, Mr. Fowler, how are you going to protect people's pensions if you don't go to the Legislature and deal with the Pension Commission and don't deal with the people who are on the Pension Commission? How are you going to protect public workers if you aren't fighting to get the money into their counties and their cities, there is money to bargain for into those cities by fighting for local government aid and county aid. How are you going to make sure that the work that (inaudible) that takes away the right to collectively bargain, which can actually happen. I'm not an active (inaudible) it there weren't for unions like AFSCME that stood up and fought it, then those things would have happened and then none of us would be doing anything.

Q We'll get to that. So in Ohio, you had testified about how Ohio had a right to work (inaudible), correct?

A Ohio had SB-5, which attempted to take away the rights of public workers to collectively bargain, and now they have a right to work bill that is threatening them at this point, and that also attempts to take away their (inaudible).

Q So that initiative, that prior initiative, are you aware of another union called Fraternal Order of Police?

A I'm aware that there is a union -- that there is an organization called the FOP. The FOP is not always a collective bargaining organization. Sometimes it's a professional organization. Other times it's kind of a lobbying organization. It depends on the state.

Q In particular Ohio, in Ohio are you aware that the Ohio FOP spent millions of dollars to defeat that bill?

A No, I'm not aware.

Q Any reason to dispute that the Ohio FOP spent million of dollars?

A I'd have to check with (inaudible) of Ohio who were co-chairs of the campaign to stop SB-5. I know about the Teacher's Union, I know about AFSCME, I know about the AFL-CIO. I have never heard anything about the FOP in that right.

Q Do you know --

A I have heard about police unions, but I have not heard anything about the FOP in that fight.

Q Do you know who Chuck Canterbury is?

A I have no idea.

Q So in that Ohio situation it sounds like there was a collaborative of different labor organizations that were working to defeat that bill, is that fair to say?

A It was a coalition of labor organizations and community organizations and others. The bill passed and was signed by the governor, and then there was a re-call of the bill, and there was a mass movement to re-call the bill, which passed two to one. I know that our union was heavily involved in this, our affiliates, our national union. Plus I know Council 5 sent folks to help out to fight SB-5 in Ohio. We had people in I think eastern Ohio who helped out with that in eastern Ohio. We volunteered folks to go and help.

It's like cancer, if it starts in a place, it grows, it goes down to other places, and so we wanted to help defeat it.
Q: The reason I am asking you these questions is because you have asserted in your testimony that MNPEA is not, in fact, active at the Legislature and is not, in fact, involved in legislative efforts, do you remember testifying to that?

A: That is correct.

Q: Okay. So then do you have any firsthand knowledge of whether or not MNPEA has partnered with the Fraternal Order of Police here in Minnesota?

A: I have been before the Petition Commission, I have testified before that commission, I have lobbied at the commission.

Q: That is not the question.

A: I have never seen MNPEA or anyone like MNPEA up at the Capitol doing anything. When the attempt came to take our defined benefit pension plan and turn it into a defined contribution plan, I was working with the fund directors, members of the Pension Commission --

Q: Again, I just asked you --

A: I was up there --

MR. FOWLER: That is not responsive, Mr. Arbitrator.

REFEREE BEFORT: I think you have got to narrowly respond to the question asked.

Q: Mr. Delmonico, his organization does lobby at the Capitol, correct?

A: They work with the MPPOA, the lobby (inaudible), and, you know, it's interesting to me because I thought you guys didn't do that. You tell (inaudible) county you don't lobby, you don't do politics, so do you or don't you, I am confused?

Q: Well, let me ask you: How do you know that MNPEA says that, is that what you have heard, have you personally heard people from MNPEA actually say that?

A: (Inaudible answer-static.)

Q: So you are hearing it secondhand. You don't have any personal knowledge of MNPEA saying that?

A: (Inaudible answer-static.)

Q: Are you aware of whether or not MNPEA has partnered with the Police Officers Alliance of Minnesota again at the Legislature, yes or no?

A: No.

Q: So you have the book. In Tab 12 there is two sets of statutes that appear in Tab 12, just to give you on the right page. The first statute is Chapter 179.

A: Uh-huh.

Q: So about midway through that stack of papers on Tab 12 starts 179A, which is, as you know, is PELRA?

A: Uh-huh.

Q: And if you could turn to 179A.03.

A: Political activities (inaudible).

Q: Just if you have what is marked as --

A: 179A.

Q: A.03.

A: Okay.

Q: In your direct examination by Mr. Corwin you were talking -- you were asked questions about rights to strike and (inaudible) in PELRA gives public employees the right to strike, do you remember that testimony?

A: (Inaudible answer-static.)

Q: Are you aware of whether or not MNPEA has partnered with the Police Officers Alliance of Minnesota again at the Legislature, yes or no?

A: No.

Q: So you have the book. In Tab 12 there is two sets of statutes that appear in Tab 12, just to give you on the right page. The first statute is Chapter 179.

A: Uh-huh.

Q: And if you could turn to 179A.03.

A: Political activities (inaudible).

Q: Just if you have what is marked as --

A: 179A.

Q: A.03.

A: Okay.

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A: (Inaudible answer-static.)

Q: Are you aware of whether or not MNPEA has partnered with the Police Officers Alliance of Minnesota again at the Legislature, yes or no?

A: No.

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Q: A.03.

A: Okay.

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A: (Inaudible answer-static.)

Q: Are you aware of whether or not MNPEA has partnered with the Police Officers Alliance of Minnesota again at the Legislature, yes or no?

A: No.

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Q: And if you could turn to 179A.03.

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Q: Just if you have what is marked as --

A: 179A.

Q: A.03.

A: Okay.

Q: In your direct examination by Mr. Corwin you were talking -- you were asked questions about rights to strike and (inaudible) in PELRA gives public employees the right to strike, do you remember that testimony?
BY MR. FOWLER:

Q If you could, just to set up the rest of the questioning.

A Okay, I will read to. “An employee organization means any union or organization of public employees whose purpose is, in whole or in part, to deal with public employees concerning grievances and terms and conditions of employment.”

Q Now, are you aware that earlier on in this hearing your attorney Mr. Corwin and I stipulated to Joint Exhibit 1, which is a list of all the different cases in which MNPEA has represented its members not only in grievances, but in contract negotiations, elections and things like that, are you aware that there is that exhibit?

A I need to consult with my counsel.

MR. CORWIN: Just answer whether you're aware or not.

A I'm not aware of what Gregg stipulated to on that.

BY MR. FOWLER:

Q Okay. So under this definition, Subdivision 6, which you already read, does that -- does the words in that definition say that a union must have a political legislative arm, yes or no?

A No. You asked me a question. It says in whole or in part to deal with public employers concerning grievances and terms and conditions of employment. Terms and conditions of employment and the right to participate in those are defined by the Public Employee Labor Relations Act. So if one is not involved in protecting, defending or improving the Public Employee Labor Relations Act, then one can't be dealing with terms and conditions of employment.

Additionally, other terms and conditions of employment as defined by statute, which is specifically prohibited by PELRA, pensions being one of those.

Also various pieces of outsourcing of privatization, which can only be -- only the effect can be negotiated, not the private part.

So, in fact, to deal with terms and conditions of employment one has to be able to operate legislatively and politically as well or one cannot deal with terms and conditions of employment.

Q And, again, that is your opinion?

A Most definitely my opinion, and it happens to be a fact.

Q Didn't you think if that was that important that the legislators who you went and lobbied for this bill, apparently your organization did back in the '70s and '80s, would have made that part of the definition?

MR. CORWIN: Objection, calls for speculation, lack of foundation, goes beyond the scope of direct examination.

REFEREE BEFORT: I will let you ask it.

A What is the question?

BY MR. FOWLER:

Q The idea or notion that a legislative arm of a union is required to be a union, don't you think that that would have been put in the statute back when your organization lobbied for it?

A I think that this is broad language, and the term -- the phrase terms and conditions of employment, since the law also specifically prohibits certain things from being done at the negotiating table, but, in fact, says that they must be done at a legislative table means that you have to operate in the legislature, and that is real clear to me out of this.

Because the same piece you're citing here, which is 179 and 179A, also prohibits at 356 then prohibits pensions from being negotiated. So if you can't negotiate pensions and you have to deal with them, they are terms and conditions of employment, where one gets a job you're told you have a pension, here's the pension, here's the formula, here's what it kicks out, the only way you can deal with that pension is legislatively. There was no need to write all of that in. Terms and conditions describes that.

Q Okay. So yes or no, do you recognize the gentleman who is sitting here behind me, Mr. Perkins, do you recognize who that is?

A I haven't seen him in a long time. If that is Mr. Perkins, then it's Mr. Perkins.

Q Are you aware -- did you know him when he worked for the Teamsters?

A Sure.

REFEREE BEFORT: Is there somebody back there I can't see.

MR. FOWLER: I didn't know he left.

A Mr. Fowler, I haven't seen Mr. Perkins in many years, so I thought that was him, but I wasn't positive.

BY MR. FOWLER:

Q But you were aware that he had worked previously for Teamster 320, correct, yes or no?

A Oh, yes.
Q Now, are you aware of whether or not Mr. Perkins has testified at the Legislature regarding correction officer pensions?

A I know Mr. Perkins when he worked for the Teamsters did politics. I know he tried to get the former county sheriff endorsed by our union, he was very involved with that, and I think he also did politics with the Hennepin County Sheriff, amongst others. This is Mr. Perkins. When he worked for the Teamsters, Mr. Perkins was involved with politics, certainly aware at the county levels, and I am sure he was up there with the Teamsters testifying on that. I don't know it, but I have no doubt that when he worked with the Teamsters that he did those things.

Q Okay. So Mr. Perkins certainly has the, not only history, but the ability to do that part of union activities, which is testifying at the Legislature?

A Anybody who has -- who can think and breathe and talk can learn to do that.

Q Do you have any direct knowledge --

A You need some -- you need to know of the issues and get up on the issues, and he worked for an organization that was involved with these issues. He now works for an organization that is not.

Q Did he suddenly lose that knowledge by switching to MNPEA?

MR. CORWIN: Objection, this is irrelevant and immaterial, goes beyond the scope of the direct. It has nothing to do with whether MNPEA is (inaudible).

REFEREE BEFORT: What was the question, Mr. Fowler?

BY MR. FOWLER:

Q Did he somehow lose that knowledge and experience that he gained with the Teamsters when he switched to MNPEA?

A All I know is when he worked for the Teamsters, I worked with the Teamsters on the 2 percent fight in 1982, we worked to protect pensions over the years with the Teamsters. MNPEA has not been involved in fighting to protect pensions or fighting against privatization. The Teamsters were, and when Mr. Perkins worked with the Teamsters as part of the Teamster organization he did those things.

Q Do you have any firsthand knowledge of whether or not Mr. Perkins has sent our State legislators letters, packets, pamphlets, any information from MNPEA?

A No.

Q So you have asserted that MNPEA doesn't deal with the Legislature, but you have no firsthand knowledge of what, if any, communication MNPEA has had with the legislators directly?

A Only what workers have told us from bargaining units where you have gone in to divide worker against worker, that you have gone in and said that unlike AFSCME, you don't do politics and you don't do legislation, that's what workers have told us.

Q So you don't have any firsthand knowledge of MNPEA's actual legislative activity undertaken by (inaudible)?

MR. CORWIN: Objection, asked and answered.

A Well, we have a pension coalition that my legislative director is the chair over, and we have never seen MNPEA at that. All of the other unions are in. We have never seen MNPEA at anything, so I don't know that MNPEA is doing any lobbying at the Capitol.

BY MR. FOWLER:

Q Thank you. So if MNPEA somehow doesn't join your coalition, is MNPEA somehow not active at the Legislature?

A It's a coalition that includes the teacher's union, the police, Mr. Rice and the police, the MPPOA, service employees. Every organization in the public sector that is a real union is involved in it protecting Minnesota's public worker's pensions.

Q So you have talked about what you have been hearing from members, et cetera. So isn't it true that AFSCME, the way that, as I gathered from your testimony, AFSCME encourages people to vote for certain politicians like Mark Dayton; isn't that correct?

A What AFSCME does is we have a People Committee by constitution. Our constitution sets out a People Committee that is chaired by rank and file and sets out committees around the State. Those committees of rank and file then screen candidates. Those candidates are screened, they get asked questions about where they stand on pensions, public workers, local government, all the issues that affect public sector workers. They do that screening, and then those committees make recommendations to our executive board. Our executive board decides if they are endorsements; and if there is a contribution to be made, the committees can make the recommendation. The executive board makes the decision. Once that
decision is made, then it's indicated that AFSCME Council 5's executive board is recommending the endorsement.

In the case of your example of Mark Dayton, which came as a result of, by the way, of a long process, the gubernational election, we had the first live television debate in our convention in Duluth.

(Long inaudible due to static.)

A Then we had formal screening that took place. The union executive board (inaudible) the endorsement, and then our candidates came to (inaudible-static).

So rank and file leadership, elected leadership in the union voted to endorse, and then they recommended that to the members.

Q My question is do you then send out correspondence, mail, fliers, et cetera to every member telling them who to vote for?

A People are asked --

MR. CORWIN: Objection, non --

BY MR. FOWLER:

Q Let me be more specific. Do your members receive mail that has the AFSCME name on it telling them who to vote for?

A We don't tell anyone who to vote for, Mr. Fowler. We recommend folks, and we give the reasons for that, that they support our public pensions, that they support the right to bargain, that they are willing to support collective bargaining and strong contracts, that they are willing to support staffing, staffing in the -- of agencies in state and local government, and we tell -- give them the reasons that we have done it.

We do not tell members how to vote. That's their choice as citizens. We do it as a result of an intense rank and file process, make recommendations to vote, and then we explain our reasons for doing it. How they vote is up to them, and we tell them that, how you vote is up to you. We are recommending these candidates and here are the reasons we are recommending them.

Q Okay. Isn't it fair to say that at least -- there must have been at least one person who has told AFSCME to stop sending me that kind of stuff?

A Yeah, occasionally it happens.

Q So when MNPEA says that we are not going to be political, how do you know that doesn't mean that we are not just going to simply do an endorsement process and send people mail?

A All I know is what we heard you say, which is you don't get involved in politics. That is how you differentiate yourself from us, you don't get involved in politics, you don't do legislation. We do. You're not going to do that. You tell people that. So when you tell people that, that is the only thing I can believe.

Q Well, again, your -- you have not been at any meeting to hear MNPEA's exact words and message, correct?

A I haven't been invited to be at one them.

Are you planning on inviting me?

Q I just want to know, Mr. Seide.

A I mean if you would like to invite me, I would be happy to show up at a MNPEA meeting and we could have that discussion in front of the workers.

Q We have invited AFSCME to come in Washington County, and that opportunity was declined, just so you're aware.

MR. CORWIN: Objection, Counsel is testifying.

A I'm not aware of it at all. I haven't been invited.

Q Moving forward to what is relevant.

A I did work with Mr. Perkins though in the corrections.

BY MR. FOWLER:

Q So under AFSCME's leadership at the Legislature doing your lobbying, has the State corrections unit ever seen a reduction in their pensions?

A We have over the years, and not just the -- in all the pension systems, which is PRA, MSRS and PERA, we had to deal with -- we had to deal with a funding situation, which had dropped perspicuously low. The people who wanted to get rid of the defined benefit pension system wanted to use that a way to --

(Long inaudible due to static.)

A -- sat down with the Finance Commissioner and Tom Hanson, sat down with the Legislature with the Commission, and tried to work on ways to smooth out the ups and downs of the pension system so that we could protect the pension from being undone completely, and so that is what we did because the pension -- the defined benefit pension -- if workers
would lose defined benefit pensions, Mr. Fowler, that would be a tragedy for those workers. Defined contribution did not match defined benefit.

A So we were involved with the State the Legislature, with the (inaudible-static), with other unions and try to figure out a way to preserve the system because, if you remember, in 2008 there was something called the great recession and the stock market took a real blow. One of the ways pension funds got their annual return is by the stock market, and so we had to deal with the reality of that situation, and in all of the pension systems there was various legislation passed over I think four years that smoothed out the types of loans.

A Police officers in Minneapolis, you know, the state troopers, all of this together did this to make sure we are protected. We have a member of --

BY MR. FOWLER:
Q My question was yes or no, did it go down during that time for the State corrections?
A We protected the client benefit pension plan because the funding levels in the corrections plan had gotten so low as a result of the recession that we had to do that.

Where I was going with this is that decision about what to do on that was made by our state (inaudible). The chairman of our committee, Pete (inaudible) was on the MSRS board, they had a discussion about doing this. In order to protect the defined benefit pension to make sure that pension wasn't eliminated because the real attempt was to eliminate the early retirement for State corrections officers, and we did not want that to happen. So that we worked on a plan that would protect the pension system for correctional officers and improve the situation with the unfunded liability.

Q The State corrections DOC is an AFSCME unit, correct?
A That is correct.
Q So did the county corrections workers also

have to give up a .2 percent?
A Again there was a -- (Long inaudible due to static.)
A -- a variety of things were done, including increasing employee contributions, employee contributions, making sure that that fiduciary (inaudible) of the fund are being met. I must tell you that at this point Minnesota has a much better and much more stable pension system than in states like Illinois and New Jersey, and that is because we insisted that employees pay every year because we responsively took corrective action by Democrats, Republicans, employers, employees to protect the defined benefit pension plan, that is what we did, and we are proud of having done that.

A It's not a yes or no answer.

BY MR. FOWLER:
Q Let me rephrase. Did the percent -- was there a reduction from 2.4 percent to 2.2 percent for the State corrections?
A We protected the client benefit pension plan because the funding levels in the corrections plan had gotten so low as a result of the recession that we had to do that.

Where I was going with this is that decision about what to do on that was made by our state (inaudible). The chairman of our committee, Pete (inaudible) was on the MSRS board, they had a discussion about doing this. In order to protect the defined benefit pension to make sure that pension wasn't eliminated because the real attempt was to eliminate the early retirement for State corrections officers, and we did not want that to happen. So that we worked on a plan that would protect the pension system for correctional officers and improve the situation with the unfunded liability.

Q The State corrections DOC is an AFSCME unit, correct?
A That is correct.
Q So did the county corrections workers also

witness whether or not under AFSCME's leadership of the State corrections unit whether it saw a 2.2 percent decrease, whereas counties who were represented by a number of different unions did not have the same corresponding decrease.

A As far as I know, we all collectively acted to protect the -- each plan had different sets of liabilities. The State correction's plan liability was much higher. The pension -- the 2008 hit by the stock market because of the relatively small number of people in that plan took a larger hit proportionally than others.

So we worked, as I said, we worked with the directors of PRA, MSRS and PERA. We worked with the coalition of unions. We worked with a coalition of legislators to protect the defined benefit pension plan and to protect at the state level corrections early retirement because correctional employees, public safety workers need to be able to get out a little earlier. Their life span after retirement isn't that long, they are in very stressful jobs, and they need to have those protections.

Q I agree that protections are important. Are you aware of whether or not Mr. Perkins in his career representing labor has testified at the
Legislature and advocated for the Corrections Officer's Bill of Rights, yes or no?

A I was aware of that when he worked for the Teamsters he did that.

Q Okay. Are you aware of whether or not Mr. Perkins had been an advocate and testified at the Legislature for passage of the Bloodborne Pathogen Bill for corrections?

A I am not particularly familiar with that.

(Question cut off due to static.)

BY MR. FOWLER:

Q You testified about, you testified just recently AFSCME is involved with dispatchers and making changes to who is included in the pension for the groups such as probation and dispatching and corrections, do you remember that testimony?

A Yeah, it hasn't happened yet. That is something that these officers, probation officers and 9-1-1 operators had asked to be part of that plan, and our board has endorsed their efforts to do that and will be lobbying that this legislative session.

Q Because I believe wasn't there already some testimony on that?

A We have lobbied 9-1-1 operators and probation. Our position on probation officers has been there for quite some time, and we have been trying to get that for a number of years now, and 9-1-1 operators we had started to do that, but we are going to put a push on that so it unifies all of those pieces together.

Q Okay. And so my understanding of the status of that is that even under a DFL-controlled Legislature, that that received quite a cool reception from the legislators; is that correct?

A As I indicated, where we are at is if we look at the different plans, I believe that the PRA (inaudible-static). I believe the State fund is somewhere in the high 80s. PERA I believe is also in the 70s. The corrections plans, I may stand to be corrected on this, have greater liability than the general PRA and MSRS plans. I see Mr. Perkins is nodding, so I must have it right.

And so, you know, they have had that, so the reception was not about should workers have these rights, but could they afford to be given to the state of plans at this point in time. I didn't agree with the legislators on that, and I don't agree with the legislators on that. I think there is a way to do this, but, you know, I don't -- I can lobby legislators, so as lobbyists I don't get to vote on the floor of the House or the Senate.

Q I am going to wrap this up. So at least on several issues you have acknowledged Mr. Perkins has a fair amount of experience in dealing with this when he worked for the Teamsters, in your words. So how do you know that MNPEA as a fairly new organization isn't reaching out to the legislators through Tom Perkins' actions and that he isn't meeting with legislators, isn't sending them mail, isn't setting up meetings, how do you know any of that?

A All I know is this: That there are a coalition that includes the state troopers, the MPPOA, the teachers, all of us, and we are trying to protect our pensions, improve our pensions, and that is why I say I have never seen MNPEA involved with this at all.

So you're asking me what I know, I know that all of these other organizations are involved in lobbying to protect pensions and to promote pension improvement and to protect the defined benefit pension system, and those are the organizations that I am aware are doing that. I'm not aware that MNPEA is doing anything like that.

Q So if MNPEA chooses not to join your coalition, are they somehow not a union?

A In my opinion, they are not a union for the variety of reasons. They are not a union because they don't --

MR. CORWIN: We have already done that.

THE WITNESS: We have done that.

BY MR. FOWLER:

Q So I guess I just want to see if you know of any facts or personal knowledge that says that MNPEA has made a promise to anybody not to be involved at the Legislature, are you aware of that?

A I am aware that I have received reports from bargaining workers where MNPEA has attempted to divide worker against worker. In order to differentiate yourself from AFSCME, you have indicated that you do not do politics and do not do legislation. If they just give you their money, you'll take care of everything for them, whatever that might be, but that you don't do politics and that you don't do (inaudible), that is the reports I have received, Mr. Fowler.

Q Isn't it possible that what was said was that MNPEA will not directly solicit its members with propaganda who to vote for?

MR. CORWIN: Objection, calls for
speculation, lack of foundation.

MR. FOWLER: I am trying to
differentiate what he knows, what he has heard these
reports to actually be.

REFEREE BEFORT: You can ask it.

Based on the last half hour, I don't think it's very
(inaudible). You can ask it.

BY MR. FOWLER:

Q So do you have any facts or firsthand
knowledge to indicate that MNPEA has told its members
it will not be active in the Legislature?

A I have had reports, as I have indicated
before, I have heard reports from bargaining unit
employees, members and non-members, that, in fact, you
have told people, MNPEA has told people they will not
engage in politics, it won't bother with politics,
they don't do that sort of thing, they won't waste
their money or time, those are the things I have been
told.

Q Okay. Fair enough.

A If you don't do politics and don't do
legislation, I don't see how you can represent public
workers.

Q And I understand. So I want to follow
that up: Are you sure the reports that you're

receiving are, in fact, that MNPEA has indicated to
members that they won't do mailings on telling people
who to vote for?

A What I have heard, again, Mr. Fowler, I
will repeat it, is that MNPEA has told folks when you
have attempted to raid and divide worker against
worker, lower the wages of all public workers, where
you have done that, if you want to differentiate
yourself from us, you have indicated that you are not
like us, you don't do politics, you don't go up to the
Legislature, you don't do those things that we do. If
you don't do those things, you can't represent public
workers because you can't be a union because terms and
conditions include people's pensions, organization and
all the things that PELRA said (inaudible-static) and
must be dealt with legislatively.

Q And to wrap up the whole politics notion
here, so you testified that if Emmer had been elected,
that we'd probably be a right to work state, and that
it would be foolish to work to support anybody but
Dayton, do you remember something like that?

A I didn't say that. What I said was that
if Mr. Emmer had been elected governor, that we would
be Wisconsin on steroids. There were other candidates
besides Mr. Dayton, Ms. Kelliher, Mr. Entenza, who

also wanted to protect public worker's rights,

public --

(A Long inaudible due to static.)

Q -- he talked about it then, he talks about
it now. He said it publicly both before he got
elected and (inaudible-static) at a rally at the
Capitol, that got national news, that Wisconsin won't
happen (inaudible), and so, you know, that if we had
not been involved in that race the way we had, 8,100
votes is a difference between Wisconsin and Minnesota,

and to tell people not get involved in politics you
might as well give (inaudible) to Mr. Emmer or
Mr. Thompson this time or Mr. Johnson this time, all
who want to eliminate collective bargaining rights and
create a right to work state in this state. So to
tell people not to be involved in politics and that
they shouldn't be means that you're not protecting the
terms and conditions of employment and, in fact,
you're not representing public workers.

Q Thank you. So if MNPEA chooses to remain
silent --

(A Long inaudible due to static.)

Q You advocate for privatization of public
service. If MNPEA finds that unimportant, I would
suggest that you stop playing with conditions and

terms and conditions of employment because that
directly affects the terms and conditions of
employment of public workers.

Q Again I have asked you several times
whether you have firsthand knowledge of whether or not
MNPEA has partnered with other organizations to be
(inaudible), whether the board members or the
organization itself has reached out to the Capitol and
the legislators being involved in that, so I am not

going to ask you those again.

But do you have -- are you saying that if
we don't do an endorsement process and send the
materials to its member, that somehow we are lesser of

a union?

A I am saying you're not a union, and the
reason you're not a union is because you're not
entirely democratic, because you don't promote workers
working together, you promote them fighting with each
other, because you will not fulfill the term and
conditions of employment as part of the statute in
179A, because you're not -- I mean Dave Thompson is
saying create a right to work state, and he is going
to eliminate the right to collectively bargain, it's
been in the press. Jeff Johnson has done the same
thing, and so have a number of the other candidates.
If you don't inform public workers, in fact,
out there who want to destroy their with wages, hours
and working conditions, take away their very right to
bargain, destroy their public -- their defined
benefit, then, yes, you're not fulfilling the various
terms and conditions, and you're not being a union.
You're being some kind of organization or enterprise,
but you're not being a union because the workers are
directly affected by that and you're choosing not to
even discuss that with them.

MR. FOWLER: I have don't have
anything further for Mr. Seide?

MR. CORWIN: I have no questions.

THE WITNESS: Thank you.

REFEREE BEFORT: Thank you. Why
don't we take short break here. I will see what I can
find out about the transcript availability and then --

THE WITNESS: What do I do with the
book?

MR. CORWIN: Leave it there.

(At this time there was a mostly
inaudible conversation on the recording
during the break when the recorder was
not turned off.)

MR. CORWIN: Are we ready to go?

MR. FOWLER: Yes.

REFEREE BEFORT: If I could get you
to raise your right hand. Do you swear to tell the
truth, the whole truth, and nothing but the truth
throughout the proceed?

THE WITNESS: I do.

REFEREE BEFORT: Thank you.

DIRECT EXAMINATION

BY MR. FOWLER:

Q Could you please say and spell your full
name for the record so the court reporter can get it.

Sizer, S, as in Sam, I-Z-E-R.

MR. FOWLER: We'll raise an
objection that this witness wasn't listed on the
witness list.

MR. FOWLER: It certainly was. Is
Lanell your middle name, or is that a hyphenated last
name?

THE WITNESS: Middle name, L-A,
capital N-E-L-L.

MR. FOWLER: We'll withdraw it. My
memory is faulty. We are just trying to find it.

MR. FOWLER: L-A capital N?
MR. CORWIN: I'll take the
representation that she's on the list.

REFEREE BEFORT: Go ahead.

MR. FOWLER: I just want to make
sure everybody is on the same page.

BY MR. FOWLER:

Q Ms. Sizer, where are you currently
employed?

A The City of Minneapolis in the 9-1-1
department.

Q So in laymen's terms, are you then a
dispatcher for the City of Minneapolis?

A Yes, I am.

Q How long have you worked in that position?

A I started in June of 2004.

Q Currently are you a dues-paying AFSCME
member?

A Yes, I am.

Q Now, in the year of 2013, so just a year
prior to '14 here, did you become aware about a
organization with the acronym of MNPEA?

A Yes, I did.

Q What did you do to learn about that
organization?
group who was solicited by MNPEA to come to this organization?

A. No.
Q. And so how did you get in touch with MNPEA?

A. I contacted them or I did the email, I expressed interest on behalf of the group that we would be interested in hearing what you guys had to offer.

Q. Did you set up informational meetings with MNPEA?

A. Yes, I did.
Q. Did you meet with this gentleman here, Mr. Perkins?

A. Yes, I did.
Q. On more than one occasion?

A. Yes, we did.
Q. Did you ask him -- did you have an opportunity to ask him all kinds of questions about what MNPEA is?

A. Yes, we did.
Q. And were these meetings just held with you and Tom, or was there other people present?

A. Other people were present.

Q. Okay. Did you -- did you then after all of that was said and done, did you turn in those cards to Mr. Perkins.

A. (Inaudible.)
Q. And approximately how many of the cards of 60 to 70 did you turn in --

(Long inaudible due to static.)

BY MR. FOWLER:
Q. If you can turn to Tab 3 of that book.

A. Okay.
Q. If you could look at the first four pages.

A. Okay.
Q. Now, do you recognize what these four pages are?

A. Yes, I do.
Q. What are they?

A. These are fliers that started showing up at --

(Long inaudible due to static.)
Q. Did you hand those over to (inaudible)?

A. I did.

MR. FOWLER: I would offer Tab 3, Pages 1 through 4.

MR. CORWIN: Besides relevance, I don't (inaudible).

REFEREE BEFORT: Besides
her opinion is as to whether MNPEA is or is not an employee organization. It is ultimately a legal conclusion and her opinion is irrelevant. Finally, to the extent that she attempts to represent -- (Long inaudible due to static.)

BY MR. FOWLER:

Q So as it relates to those documents, let me rephrase, do the documents here impact your opinion as to whether or not MNPEA is a legitimate labor organization?

A Well, we would probably do more research, but we didn't know even how to verify any of this because there is nothing in there that we could check it with against. I don't know, so --

Q Okay. Did you have an opportunity to ask Mr. Perkins about these four pieces of paper at that meeting?

A Yeah, uh-huh.

Q In fact, had you met Mr. Ditsch at one of these meetings?

A Yes.

Q The person to my right?

A Yup.

Q Do you feel like MNPEA had answered all of your questions sufficiently?

A (Inaudible) I'll try.

BY MR. FOWLER:

Q So based on your conversations with other employees represented by MNPEA.

A Yeah.

Q Did you have any question in your mind that MNPEA was representing those employees' interests with respect to their terms and conditions of employment?

A (Inaudible).

Q So you were satisfied that MNPEA was doing that?

A (Inaudible).

Q Had MNPEA ever told you that as a union MNPEA would never be active at the Capitol?

MR. CORWIN: Objection, MNPEA is not a person, and therefore the question is vague. I don't know who MNPEA is or is MNPEA somebody who can speak, I don't know.

MR. FOWLER: Seriously?

REFEREE BEFORT: MNPEA officers or agents, right?

MR. FOWLER: I am sorry, I am having a hard time since we have been here for a long time talking about on behalf of MNPEA and now it's raised as an objection now.

MR. CORWIN: You're asking whether MNPEA said something, that is not a proper question. It would have to be an officer or director or some agent of MNPEA. MNPEA itself doesn't talk.

BY MR. FOWLER:

Q Ms. Sizer, let me rephrase. Did anybody purporting to be connected with the Minnesota Public Employees Association Organization ever tell you that the Minnesota Public Employees Association would not be active at the Capitol or Legislature?

A No.

Q In fact, you met with Mr. Perkins?

A Yes.

Q Did Mr. Perkins tell you directly about his involvement and knowledge with respect to pension issues, for example?

A Yes.

MR. CORWIN: Objection, hearsay.

MR. FOWLER: Not from the party opponent it's not.

MR. CORWIN: He is not a party.

REFEREE BEFORT: He's in the room.

I think you can answer that question. You can cross-examine him.
1 BY MR. FOWLER:
2 Q Did Mr. Perkins ever tell you about his
3 work, for example, with the Corrections Officer's Bill
4 of Rights?
5 A Yeah.
6 Q Did he talk to you about his work and
7 knowledge with the Bloodborne Pathogen Bill?
8 A Yes -- actually, I don't remember that
9 part, that was a long time ago.
10 Q Was he talking generally about his
11 qualifications --
12 A Yes.
13 Q -- and history?
14 A Yup.
15 Q Were you satisfied with the answers?
16 A I was.
17 (Long inaudible due to static.)
18 BY MR. FOWLER:
19 Q (inaudible) was that ever concealed or
20 hidden by anybody from Minnesota Public Employees
21 (inaudible)?
22 A No.
23 Q The fact that MNPEA is new, for you
24 personally what impact does that have, if any, on
25 whether or not that MNPEA is a legitimate labor
organization?
   A What do I -- is that a concern to me that
   it's new?
   Q Sure, if that way you take it?
   A No, it's not a concern to me. You guys
   you're going to hopefully have a new outlook, and I'm
   excited to get a chance to work with you guys.
   Q So as a new organization would you expect
   that there are goals that MNPEA hopes to accomplish as
   they get bigger?
   A Yes.
   Q Was that ever told to you?
   MR. CORWIN: By whom, objection.
   BY MR. FOWLER:
   Q Did Mr. Perkins ever tell you, for
   example, that in the future MNPEA plans to do X, Y, Z?
   A Oh, we talked about general things. I
   mean we didn't get super specific. We were basically
   more focused on what he could do for us and our
   organization, and those were our main concerns at that
   time.
   Q Okay.
   A We didn't go much into that.
   Q Now, you have been an AFSCME member since
   2004?
   A Yup. Yes. Sorry.
   Q So do you feel that in terms of the
   ability to represent the terms and conditions of your
   employment, that it is necessary for a union to send
   you mail on telling you information about who the
   union has endorsed?
   A No.
   Q Why not?
   A I want to be able to vote for who I want
   to vote for. I don't need fliers and mailings. It
   just piles up a lot. I can't talk for everybody else.
   For myself it means nothing to me.
   Q How many -- if you would to estimate all
   the fliers you have received from AFSCME since 2004,
   how large of a stack of mail would that be?
   MR. CORWIN: Objection, calls for
   speculation, lack of foundation and (inaudible) it's
   probative.
   A I'm sure I have a pile at home --
   REFEREE BEFORT: She can answer.
   A -- I could bring in. I recycle it so I
   save it.
   BY MR. FOWLER:
   Q So have you received a lot of this?
   A Yes.
Now, you understood, for example, Mr. Ditsch showing up at these meetings and Mr. Perkins, did you understand that you would receive services from MNPEA through a lawyer, correct?
A Yes.
Q Now, is that appealing to you?
A Yes.
Q Why?
A Inaudible answer due to static.
Q So in the past have you ever needed the services of AFSCME to represent you individually?
A Yes. did.
Q Did they send a lawyer?
A No.
Q Would you have liked to have had a lawyer?
A Yes.
Q You understood that MNPEA told you as part of its structure that you will receive direct lawyer services to defend you if you have a disciplinary problem, for example?
A Yes.
Q Is that appealing to you?
A Yes.
Q Do you feel that having a lawyer is beneficial to the union's ability to navigate the terms and conditions of your employment?
A Yes.
Q In the past when you have needed AFSCME's services since 2004, has AFSCME essentially sent one of your fellow stewards to help you?
A Yes. Well, I asked for one.
Q Have you ever asked, for example, for a lawyer to come and sit in with you on your issue?
A Yes, but the union steward that I had said that she could do the representation.
Q So you were not provided with lawyer?
A No.
Q Do you feel that the steward did a better job than if AFSCME had sent a lawyer?

MR. CORWIN: Objection, calls for speculation, lack of foundation. I mean that is assuming that the lawyer that was sent by MNPEA was even competent, so I don't understand why this testimony --
MR. FOWLER: Let me narrow my question.
BY MR. FOWLER:
Q As opposed to the steward that AFSCME sent, who was not a lawyer, am I correct on that?
A Right, yes.

Q So instead of having a coworker, do you feel if AFSCME had sent a lawyer that that would have improved your representation?

MR. CORWIN: Objection, speculation.
MR. FOWLER: Not on her own case.
REFEREE BEFORT: I think she can answer.
A Yes, I think it would have. My union steward didn't say anything during the whole meeting, so at the end she just said I should just take what I get for the offer.

BY MR. FOWLER:
Q In your experience since 2004, have you had every contract negotiated by AFSCME?
A Yes.
Q Has AFSCME sent a lawyer to negotiate?
A Inaudible answer.
Q Had anybody told you that there was a lawyer there?
A No.
Q By contrast, MNPEA has indicated that as part of its setup with its union, that lawyers will come to the table to negotiate?
A Yes.
Q Is that something that is attractive to you?
A Yes.
Q Do you feel like AFSCME's challenge to MNPEA, as you understand it claiming that they are not a union, is that an appropriate use of your union dues?
A No.

MR. FOWLER: I have nothing further.

CROSS-EXAMINATION

BY MR. CORWIN:
Q Ma'am, do you know whether anybody at MNPEA is registered with the State of Minnesota as a lobbyist?
A I do not.
Q Do you know whether Mr. Perkins is a registered lobbyist?
A I do not.
Q Are you aware of whether if someone engages in lobbying activity or political activity and they are not registered, whether that happens to be a violation of the State law?
A I do not know.
Q Are you aware of the competence of MNPEA's attorneys?
Q: Do you know that she went to steward training?
A: Yes (inaudible).

Q: Do you know whether MNPEA’s attorneys have ever been trained as stewards?
A: (Inaudible).

Q: Do you know whether that steward also has the right or ability to seek the help of a professional business agent?
A: Yes.

BY MR. CORWIN:
Q: Who is she?
A: No longer with AFSCME.

Q: Who was she at that time?
A: Business agent.

Q: Do you know that she participated in your (inaudible)?
A: (Inaudible).

Q: Do you know if any other professional staff participated in negotiations?
A: I have no idea.

Q: Do you know what training Laurie Warner had as a business agent?
A: No, I do not.

Q: Do you think that any lawyer would represent you better than a trained business agent or steward?
A: My opinion, yes.

Q: An intellectual property lawyer?
A: Yes.

Q: Okay. A criminal lawyer?
A: Yes.

Q: A lawyer who does tax work?
A: I don’t know.

Q: So you think just having a lawyer, no matter what their ability or experience, that is better than having a steward?
A: Well, I feel like they have gone to way more school and know laws better.

Q: You don’t know whether they know PELRA better or the duties of a steward or a business agent?
A: No, I am sorry, I do not.

Q: Now, when you were testifying about your knowledge of MNPEA.
A: Yes.

Q: Did that come through statements or representations made by Mr. Ditsch?
A: How do you mean?

Q: Have you seen any fliers from MNPEA? You testified that you saw the AFSCME flier. I want to know if you have seen the --
A: They weren’t fliers. We got letters from other agencies just saying that they were happy with their representation with MNPEA.

Q: Did you ever get any material, campaign material from MNPEA?
A: I wouldn’t call it campaign.

Q: Oh, so you draw a distinction between what you got from AFSCME and what you got from MNPEA?
A: Well, I draw a distinction between positive and negative stuff. I mean --

Q: Okay.
A: If they can speak on behalf that they are to help with what they have received, I guess I would separate the two.

Q: Okay.

MR. CORWIN: I’m not sure what exhibit we are up to.
A: What am I looking at?

BY MR. CORWIN:
Q: I am going to ask you about that. REFEREE BEFORT: It looks like 15 is the most recent, in your booklet anyway.
MR. CORWIN: So let's mark this for identification as exhibit --

REFEREE BEFORT: 16.

UNIDENTIFIED MALE: Do you have one more of this?

MR. CORWIN: Yeah, I have got all sorts of them.

UNIDENTIFIED MALE: Professor Befort, before we get to questioning of this, would you able to track with some of the documents?

MR. CORWIN: Who else needs them? I have got more.

REFEREE BEFORT: How about me?

MR. CORWIN: Oh, yeah, that might help.

MR. FOWLER: Mr. Corwin, is this a document that appeared on your document list?

MR. CORWIN: No.

MR. FOWLER: I am going to object to it as not disclosed.

MR. CORWIN: It's rebuttal.

MR. FOWLER: This is not rebuttal. It's cross-examination. Rebuttal is --

MR. CORWIN: You obviously don't understand that in cross-examination you can provide rebuttal testimony. Would you like me to get out the org book?

REFEREE BEFORT: Well, I understand your objection, and I will let you use this.

Q Have you seen this document before?

A No.

Q Okay. I would like you to read it because the question I am going to ask you is whether this is a positive or a negative document.

A Okay.

Q You testified that AFSCME's material was all negative, so I would like you to read that.

A I will.

M R. CORWIN: The question is she testified that all the campaign material that AFSCME provided was negative, that she was disappointed because none of it was positive. She then said that MNPEA, on the other hand, was all positive. I am just asking her for her opinion as to whether this is negative or positive.

REFEREE BEFORT: Okay. I'm not sure it's relevant, but if that is the sole question being asked, I will let you do it.

A It looks positive to me.

BY MR. CORWIN:

Q You think it's positive?

A Yeah. It doesn't say anything bad about you guys.

Q It doesn't say anything bad about us?

A No. Where does it say that? It just says you guys are different.

Q Okay. We will let the document speak itself.

A It didn't show a picture of a nose or a wolf or a scam.

Q We will let the document speak for itself.

MR. FOWLER: I will object to the receipt of this document.

MR. CORWIN: Well, it's not being offered. It will be offered through Mr. Perkins.

 REFEREE BEFORT: Okay, I am going to receive it.

UNIDENTIFIED MALE: And the exhibit number is?

REFEREE BEFORT: 16.

UNIDENTIFIED MALE: 16. Thank you.

MR. CORWIN: I have no further questions.

MR. FOWLER: Nothing.

REFEREE BEFORT: Thank you very much.

THE WITNESS: Thank you.

REFEREE BEFORT: You can go.

MR. FOWLER: At this time we call Tom Perkins.

REFEREE BEFORT: Would you raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth in this proceeding?

THE WITNESS: Yes, I do.

REFEREE BEFORT: Okay.
DIRECT EXAMINATION
BY MR. FOWLER:
Q Mr. Perkins, are you currently a public employee?
A Yes, I am.
Q Where are you employed?
A I'm on a leave of absence, a medical leave of absence from Ramsey County.
Q Okay. In what capacity with Ramsey County?
A Correctional officer II.
Q When was the last time you physically put on a uniform and worked at Ramsey County?
A It was prior to my surgery. It would have been February -- some time February 2013.
Q So within the last year even you have worked as a correctional officer wearing a uniform inside a jail?
A This year, yes, that is correct.
Q Okay. You mentioned you're on a medical leave. How did you -- were you injured on duty?
A Yes, I was.
Q In the role as a corrections officer?
A Yes, in the line of duty, yes.
Q Let's go way back in time. So when were you first hired as a correctional officer?
A I was hired as a correctional officer back in 1994.
Q With Ramsey County?
A Yes, that is correct.
Q Please tell me your public employee union experience.
A I started out at Ramsey County on the birth of my first child. I came back from the birth of my first child and found out that I was elected as a steward, chief steward because I had made a few comments and stuff, and I was the only one that had their name up, and I basically started out as chief steward at the Ramsey County Correctional Facility with Teamsters Local 320. From there -- do you want me to continue?
Q Please.
A From there I worked in that capacity in negotiating contracts with a business agent. I became more involved as I saw there was a major need for pensions in the State of Minnesota in that correctional officers have a major lacking, began contacting a number of different agencies around the State at the time concerning the pension. Some of the agencies I contacted (inaudible) would be Andy from the workhouse, I contacted OS groups, Sergeant Dave Beal (inaudible). I started going about it would be the Teamster Local 320 groups and I began hounding my business agent pretty much every single day my goal or the phone calls.
A At which time I started going after my local rep, who was a great rep, Democrat by the name of Mike Belmont. Mike took it upon himself as a dispatcher that there was a need and he began working on some ideas.
Q We had a big meeting at Teamsters Local 320. AFSCME was invited. I think our lobbyist at the time was Steve Hunter and Julie. We had Elliott Luss participated. We sent Dan Wells, and then it was myself, but I took it upon myself to take it a little bit father as a grassroots movement. I invited groups from all across the State.
A I worked with -- we invited the ladies from up in St. Louis County. There was a president of their association up in the St. Louis County area.
Q From throughout the State they came to the meeting at Teamsters Local 320, at which time there was decisions to go about hiring a lobbyist to make that move forward. The unions weren't going to take it in that capacity. We as a group decided we would go forward and try to get a lobbyist to go after pension benefits.
A As you well know, we were very successful with the pension. It began with the Disability Bill.
Q We were very successful. Granted, you know, there were many participants that needed letters. AFSCME participated. They provided a letter, Elliot Luss through the MPPO (inaudible) showed up.
A My recollection was it was myself that testified at the Capitol and someone else verifies and Bob Johnson were the primary at the table concerning the Disability Bill.
Q The following year we went back. I still maintained my duties, but I went on a leave of absence. I had to go on no pays from the Teamsters for a period of time as we were doing the pension from Ramsey County. My wife was working in the capacity as a deputy, and at which I was on no pays duty at work, and I started to become well-known because I carried my son around in the little tote on my chest. I would show up at the Hennepin County workhouse with fliers and all over the place. He and I would go around the State handing out stuff. I took him with me.
Q At which time we went back to the Capitol, all the parties participated. We testified again, and...
probably one of the most significant pieces of legislation done by unions in the State of Minnesota was when they recognized that local county correctional offices had a distinguished need because of the hazardous duty assignments and working within county jails.

At that point I was approached by representatives from Teamster Local 320 as I was becoming more active, and they asked me if I was interested in the position on their executive board. I had to talk to my wife, and, you know, a few different things. I have a great love for corrections, and I loved my job at Ramsey County, it was a great place to work.

We had some discussions. I spoke to my business agent, Mike Golen, and at that time I accepted the position of trustee as appointed. I was reelected about a year and a half later as a trustee with Sue Maren. I was reelected one more time, at which time I was appointed to the position of business agent for Teamsters Local 320, and I had to resign my position as trustee, and I went on from there as a business agent with Teamsters Local 320.

During the meantime I was assigned different groups as we proceeded forward with negotiations, but my love for corrections and pensions for the union and working people continued. I participated, along with Elliott, we participated with the probation -- the initial probation, assigned Mary -- no, I think Julie was assigned.

We participated in the MSRS and the (inaudible) on the possibility of implementing probation officers and 9-1-1 dispatchers into a specific pension plan. At which time I continued to move forward.

There is a great need on the correctional officers where peace officers already had the Peace Officer Disability Procedure Act, we began a function of moving forward with a Correctional Officer Bill of Rights. There was a lot of -- unfortunately to this day I don't understand, but there was a lot of resistance from both parties towards a Correctional Officer Bill, but I will -- Bill Cudo to AFSCME they stuck there with us, they participated. There was a correctional officer in the State of Minnesota that testified, and we went forward, and we did get some legislation concerning a Correctional Officer Bill of Rights.

At that time I began to function more in the capacity of taking over other groups within Teamsters Local 320, getting involved more in the internal politics of different items within the local. I continued that capacity until April of 2011 when I was terminated from Teamsters Local 320.

Q You heard I think it was Mr. Wes Morlan and Mr. Lehto testify that they serve at the will of the AFSCME executive board. As a Teamsters business agent were you an at-will employee serving at the will of the Teamsters executive board?

A Yes, I was an at-will employee for the Teamsters Local 320. That is why under PELRA I maintained my leave of absence through Ramsey County where I could return back at any time at my discretion.

Q And you were terminated by Teamsters 320?

A Yes, I was.

Q And you were returned to work shortly thereafter to Ramsey County?

A I reported back to Ramsey County. I was going through a pretty well-known medical issue at the time. I went back on to continue on my leave of absence until I was done with that medical issue through the form of period. At which time I reported back. I contacted Ramsey County, and I returned back to duty and start the process of (inaudible) starting

Q You heard I think it was Mr. Wes Morlan and Mr. Lehto testify that they serve at the will of the AFSCME executive board. As a Teamsters business agent were you an at-will employee serving at the will of the Teamsters executive board?

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Q And you were terminated by Teamsters 320?

A Yes, I was.

Q And you were returned to work shortly thereafter to Ramsey County?

A I reported back to Ramsey County. I was going through a pretty well-known medical issue at the time. I went back on to continue on my leave of absence until I was done with that medical issue through the form of period. At which time I reported back. I contacted Ramsey County, and I returned back to duty and start the process of (inaudible) starting
A Yes, there was.
Q Were you appointed to the board?
A I was appointed after the initial couple of months afterwards.
Q What is, to the best of your recollection, of whether or not the original board members that were initially appointed were ratified by a vote of the members, did that ever happen?
A Yes, our initial membership board meeting took place, and what happened was that we reaffirmed that the board, if there were any issues, and it was reaffirmed in the November 2011 --
Q Meeting?
A Meeting, yes, that is correct.
Q Was that posted well in advance?
A Yes, it was.
Q How does MNPEA's board meetings -- when do you hold them?
A Well, if look at our structure, it's bimonthly. The board meeting is on even months. The membership meetings are on odd months. So like tonight is one of our board meetings, that will take place after 6:30 tonight.
Q Okay. Is that the normal time?
A Yes, it is.
Q And do you set these on your calendar far in advance?
A Yes.
Q Now, in your current role with the Minnesota Public Employees Association do you act as a business agent for various bargaining units that are represented by MNPEA?
A Yes, I do.
Q If such -- let me show you what has been marked for identification as Joint Exhibit 1. You can flip through those. Do you recognize Joint Exhibit 1 as a list of all the election cases that MNPEA has been involved in, all the grievance cases that MNPEA has been involved in, and interest contract arbitration cases that MNPEA has been involved in with the Bureau of Mediation Services?
A Yes, I do.
Q Does that information look fair and accurate to you?
A Yes.
Q Do you have any reason to dispute the Bureau's record with respect to Joint Exhibit 1?
A No.
Q Now, in those, for example, in, for example, with Sibley County, is that one of the groups you represent?
A Yes, I do.
Q Now, have you sat down with the employer and talked about terms and conditions of employment with their contract, for example?
A Yes, we have.
Q And have you had occasion in our business rep capacity with MNPEA to discuss with the employer about grievance issues arising out of the contracts?
A Yes.
Q And Joint Exhibit 1 is a recitation of all the case (inaudible) that have been assigned to those, correct?
A Yes.
Q Any doubt in your mind that you represent public employees on their terms and conditions of employment?
A There is no doubt on that.
Q Now, initially were your bylaws set up with a five year period for elections for officers?
A Yes, they were.
Q Why did you choose five years initially?
A The initial purpose is that myself, Mr. Golen and Mr. Deal, particularly Mr. Golen, and Mr. Deal, has just came back -- and had come back from Teamsters national convention that was held at the end of June, and one of the big purposes with the Teamsters was that they had their international's five year elections, so we took it upon us that it was five years, and that was one of the reasons is that the international had five years in the Teamsters, and that was one of the reasons that we based it on that initially.
Q Now, you realize that the case here today has a dispute of whether or not the Union Democracy Act even applies to public employee -- solely public employee unions, do you understand that?
A That is correct.
Q What is your position as to your understanding as to whether or not the Union Democracy Act applies to the public only union?
MR. CORWIN: Objection, calls for a legal conclusion, lack of foundation, calls for speculation.
REFEREE BEFORT: It sort of does. I mean there is some special expertise that --
MR. FOWLER: You know, it's foundational to my next lines of questions in terms of showing a chronology of the bylaw change, that is the only purpose for it.
REFEREE BEFORT: Why don't we just skip over that one.

MR. FOWLER: Okay.

BY MR. FOWLER:

Q So in terms of -- at some point did AFSCME early on in MNPEA's existence make an objection claiming that the Union Democracy Act did not -- that the Union Democracy Act that MNPEA was in violation of it, do you recall that?

A Yes, I do.

Q In front of you you have a book, would you turn to Tab 7, please. If you could quickly familiarize yourself with the exhibits in this document.

A Okay.

Q Mr. Perkins, tell us in your own words, I don't mean to lead you, but tell us in your own words what Exhibit 7, Tab 7 is.

MR. CORWIN: We are not going to object to BMS -- this is part of the BMS official record with respect to all of these documents, so --

MR. FOWLER: Well, let me --

MR. CORWIN: They are part of the record, whether --

MR. FOWLER: Let me (inaudible)

because I think we left off last time saying, hey, is MNPEA's response that they gave to the Bureau part of the record or not. If there is no objection, then I can skip a lot of the questions.

MR. CORWIN: There is no objection because it's part of the BMS record. We don't dispute that these letters were sent to the BMS, and therefore, they are incorporated into the record.

REFEREE BEFORT: Gregg, are you talking about Tab 7 in particular or the entire?

MR. CORWIN: Well, I have read all of Tab 7, and Tab 7 either has official Bureau documents, letters that were sent to the Bureau of Medication Services, which is I am not going to contest whether they received them or not. I am going to assume that they did receive them, and so therefore as far as I am concerned, they are all part of -- they were all part of the record, they were all submitted to the Bureau of Medication Services.

MR. FOWLER: Okay. Fair enough.

But I remember a discussion last time being we were ordered by the Bureau to give a response prior to your involvement, Mr. Befort. We submitted a 13 tab document, which I have been calling Exhibit 1, Tab 7, for example, and so my question was had they already been received as part of the record. I definitely want it admitted if it's not. But if Mr. Corwin is saying it's part of the record --

MR. CORWIN: It's part of the record, we don't have any objection to it, it's part of the record.

MR. FOWLER: So then formally, I want to make this clear on the record, formally I move for the admission of what I am calling Exhibit 1, Tab 1 through 13 with the accompanying brief on the first.

MR. CORWIN: Wait, wait, I thought we were talking about Tab 7.

MR. FOWLER: My plan is to get all of this in, Gregg, so this is what I submitted to the Bureau as ordered by them.

MR. CORWIN: You know, to speed this along, this is -- I am going to say that that is fine, you can --

MR. FOWLER: Okay.

MR. CORWIN: -- you can submit your entire book as an exhibit. I don't want to start spending hours going through the documents.

MR. FOWLER: I appreciate it. So that is received then, Mr. Arbitrator?

MR. CORWIN: As long as it's reciprocal and that our booklet is received.

MR. FOWLER: Absolutely.

MR. CORWIN: All right.

MR. FOWLER: Well, your -- what was submitted as ordered by the Commissioner.

MR. CORWIN: Right.

MR. FOWLER: Yes.

MR. CORWIN: So both submissions of the parties are received into evidence without objection.

REFEREE BEFORT: Okay. That includes MNPEA's Exhibit 1 with 13 tabs. Is AFSCME's submission this booklet, or is that something different?

MR. CORWIN: Right, it's that.

REFEREE BEFORT: Okay. It's all received.

MR. FOWLER: Fair enough. That is fair.

BY MR. FOWLER:

Q So did AFSCME in a subsequent election than Jordon make an objection claiming that MNPEA was not a real union and in violation of the Union Democracy Act?

A Yes.
Q So now here is it your understanding that this is the third time that AFSCME has raised the objection that MNPEA is in violation of the Union Democracy Act and is somehow not a union?

A Yes.

Q So why don't we talk about the early stages of MNPEA before it was in existence. Whose idea was it come up with the Minnesota Public Employees Association?

A Mike Golen's.

Q Did he have any discussions with you about those plans?

A Yes, he did.

Q Did the Fowler Law Firm create MNPEA?

A No.

Q How was the Fowler Law Firm even involved, if it is, with MNPEA?

A There was a lot of political stuff going on with the Teamsters at the time, and what happened was that Mike Golen worked with Gary Cayo, who was the FOP in the City of Minnetonka. Gary Cayo spoke nothing but the goods about you. We had known you previously from many members did, from your representation with Teamsters Local 320 and Kelly Fosset with our firm, Beck's firm, and we knew about your representation, you were very popular, and at which time Mike, you know, said you were the guy, that we should contact you.

Q Okay. Was it ever in the planning phases to have Rob Fowler, Robert Fowler or Joe Ditsch or anybody associated with the law firm be a voting board member of this organization?

A Never.

Q What -- do you have a contract with (inaudible) services with my law firm?

A Yes, we do.

Q So am I a contract employee or am I a board member?

A You're a contract employee, and that contract was insisted upon us.

Q And so does the Fowler Law Firm under any version of the bylaws have the authority to dictate decisions made by MNPEA?

A You don't have the ability to sign nothing, spend money, or tell us what to do. You work at the will of the members, and you work at the will of the board.

Q Okay. Mr. Perkins, I want to walk you through the bylaws. First of all, has MNPEA been in existence for four years?

A No, we have not.

Q So let me ask you this: Even if the Union Democracy Act applied to this organization, has sufficient time passed for MNPEA to have even been in violation of that statute?

MR. CORWIN: Objection, calls for a legal conclusion. The statute speaks for itself.

MR. FOWLER: Well, at least I need to get into the facts that four years hasn't passed, Mr. Arbitrator.

REFEREE BEFORT: I think that is sufficient.

BY MR. FOWLER:

Q Has four years passed, Mr. Perkins?

A No.

Q Okay. Now, if I understand it right, the bylaws have been amended four times, does that sound right to you?
A: That sounds right.
Q: Does it sound correct that on 10/27/11 they were amended to reflect a new mailing office for MNPEA?
A: That is correct.
Q: For example, initially when MNPEA was filled with the Secretary of State’s Mr. Deal couldn’t use a Post Office box as the address, correct?
A: That is correct.
Q: And once MNPEA was filed and the organization got started, you obtained a business office, correct?
A: That is correct, in Roseville, yes.
Q: And so that is the reason for the first bylaw change?
A: Yes.
Q: Was that largely administrative in nature?
A: Yes.

MR. CORWIN: I wish he would quit leading the witness.
MR. FOWLER: All right.

BY MR. FOWLER:
Q: Narratively, was there an additional administrative amendment to the bylaws that happened on or about January 2012?
A: I vaguely remember, yes.
Q: Do you remember why that was changed again?
A: Not exactly, unless I look at it.
Q: Do you have any reason to dispute that was to change the address?
A: A: MR. CORWIN: Objection, he is leading the witness. The witness already testified he had no knowledge. Now he is trying to lead him and give him the answer.
REFFEREE BEFORT: I don’t think it really matters.
MR. FOWLER: I don’t either.
REFFEREE BEFORT: Go ahead and lead on the second and third ones and maybe we will get --
MR. FOWLER: That is all I am trying to do is get through the mundane.
Q: And, in fact, through that membership, the time that you -- did you post the fact that you were proposing a bylaw change to change the terms from four to five years?
A: Yes, we did.
Q: And that is found, in fact, in the documents that we submitted to the Commissioner on this very issue, correct?
A: That is correct.
Q: If you could turn to Tab 2 of the book, I want to ask you a specific question about a document here. About the 12th page in from this stack where it appears on the heading a Gmail, urgent question regarding MNPEA. Now, as part of your arrangement with the Fowler Law Firm, your contract, do you use the Fowler Law Firm to be the communicator on behalf MNPEA with agencies such as the Bureau?
A: Yes, we do.
Q: Did you authorize -- did the board authorize my firm to let Commissioner Tilson know that we planned -- MNPEA planned to change the bylaws from a four to five-year term?
A: That is correct.
Q: And that is found in this document here; is that right?
A: Yes, it is.
Q: In fact, you let the Commissioner know that it was being posted on the website to that avail?
A: Yes, we did.
Q: And if you keep turning about seven pages forward where there is a letterhead that says BMS.
A: Yes.
Q: Do you see there -- what does the Commissioner say about assuming hypothetical facts?

MR. CORWIN: Objection, the document speaks for itself. The witness -- there is no foundation for this witness other than the document.

MR. FOWLER: Well, okay.

BY MR. FOWLER:
Q: Mr. Perkins, you were CC'd on this document, correct?
A: That is correct.
Q: What did the Commissioner tell you about assuming hypothetical facts?
MR. CORWIN: Well, the document speaks for itself.

MR. FOWLER: I need to do my questioning, Gregg.

MR. CORWIN: The facts are in the record. They're in your exhibits.

MR. FOWLER: I just want -- I want the point made. It's stylistic, Gregg, but I think that is --

REFEREE BEFORT: You made the point.

MR. FOWLER: All right. Moving on.

BY MR. FOWLER:
Q: So, Mr. Perkins, what did the Commissioner tell you about assuming hypothetical facts? If you want to read it, that will be fine.
A: What page are we on, 19?
Q: It has got the BMS -- do you want to read that into the record about where I indicated to you?
A: Yeah, I will read it.

THE WITNESS: Is that okay?

REFEREE BEFORT: Yes, sir.
A: "Mr. Fowler, MNPEA’s motion concerning the above-captioned matter you submitted via email on Friday, October 4, 2013 seeking clarification of the BMS letter October 2, 2013 is denied. Your letter assumes hypothetical facts. To ask for the impact of those facts on Council 5’s objections in this matter without a written argument from MNPEA, including the facts and law as you understand them and response from the other parties to request a ruling, would be speculative and otherwise inappropriate. Also, please note that Council 5 is seeking changes, notice to eligible voters. This issue should be addressed by MNPEA."
Q: Now, as it relates to whether or not there has been an election, isn't it fair to say that assuming that there would not be an election in the next four years is also speculative and hypothetical?

MR. CORWIN: Objection, again, there is no probative value in speculating at this. We are wasting time. I don't understand how it advances.

MR. FOWLER: All this line of questioning goes to the ripeness doctrine, which I need to make a record of for when AFSCME appeals this decision, so I want it clear that there are facts that support the ripeness doctrine.

MR. CORWIN: The facts are in the record. They're in your exhibits.

MR. FOWLER: I just want -- I want the point made. It's stylistic, Gregg, but I think that is --

REFEREE BEFORT: You made the point.

MR. FOWLER: All right. Moving on.

BY MR. FOWLER:
Q: Mr. Perkins, do you plan to have an election within the next four years?
A: Yes.
Q: So what is the reason for -- well, let me ask you this: So did you post the proposed changes verbatim to the website?
A: Yes, we did. They are still posted on the website, yes.
Q: And under your bylaws is that an adequate method of giving notice to members?

MR. CORWIN: Calls for a legal conclusion.

MR. FOWLER: That is not a legal conclusion. It's under his bylaws is that allowed.

REFEREE BEFORT: Go ahead.
A: Yes, they are, and they were approved by the Commissioner.

BY MR. FOWLER:
Q: Has MNPEA been certified by the Commissioner with the set of bylaws that are in place on other groups since those were filed?
A: Multiple times.
Q: Well --
A: Since the new updated?
Q Yes.
A The updated we have been certified, yes.
Q And which is the two most recent?
A The Zumbrota Police Department, Nisswa and Sherburne County.
Q Is Mr. Deal a public employee?
A Yes, he is.
Q Does he pay dues in his capacity as a Washington County correctional officer?
A Yes, he does.
Q Was he present at the meeting by which the bylaws were amended?
A Yes, he was.
Q Did he vote?
A Yes, he did.
Q Mr. Perkins, it's been insinuated that MNPEA does not engage in the legislative process. Do you remember that testimony?
A Yes, I do.
A We have begun the process of -- MR. CORWIN: Objection, non-responsive. Calls for a yes or no answer.
BY MR. FOWLER:
Q At the present time?
A Right now as an individual?
Q Yes.
A As an individual, yes, myself.
Q I will ask it narratively, does MNPEA plan to be active at the Legislature?
A Yes, we have sent out our letters to the House, and we sent out letters to the Senate.
Q Okay. Are you in the process of scheduling meetings with elected officials?
A No, we are not in the process at this point. At the present time we are right now in the process of doing our paperwork to turn in for lobbying and being filed as registered lobbyists. It is no different than Desk Ronkey from Local 320 or AFSCME with their lobbyist.
Q Has MNPEA given any money to any political candidate up to this point?
A No.
Q Talk generally, if you could, about, you know, MNPEA as a new organization, were you able to do everything right away that you planned to do?
A No.
Q Give us some examples.
A Well, one of the big examples right now, and I think our friends from AFSCME would support this, is that correctional officers need because of the pension plan that we have, we need an individual on the pension PERA board, and we need someone to serve in that capacity because police and fire has an individual that is on the board.
One of the other ones I am sure that representing different correctional groups, we need to go back, there was a promise that we all made to ourselves a long time back, and people might forget because Mr. Seide and I actually worked on a major campaign concerning a (inaudible) with AFSCME, that one of our agreements we would go back down the road with the Correctional Officer Bill of Rights, and that was one of our priorities that we go back, and that was one of the foundations is that corrections and my involvement was that there was a lack of representation and that we needed that to go forward, and that is where I went and I support, and my heart has always been there, with unionized correctional workers and building with the rights, so that will be something that will happen, and that is the foundation, so that is where we are at.
Q What about the allegation that MNPEA has told its member we are not going to be political, did you hear that testimony?
A Yes, I did.
A From my part on it from what we state to members is that I'm not going to tell you how to vote, who to vote for, why I should vote. I'm not going to tell you need to go do this, you're not going to do that. My political affiliations are pretty well known. I served as a sergeant in arms at the DFL conventions. I did different things. I (inaudible) caucus, where it's at, but I am not going to tell someone, particularly when you get into different demographics in the State of Minnesota, there are individuals that they believe in the union (inaudible), but they are not going (inaudible), so I tell people as individuals you vote for who you want to vote for, and we are not going to use your money to tell you how to vote.
Q So when you say you're not going to use your money to tell you how to vote, that means you're not going to send out endorsement letters, you know, rah-rah -- MR. CORWIN: Objection, leading.
BY MR. FOWLER:
Q Let me ask you this way: Do you plan to
send out any campaign endorsement letters?
A At this time, no, but the membership has
the ability to override or change that.
Q So you have told members what as it
relates to what kind of mail they are going to get?
A The mailing on political?
Q Right.
A We would not be doing that. That is one
of the big things with the groups that we organized
was that they want to be able to make their own
choices, and they are adults to make those choices,
and that we would not get involved in that political
process.
But we also told them that a big piece if
we found something where they were going to be hurt by
concerning correctional officer issues, pension
issues, you know, right to work in the State of
Minnesota, those are issues we would get involved in.
We would be nuts to say that we would ever support a
right to work state in the State of Minnesota. We
would nuts to say that we wouldn't support
correctional officer issues or fellow brothers and
sisters that want pension enhancement, we would be
nuts to say that. That is just absolutely, you know,
as far as we know, it's a farce on that, you know.

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as far as we know, it's a farce on that, you know.

MR. FOWLER: I don't have any
further questions for Mr. Perkins.
REFEREE BEFORT: Mr. Corwin.
BY MR. CORWIN:
Q Mr. Perkins, most of your lobbying
activity and political activity was while you were
employed by the Teamsters Local 320; is that correct?
A It was prior, the majority of it was prior
as a steward as coming on board, the solid majority of
it.
Q You never registered as a lobbyist for the
State of Minnesota; is that correct.
A No, I have not.
Q And MNPEA has never registered as a
lobbyist with the State of Minnesota?
A That is correct.
Q And you understand that to lobby
politically and comply with state law you must be
registered?
MR. FOWLER: That calls for a legal
conclusion.
REFEREE BEFORT: I will let the
question stand, if you know the answer.

employee. The reason is really irrelevant also as an
at will employee. So what possible fact or inference
or anything can be proven to the answer to that
question as to whether or not MNPEA is in violation of
the Union Democracy Act or is not a real union?
Nothing.
REFEREE BEFORT: What relevance does
it have, Gregg?
MR. CORWIN: Well, the relevance is
whether or not -- you just heard testimony that the
steward from AFSCME didn't do anything, she never met
the business agent, and these were negative complaints
against AFSCME for not doing some of the duties of an
exclusive representative, and the evidence we would
proffer indicates that when Mr. Perkins was with the
Teamsters Local 320 he did a lot less than that.
REFEREE BEFORT: So the evidence
would show that Mr. Perkins was fired for performance
related?
MR. CORWIN: For non-performance
with respect to the duties as an exclusive
representative.
MR. FOWLER: That specific instances
of supposed misconduct, which is not a proper method
for proving character, or actually in conformity there
with. It is black letter law on methods of proving
character; and, Number 2, that was while he was
employed with Teamsters, so what relevance does it
have for the MNPEA duty.

MR. CORWIN: Well good, then we will
exclude all of the testimony that you elicited from
this witness about all the activities he performed
while he was a member of Teamsters Local 320.

MR. FOWLER: No (inaudible).

MR. CORWIN: You opened the door. I
can ask him questions about this.

REFEREE BEFORT: It doesn't seem to
me to be relevant. Why can't we just stipulate that
Mr. Perkins was terminated for performance or
non-performance --

MR. FOWLER: Allegations.

REFEREE BEFORT: -- allegations with
regard to the Teamsters.

MR. FOWLER: As long as you put it
in there, you know, he disputes it, that he is an at
will employee, I mean -- I will stipulate to that.

MR. CORWIN: All right, that is
fine.

REFEREE BEFORT: Okay.

BY MR. CORWIN:

Q Now, you were on medical leave that was
for a workers' comp issue, you said it was a
work-related injury?

A Yes.

Q And did that affect your ability to travel
or to perform duties at Teamster Local 320?

A Pardon me?

Q That injury?

A My injury was after I came to MNPEA, I
reported back to duty as a Ramsey County correctional
officer.

Q So Ramsey County is the one that put you
on disability? You made your disability claim against
Ramsey County, your workers' comp claim?

A Yes, I reported back to duty, when I
informed them it was April 2011.

Q Does that limit you in any way in
performing the duties that you have for MNPEA?

A It is a medical issue. I have had one
surgery already. I would have gone back if we
wouldn't have extended this hearing for a second
surgery. This is my elbow. I will lose the ability
of my arm over the next year. My shoulder is torn. I
have no feeling in my hands. You can see the
swelling.

Q So down the road I have got some big
decisions. I am going to always use my mouth, but I
mean even people would agree which, you know, I have
some big decisions, and that is between myself and the
MNPEA board where I go for the future.

A Okay. All right. I am just -- so it
doesn't impact right now your role at MNPEA, that is
all I was trying to get at?

Q The majority of it, no.

A You can still travel?

Q Pretty much.

A And do whatever you have to do. Okay.

Now, are you aware of when MNPEA filed its paperwork
with the IRS and the State Department of Revenue with
respect to its tax status?

A I am vaguely familiar with it, yes.

Q What are you familiar with?

A We filed a 501(c)(5).

Q When did you file it?

A It would done a while back. I don't
have the exact date on that.

Q Was it after AFSCME started raising
objections?

A No, it was previously done because I know
the State of Minnesota with that and we had the
(inaudible), going off the top of my head, was the
main part; and then it was refilled because there was a
statutory requirement, I'm not a lawyer, but there was
a requirement that we had a period to file it, and it
was refilled and they requested new information from
us.

Q We received a document from you that you
made an application for recognition for exemption
under 501(a) on November 7, 2013. Do you have any
reason to dispute that? I can show you the document.

A No.

REFEREE BEFORT: On what date?

MR. CORWIN: November 7, 2013.

REFEREE BEFORT: Okay.

BY MR. CORWIN:

Q And that is signed by David Deal?

A I know.

Q Do you know whether a similar
determination request for tax exempt status was filed
with the State Department of Revenue?

A Yes, there were Revenue forms, I don't
know the exact date.

Q Would that be about the same time as you
filed for federal exemption?
A No, there was previous times filed on it because we get the paperwork, I know that, from the Department of Revenue.

Q Do you know why MNPEA waited until this date to file its 501(c) request?
A The 501(c)(5)?
Q Yes.
A We were waiting for a period of time I know with the government shutdown. We did the nonprofit when we filed, off the top of my head, the Secretary of State's Office, the paperwork was sent in originally. With the government shutdown that happened that time there were different attempts to contact concerning that with a nonprofit. I know there was work done with the Department of Revenue, and then when it came back when we looked into, as far as I know, that it had not been approved and it was refiled again.

Q How long after MNPEA became an organization, how long -- let me ask you this: How long had MNPEA been organized by November 7, 2013?
A At that time it would have two years and three months.
Q And it took that long to file that 501(c) request?
A If that is what it says.

Q Do you know what your tax filing status with respect to federal taxes was prior to November 7, 2013?
A As far as I know, nonprofit.
Q Is it true that you didn't ask for an initial determination letter from the IRS as to your tax exempt status until this document was filed on November 7, 2013?
A I don't have an answer to that part. I have not been doing on that part of the paperwork.
Q So you're saying prior to a determination as to your tax exempt status you were filing returns as a tax exempt organization?
A To the best of my knowledge is that we are a tax exempt organization or 501(c)(5), that's what was discussed at the initial Secretary of State filing.
Q Right. But you did not seek that determination from the IRS until some two years after you were formed?
A To my knowledge, it was prior to that.
Q Well, do you know of any form that was filed other than the form I have that is dated November 7, 2013? If it is, we didn't get it, so that is why I am asking, in our discovery.
A To my knowledge, I thought there was a form filed prior to that.
Q You're aware that we asked for those forms?
A You asked for a 501(c)(3).
Q Right.
A And we don't have 501(c)(3)s.

REFEREE BEFORT: But that request was modified then to cover all tax submissions, and I okayed that.

MR. CORWIN: Right.

REFEREE BEFORT: Subject to the redaction. Why don't we cut to the chase, Robert, is there another document?

MR. FOWLER: We filed the document in September. It was returned, and then the government had its shutdown, and the exact same document was redated and sent. That is all there is to this, Mr. Befort. There is nothing -- and I would just state a lot is being made about a time difference. It says right on the instructions to that form that you have a longer time period, you don't need to file this immediately. It was within the three years that the IRS requires. There is no issues here. In other words, there does not exist a separate form, that I am aware of, that in any way differs from what you have.

MR. CORWIN: Well, it seems to me that MNPEA would have had to have filed tax returns. If it doesn't have tax exempt status, then it might have filed them as a for profit, and that certainly would be relevant to this hearing.

MR. FOWLER: Well, it assumes it didn't file as a regular nonprofit, doesn't it?

MR. CORWIN: We don't know because I don't think we have seen all the documentation. That was requested.

MR. FOWLER: I have given you everything now, with your amendment I have given you everything on the 501(c)(5). Everything else that was ordered, I have turned over. I have my notes from our hearing and what I actually provided in narrative...
form, and everything is there.

REFEREE BEFORT: Well, from my
little work in this area, and I have done some in
terms of incorporating, the instructions with the IRS
does say you can operate as a nonprofit for a period
of time before getting official status.

MR. CORWIN: I understand that, but
it doesn't sound like I got all the documentation,
that is what I was concerned about.

MR. FOWLER: Scouts honor, I have
given everything. You can inspect it. I mean we have
done in camera, I have done no attempt to hide.

BY MR. CORWIN:
Q How much is a member's monthly dues?
A A member full member, $39.
Q Are any additional fees charged?
A After the 39?
Q Yes.
A No.
Q You have to pay a fee to peace -- what is
it called, POF?
A FOP.
Q FOP, I am sorry?
A It's included in the $39 if you join.
Q Can you object and have that deducted from
your dues?
A You can become a fair share member.
Q That is the only way you get out of paying
FOP dues?
A Yes.
Q Okay. How much of that dues money pays
for legal services?
A Under the $39, for the legal services, the
legal plan is pretty much same and similar and price
amount as the Teamsters legal defense fund, it's about
$7 or $8 goes towards that; and then I think we pay
about, just rough estimates here, about $8 or $9
wards all internal process with Mr. Fowler.
Q Can a member not agree to pay for that
legal service plan as part of their dues?
A Under --
Q Can a member say I don't want to have
Fowler represent me?
A Can a member object to that?
Q Yeah, they have to be a fair share?
A Well, there is two things under our dues.
If they are fair share, they still get legal
representation anything dealing with a grievance, and
they still get the representation concerning union
negotiating.

Q But I am talking about the legal services
plan?
A Legal services plan?
Q Yeah.
A They can go fair share, and that's --
Q That is the only way, a member can't
simply say I don't want to pay for the legal services
plan?
A That is correct.
Q If you pay for the legal services plan,
then you have to use the Fowler Law Firm; is that
correct?
A There are other attorneys if you do not
like Rob or Joe, they are outside attorneys where
there is Ryan Case, Ben Gallagher, there were other
ones that you can go for. It's just like if you --
Q Would the plan reimburse you for that
then?
A What is that?
Q Would the plan then reimburse you for
that?
A That falls on Mr. Fowler as part of our
contract if a member goes out and asks for a different
lawyer.
Q What happens then? Let's say I as a
member want to have whoever --
A Yup.
Q -- represent me.
A Yeah.
Q I don't want Fowler, what do I do?
A If you don't want Fowler, we would offer
Mr. Ditsch here.
Q Somebody out of his firm, I want a
different law firm?
A Then we would offer up Mr. Ryan Case would
be a backup attorney, and then from there it would be
Ben Gallagher, and there are several others.
Q And I can go to them and the legal service
plan will pay them?
A Through Mr. Fowler, yes.
Q So Mr. Fowler makes a determination about
whether I can seek an attorney other than him?
A No. No.
Q What does he do, you said it goes through
Mr. Fowler?
A At which time it comes to Mr. Fowler. To
give an example here, so if Mr. Befort here went to
Mr. Fowler, does not like Mr. Befort here went to
our board, the first thing we have done, and we have
done it before, just like there is always personality
conflicts, people like or hate people, we’d offer up
Mr. Ditsch. If they didn’t want that, then we would
give another option that would be another attorney on
retainer, at which time that attorney would be offered
up to that member.

Q: Do you have other attorneys on retainer?
A: That would be -- yes.

Q: Does MNPEA have other attorneys under
retainer?
A: Do we have at the present time?

Q: Yes.
A: It all depends. You know, for workers’
comp issues and stuff like that, we refer to a
specific attorney that deals with public employees for
workers’ comp. Injury on duty disability, there is a
firm we refer. But the attorneys that we have would
contract with the Fowler Law Firm to provide those
legal services. He also has the backup if he is gone
out of town or on vacation, there must be an attorney
there on stand-by.

Q: Let’s say that I don’t want Fowler
representing me.
A: Yup.

Q: As part of my dues I am required to pay
for this legal services plan?
A: Yup.

Q: And I want to pick a lawyer of my choice
and I don’t want to ask Rob Fowler whether I can go to
this other attorney, do I have that right?
A: Under the current plan the way I
understand it, no, it’s same and similar as other law
firms.

Q: And I have to go to Fowler to get his
permission to seek another attorney, and he’s going to
refer me to somebody he has a relationship with, is
that what you’re saying?
A: No, we would have the backup. You would
go to us. If you had a problem with Rob, you would
come to us and we would tell him and he would provide
different lawyer that is on contract or retainee at
that time.

Q: On contract or retainee to Mr. Fowler?
A: On contract or retainee -- I am not a
lawyer on the legal terms, but it would be someone
that would be it would be like in baseball, you have
someone on standby.

Q: Does MNPEA have any other attorneys other
than Mr. Fowler’s firm on contract or retainee?
MR. FOWLER: I am going to object
into relevance here. Number 1, the statute under 179A
defines what a union is. The attorney-client --
he is asking for attorney-client relationship
information. He is asking for billing structure, all
stuff which, frankly, is privileged from MNPEA and
myself. If he wants to get into this area -- I mean I
have been gracious enough to let a few questions go,
but now we are getting into legal services
arrangements, information that may be privileged, and
also may be trade secrets in term of how our plan is
run that the competitors sitting at this table do not
need to know.

MR. CORWIN: Our opinion is that the
Fowler Law Firm is a front for MNPEA, and that is why
we are asking these questions.

MR. FOWLER: Define what a front is.

REFEREE BEFORT: I think if we
narrow the questions to is it -- is it, and how is it
possible for a member to obtain legal representation
through someone other than the Fowler Firm, I think
that is arguably relevant to --

MR. FOWLER: Can I address that for
one piece? Every organization that is here at the
table employs by some either in-house, or contract
like Mr. Corwin, some lawyers. Okay. Just like when
you have a policy at State Farm, you don’t get to tell
State Farm what I am paying for. The dues are the
dues. The rates are at the jurisdiction of the
insurance. This is not relevant. There being an
insinuation that a member gets to pick and choose from
what an organization offers. It’s an exclusive
representative, they don’t get their choices there,
okay, so none of this is relevant, none of it; and now
we are dealing on how one organization contracts with
a law firm which we were delving on to some pretty
well-established doctrines of privilege and things
like that and their ability to obtain legal services,
and to not have trade secrets and other personal
business information available for public viewing with
its competitors. Nobody else is in that situation.

MR. CORWIN: No other union --

REFEREE BEFORT: If you are asking
the question whether or not the contract for these
other attorneys is with MNPEA or with the Fowler firm,
I will allow it.

MR. CORWIN: Okay.

BY MR. CORWIN:

Q: And who is the contract with?
A: With the other attorneys?
Q: Yes.
A The backup attorneys would be Ryan Case
and Ben Gallagher.
Q Who is the contract with, MNPEA or Fowler?
A Mr. Fowler with those attorneys.
Q So what I am trying to get at is you
require me as part of full member dues to pay for a
legal service plan for legal services outside the
union’s scope of representation for which I do not
have freedom of choice as to which attorney I use?
MR. FOWLER: Objection, Number 1, that is not what the witness testified to. You’re
saying that a -- what your question asked is that a
member can elect -- Mr. Perkins already testified that
the member can elect to go fair share and not receive
the additional legal plan at all; but if they do, what
relevance does it have of any choice? What relevance
is that to whether or not MNPEA is a union and whether
it violates the Union Democracy Act?

MR. CORWIN: Well, I think it’s a legitimate question to know whether as a condition of
full membership if I have to buy into a plan with the
Fowler Law Firm where they provide the legal services
and they control which attorney I can use for anything
outside of the union’s duties as exclusive
representative for bankruptcy or for car accident or

for full membership in FOP; is that correct?
A That is correct.
Q All right. So therefore the member could
seek legal coverage from FOP?
A That is a little more beyond my scope, but
my understanding would be yes.
Q So why would they need the Fowler Law Firm
at all, why should they pay for the Fowler Law Firm,
if they are paying twice for the same thing?
A It’s no different --
MR. FOWLER: Objection, now he is asking what the FOP has to do which is not a party.
Come on.

MR. CORWIN: Well, you keep saying
that that is a big deal because they do all your
lobbying and political stuff for you because you can’t
do it yourself, so evidently it is relevant.
Evidently the members have to pay for the FOP to do
all the political stuff.

REFEREE BEFORT: What is the
question you’re seeking to ask?

BY MR. CORWIN:
Q Let me ask you this: Did you tell the
members of the 9-1-1 bargaining unit that $10 of every
full member’s dues or fair share fees go to the Fowler
legal fund?
A We gave a breakdown.
Q Did you tell them --
A As a rough guess. I don’t remember that
exactly, no.
Q You don’t remember saying that?
A I remember telling them multiple times
there is no promises and guarantee that every
single --
Q Did you tell them that $10 of every --
A That sounds about right.
Q Okay. And you’re aware that if I
didn’t --
A You don’t have to yell at me, I hear you
clearly.
Q Well, sometimes I mumble.
MR. FOWLER: We’re fairly

(inaudible).

MR. CORWIN: Well, I don’t know, our
executive director has already been threatened.
MR. FOWLER: I didn’t violate it.

BY MR. CORWIN:
Q What I am trying to get at is if I am an
FOP full member, as my duties would indicate I am

for a criminal matter, I think I am legitimately
allowed to ask whether or not the member has that
choice under a legal services plan as a condition of
their membership.
 REFEREE BEFORT: Well, you got an
answer on who the contract is with.
MR. CORWIN: Yeah.
REFEREE BEFORT: Fair enough?
MR. CORWIN: Okay, that is fine.
MR. FOWLER: Otherwise I was going
to suggest we go to a side bar because this is not the
appropriate --
MR. CORWIN: I want to keep going.
All right.
BY MR. CORWIN:
Q So you’re aware that all post-certified
licensed officers are automatically enrolled in the
FOP legal defense plan; is that correct?
A If they choose to be full members, yes.
Q Of the FOP?
A Yes.
Q Okay. And FOP offers off duty legal
coverage as well; isn’t that true?
A That is correct.
Q And part of the member’s dues to MNPEA is
through MNPEA, and I have access to a legal service plan through FOP for these dues, full dues.

Q You are in addition to that charging a fair share member -- or fee paying member an additional amount to provide to have legal services from Fowler Law Firm as well?

A So what you're saying by -- you're asking me if a member is already a member of the FOP prior to coming to us, they have to pay for the extra services at that time?

Q Right.

A No.

Q They don't?

A They don't.

Q And if I am not a member of FOP and I join your organization, and as part of my dues I become a full member of FOP; is that correct?

A Yes.

Q But then --

A A fair share member.

Q But then you're also telling me --

A A full share member.

Q -- that now because I joined MNPEA I get to be represented under the FOP legal service plan, because as per statute we have to register with the State of Minnesota. We have done the initial this is who we are with the State sending out our letters so they are not all shocked who we are; and we are in the process and the paperwork, which I have to file which becomes a record, a public record, which you guys will be able to look up. At that time then we would have to start keeping track of that.

Q So out of the full dues that a MNPEA member pays, what amount goes for the union or the organization, whatever's side you're on in this battle, what goes for their operational expenses, what portion?

A For the dues?

Q Yeah.

A After the legal plan and everything else is paid for, I am going to do a rough guesstimate on that, you know, about 80 percent.

Q About how much?

A You're saying for representational?

Q Yeah.

A We put in about after the legal part is paid for, that is including their on and off duty coverage criminally and civilly, if they are a full member, or if they are a fair or full member you have the internal legal coverage where if you want to have a lawyer, you have a lawyer representing you on all your step grievances, your arbitrations, all of that stuff and you have the rest of it, are you asking me for what is left over from the MNPEA part of it?

Q Well, I am trying to understand the representational portion of the cost, excluding FOP membership, excluding the legal services plan for other than union, other related activities.

A Out of the dues?

Q Out of full dues?

A Out of the full dues after everything is gone from that part for representation, you would have about rough estimate 60 percent of the dues are left over.

Q And that was what would go for salaries, rent, office expenses and so on?

A Technology, paper, ink.

Q Right. Right. Okay. So does MNPEA bring in more revenue than it spends in expenses?

A Does it bring in more revenue?

Q Yes.

A It's pretty consistent where we are at on representation. We are a new organization, we run in the black. We're never in the red. But for every...
We had to go with mailing. Mailing and a few extra things right now, so, you know, there are expenses that have to go with mailing.

Q: So MNPEA makes a profit?
A: No profit.
Q: You're in the black you said?
A: Well, I am talking about you're asking me if we're ever in debt, we are never in debt.

Q: Do you take in more in gross revenue than you spend in expenses?
A: We are not like Teamster's Local 320 where they have $4 million or whatever in their reserves.

Q: Have any of those meetings dealt with bylaw changes?
A: No.
Q: How many members does MNPEA have at the present time?
A: Present rough estimate right now, close to 900 to 1,000.
Q: What is the largest number of members you have ever had at a meeting?
A: At a meeting.
Q: Yes.
A: (Inaudible) it would have been about, would have been a meeting probably about, I am going to guestimate anywhere between 7 to 11 people.

Q: Any nonprofit can have a surplus, that doesn't matter. That does -- that legally does not matter whether a nonprofit takes in more in revenue. That is giving an insinuation to somebody reading this transcript that we are a business, and it has no relevance. I want that answer stricken.

Q: Does MNPEA in its membership meetings use Robert's Rules of Order?
A: Yes, we do.
Q: In the meetings where you passed bylaw changes, how many members were present at those meetings?
A: Present at the meetings that we had the bylaw changes, we posted it up, it was notified, we even put it out to the public website so everyone could see it on the public website beside the membership site, we had a total of three members that was there.

Q: And have you ever had more than three members at a membership meeting since MNPEA has been in existence?
A: Yes, we have.
Q: Have any of those meetings dealt with bylaw changes?
A: No.
Q: How many members does MNPEA have at the present time?
A: Present rough estimate right now, close to 900 to 1,000.
Q: What is the largest number of members you have ever had at a meeting?
A: At a meeting.
Q: Yes.
A: (Inaudible) it would have been about, would have been a meeting probably about, I am going to guestimate anywhere between 7 to 11 people.
Q: Are there any rules with respect to what constitutes a quorum for purposes of a membership meeting?
A: The members that were present at the time.

Q: Does MNPEA make financial reports to any governmental agency?
A: I don't handle that part, so --

Q: Is it true that under MNPEA's bylaws, the three officers and staff at MNPEA are permitted to draw up on MNPEA funds up to $14,999.99 without membership approval?
A: It's actually $15,000, and we have to have membership approval to do anything along that line.

Q: Is it true that under MNPEA's bylaws, the three officers and staff at MNPEA are permitted to draw up on MNPEA funds up to $15,000 without membership approval?
A: In the bylaws it does state that, yes.

Q: Do you maintain a fair share/membership database to determine that only members can vote on MNPEA matters?
A: Yes.

Q: Do you have any fair share members?
A: Very few.

Q: If a member wishes to attack -- not attack, but question a procedure, eligibility to vote, election integrity or whatever, is there any appeals procedure for MNPEA members?
A: For?

Q: MNPEA members, let's say I don't like something that happened at a meeting, I say there wasn't a quorum or I don't think that a meeting was posted properly or I want to object to an election of an officer, is there any appeals procedure?
A: You would come to the board on that procedure, at which time, yes, there is the appeal process and you can appeal to the board on that.

Q: Does MNPEA utilize its office space in the same office as Mr. Fowler?
A: No, not even close to his.

Q: Are you in the same building?
A: No.

Q: And MNPEA has an executive board; is that correct?
A: That is correct.

Q: Who is on that right now?
A: Sergeant Dave Deal is the president, of Washington County, there is myself and Mr. Golen.

Q: And how were they chosen?
A: The initial bylaws, just like any other union, when it was filed, the initial person who filed with the Secretary of State Office appointed, and it was a process that took place over a couple of months.

Q: So the board members that are presently running MNPEA, none of them have been elected by the membership?
A: We were reaffirmed by the membership back in November of 2011.

Q: When you say affirmed by the membership, what do you mean?
A: We had a membership meeting and the members that were present, and it was put out there that we were going to have a membership meeting concerning policies, procedures, bylaws, go over everything, the members that showed up at that meeting, it was put out there that you reaffirm it.

Mr. Golen was pretty adamant about any time if a member ever wants to challenge or encourage or whatever, we encourage that for running, you know, down the road.

Q: How many members were at that meeting?
A: Top of my head I am going to say, including Mr. Golen and myself and Mr. Deal, we pay, I think there were two others. And a legal counsel was present.

Q: Are there minutes of the executive board meetings?
A: Pardon me.

Q: Do you keep minutes of the executive board meetings?
A: Pretty much it's all consistent, yes.

Q: Can a membership overrule a decision of the executive board?
A: The membership under our membership meeting, at the meetings they can bring it forward and bring a motion forward. There is a procedure in the bylaws that they can come back and they can have a vote on it, yes.

Q: Do you have any stewards at MNPEA?
A: Yes, we do.

Q: And how are they selected?
A: They are selected by the membership. We do not change -- at the time a union come on board we do not make any changes in the stewardship structure until after the dues -- not the dues, but after the
Q Now, MNPEA asserts that an attorney will be present at all step 2 grievances; is that correct?
A If a member wants them.

Q All right. So if a member doesn’t indicate that they want an attorney, then a steward would be there?
A Yes, or one of us, that is correct. It should always be one of us, but I would say the majority of the same, the solid majority they always want a lawyer.

Q Do stewards have a voice in how to proceed with (inaudible)?
A Yes, they do.
Q How many of MNPEA’s current stewards have been elected by their peers rather than appointed by the MNPEA staff?
A Elected by their peers?
Q Yes.
A Everyone but the brand-new groups, and

they’re consistent. Zumbrota maintain their -- they left the Teamsters, they sought their current stewards and go off contract. Sherburne County still has to go through the process. Nisswa is a brand-new group, so they are in the process of going through that, but the solid majority have been elected.

Q By the membership?
A By the membership. We cannot do that.
Q But I thought you said that you normally just incorporate the old stewards?
A At the very beginning of the process. So if they are in the process of negotiations, right when the contract is done the majority of the time is when we have the election. Most of the times when we take over the group they have already started the negotiations.

Q Have you filed decertification petitions against LLES units?
A Have we filed them?
Q Yes.
A To go after LLES?
Q Yes.
A Yes.
Q Have you filed decertification petitions against Teamsters Local 320?
A Yes.

Q And AFSCME?
A Yes.
Q What is MNPEA’s relationship with FOP?
A With Fraternal Order of Police?
Q Yes.
A I’m not a lawyer, I am a layperson, but I guess it would be more like friends with benefits.

One of the things that we use back and forth on the knowledge and everything on the legal plans, we work a lot of stuff when it has to do with internal issues and where law enforcement goes, corrections, you know, vision of where we have it.

The other part is that we -- that the legal plan and our services and membership, so they have the ability to have lobbying efforts, the licensed part of it.
Q Does MNPEA consider itself a client of the Fowler Law Firm?
A No.
Q Does MNPEA have a contractual relationship with Fowler Law Firm?
A Yes, we do.
Q Does MNPEA consider it a client of the Fowler Law Firm?
A No.

Q You do not consider yourself a client?
A As a client, that we work for him?
Q Yes.
A That (inaudible).
Q An attorney-client relationship?
MR. FOWLER: Define what you mean, Gregg, I don’t know if I understand.

BY MR. CORWIN:
Q Does MNPEA have an attorney-client relationship with the Fowler Law Firm?
A We hire, yes, the Fowler Law Firm, we contract with them.
Q And if I were -- if MNPEA wanted to get rid of the Fowler Law Firm, what would they have to do?
A We have a process that we put in there as part of the request of myself, Mr. Deal is that we would have to give notification to Mr. Fowler, and under our contract I think it’s a 16-week period where he can’t just get up and leave us too. Because we were a new organization at the time we demanded that out of him, that we have to have a 16-week period before he could leave and, you know, do anything else with that. So we have to give notification because
the transition because our arbitrations and everything
else, paperwork, I mean --
Q But what vote of the membership does it
take to end the contractual relationship with the
Fowler Law Firm?
MR. FOWLER: Objection, at this
point -- Mr. Arbitrator, I have allowed a little bit
of leeway with the attorney-client relationship
information, but that is as far as I am willing to let
it go, so I would object on attorney-client privilege.
MR. CORWIN: We think it's very
significant because it's almost impossible to get rid
of the Fowler Law Firm there, and that is one of our
big arguments that, in fact, it's a symbiotic
relationship.
REFEE BEFORT: Your question isn't
about the 16-weeks provision, it's about who can
terminate?
MR. CORWIN: The contractual
relationship with the Fowler Law Firm and what is the
procedure for doing that.
REFEE BEFORT: Well, let me guess
that the entity that can terminate it on behalf of
MNPEA is MNPEA's board?
MR. FOWLER: Yeah.

MR. CORWIN: I don't want Fowler
testifying, unless he is going to put himself under
oath.
REFEE BEFORT: Well, you can ask
that question.
BY MR. CORWIN:
Q How do you terminate the contractual
relationship with the Robert Fowler Law Firm?
A With any attorney that we could contract
with, the board would make a decision, we would
consult with the membership, we would give him his
notification, his notice, and we would terminate that
contract, and we would have a 16-week period.
Q Who makes the decision as to whether the
contract is terminated?
A The MNPEA board.
Q And that is you?
A Mr. Golen.
Q Deal, Golen?
A With consulting with --
Q You three have that power?
A With consulting with membership, yes.
Q Are you required by your bylaws and
constitution to consult with the members?
A There is a clause in the bylaws, it says

as advisory capacity, as the stewards we would have to
ask and go back. But is there a final piece on say
about terminating him on that? As far as I know, no,
so it's the MNPEA board, no different than any other
organization's executive board.
Q Have you ever or Mr. Fowler under your
direction sent cease and desist letters to members of
your union -- or your union organization?
MR. FOWLER: Objection, relevance.
MR. CORWIN: Show that they are not
a union if they are threatening their own members.
MR. FOWLER: Come on. How is that
relevant to the statutory stuff that we are supposed
to be discussing? You know, you may have members who
are mentally ill come after you, you know what I mean?
What are you supposed to do in those situations? We
don't need to get into that, that is not relevant.
MR. CORWIN: Well, we are talking
about internal democracy.
MR. FOWLER: No, we’re not. We are
talking about all kinds of stuff that is not relevant
as to the Union Democracy Act, which is the only basis
for that claim is that there is not four-year
elections.
MR. CORWIN: We are not making legal
arguments.
MR. FOWLER: This is outside of that
scope, Mr. Befort.
REFEE BEFORT: Well, let’s -- I
don't think we need to go down cease and desist
orders. Move on.
BY MR. CORWIN:
Q Does the union post information about
membership grievances on Facebook?
A That came to our attention, and that was
removed. That is not the policy of the Minnesota
Public Employees Association.
Q But it happened, didn’t it?
A What’s that?
Q It happened, didn’t it?
A Obviously if you’re asking the question,
yes.
Q Who made that Facebook post?
A That is an internal MNPEA on that, but
under legal counsel's advice and then with our board,
that was to be removed on the process.
MR. CORWIN: So I am asking the
referee to instruct the witness to answer.
REFEE BEFORT: If he knows who
posted it, is that the question?
Q: Do you know?
A: I didn't do it.
Q: Do you know who did it?
A: Mr. Golen did.
Q: If a member, a current member of MNPEA filed a DRF lawsuit against MNPEA, would Fowler represent MNPEA?
A: Mr. Fowler: Objection, speculative, that hasn't happened.
REFEERE BEFORT: I think that is right unless either one has happened or, two, there is some arrangement that has already been entered into to determine that result, so I will sustain the objection to the question that is asked. If you want to rephrase it in either of those two ways --
MR. CORWIN: Okay, that is fine.
Q: If a member has -- has a member ever asked to see meeting minutes?
A: What is that?
Q: Has a member ever asked to see meeting minutes?
A: Yes.
Q: And have they been provided to that member?
A: They have been told that there is a membership meeting and they can come. Any member at any time during membership meetings will be provided any time at the meeting.
Q: You have to come to the membership meeting to get the meeting minutes?
A: No, unless you make a formal request at which time we can send those out.
Q: Did that member make a formal request?
A: No, that member made what was called a verbal request, at which time we had this ongoing issue right now, and that member also asked for extensive other issues that were pertaining to this hearing, at which time they were considered a MNPEA member, and that information will be disseminated to that member at our meeting, which is tonight, if they show.
Q: Does MNPEA make financial reports to the membership at membership meetings?
A: All the time.
Q: Has MNPEA's financial reports been independently audited and verified to the membership?
A: As far as I know, our requirement is yes.
Q: So have you seen independently audited and verified financial statements?
A: It's done every month with Mr. Deal.
Q: Do you have a CPA or someone who audits independently or verifies your financial statements?
A: We do not have a CPA, no.
Q: Do you have anyone outside MNPEA to audit or verify financial statements?
A: At this time, no.
Q: Does MNPEA have trustees?
A: No, that is not a requirement.
MR. CORWIN: I have no further questions.
UNIDENTIFIED MALE: Hold on.
MR. CORWIN: Wait, wait, I guess I might. First of all, I said I would introduce this through Mr. Perkins, and that is Exhibit 16. Do you have that in front of you? I have got more copies.
REFEERE BEFORT: Although it was admitted.
MR. FOWLER: I mean it was admitted, it's already in the record.
Q: But you recognize that?
A: It was a Washington County flier.
A: Uh-huh.  
Q: You have to say yes or no.  
A: Yes.  
Q: All right. So MNPEA has a Facebook page; is that correct?  
A: Pardon me.  
Q: MNPEA has a Facebook page?  
A: Yes.  
Q: And do you know if this was posted on MNPEA's Facebook page?  
A: I personally when it comes to the internet, I do not go to the internet that much outside of CCO, and I go CNN and that is about it and emails.  
Q: Is it MNPEA's position in that first sentence there that essential workhouse correctional officers do not have to bargain with non-essential clerks?  
A: Which one are you talking about?  
Q: An open letter to Hennepin County workhouse POs, and then it says thanks, starts thanks for the effort.  
MR. FOWLER: Where are you at?  
REFEREE BEFORT: That must be this one.

BY MR. CORWIN:  
Q: The first page, first page, thanks for the effort. The members have spoken out. I hope you have learned that essential workhouse correction officers do not have to bargain with the non-essential clerks.  
A: This item --  
MR. FOWLER: Hold on a second, I don't have this. This is what I have been shown. I just want to know what document --  
REFEREE BEFORT: You don't have the open letter?  
MR. FOWLER: No, I have a different one.  
MR. BECK: Nor do I.  
REFEREE BEFORT: This isn't the same thing.  
MR. BECK: So is this an exhibit at this point?  
MR. FOWLER: 17.  
MR. CORWIN: 17.  
MR. BECK: Thank you.

Q: So the question is: Is it MNPEA's position that essential workhouse correction officers do not have to bargain with the non-essential clerks?  
A: Is that our position?  
Q: Yes.  
A: We would say under State statute under PELRA there is a distinct separation of it because essential employees can go to arbitration, non-essential, and that is what I thought, have the ability to go on strike, so there is a big distinction between the two.  
Q: What about the statement that says Ramsey County makes $4 an hour more than us. Why AFSCME forces you to bargain as non-essentials and you get stuck with clerks?  
A: This individual here is a 20-plus year employee. This is a blog that he has had for many years between Teamsters, us, everyone else. He has been a member and he is an employee of Hennepin County, and he is good friends with multiple workhouse individuals, so on that I am not going to -- I don't have a lot of knowledge about this. This is his own personal blog, and the stuff that has been on this blog is done by him and no discussion with us. I mean --  
Q: Would you agree with that statement?  
A: What is that?

Q: Would you agree with the statement?  
MR. FOWLER: Objection, relevance.  
He has already testified it is not MNPEA's blog.  
MR. CORWIN: It is a MNPEA steward.  
MR. FOWLER: So.  
MR. CORWIN: And it's on MNPEA's Facebook page.  
MR. FOWLER: It is not on MNPEA's Facebook page. There is a link.  
REFEREE BEFORT: What is the question?  
MR. CORWIN: Whether that is MNPEA's position.  
REFEREE BEFORT: What exactly is MNPEA's position, I am a step behind you, sorry? Which comment are we talking about?  
MR. BECK: AFSCME forces you to bargain with non-essential.  
REFEREE BEFORT: Oh, that one.  
MR. CORWIN: We are still on the Ramsey County makes $4 an hour more than us. Why AFSCME forces you to bargain as non-essentials. You get stuck with clerks.  
MR. FOWLER: My objection is how does a member of MNPEA, who is not on the executive
(At this time there was a mostly inaudible conversation on the recording during the break when the recorder was not turned off.)

BY MR. BECK:
Q -- when MNPEA bargain unit, it opens to other individuals?
A Yes.
Q Okay.
MR. BECK: Thank you, that is all I have.

REDIRECT EXAMINATION

BY MR. FOWLER:
Q Mr. Perkins, you had mentioned about working with other unions in our history involving public employees. Are you familiar with the organization called Law Enforcement (inaudible-static)?
A Yes.
Q Have you worked with (inaudible)? Are you familiar enough with PELRA laws to understand its relationship with the Minnesota Peace Police Officer?
A Yes.

we --
MR. CORWIN: Objection, lack foundation.
(Long inaudible due to static.)

BY MR. FOWLER:
Q Is that unusual to have only a handful of members show up at these meetings?
A From my experience, I cannot speak to AFSCME, I cannot speak for LLES or (inaudible), from my experience (inaudible-static) most of the time the meetings are pretty small, there is not a lot of people there.
Q Is it part of your primary duties to file all of the tax forms that Mr. Corwin asked you about?
A No.
Q Whose duties are those?
A (Inaudible).
Q You were asked a question – questions about the FOP and the percentage of (inaudible), is that part of your primary duties to set up that relationship with the FOP?
A No.
Q So who is the person with most knowledge in terms of how the FOP (inaudible)?
A The executive director (inaudible).
Q Did you try to do your best to answer Mr.
Convin's questions with what you know as a board member?

A Yes.

Q You were asked a question about how many fair share members MNPEA has. Why do you think it is MNPEA has (inaudible)?

(Long inaudible due to static.)

MR. FOWLER: MNPEA will call its last witness Mike Golen.

REFEREE BEFORT: Do you swear to tell the truth, the whole truth, and nothing but the truth in these proceedings?

THE WITNESS: (Inaudible).

DIRECT EXAMINATION

BY MR. FOWLER:

Q Mr. Golen, why don't you give us a little background starting with the time (inaudible).

A In 1979 I was hired (inaudible static), Nine individuals were allowed to be hired under that branch. (Long inaudible), and so we came in to make sure to cut down on assaults on staff. The grants ran out after a couple of years, and at that point I was transferred over to be a correctional officer there. I have been a steward since 1981. We were the only correctional (inaudible). We were out for nine weeks.

Shortly after that at the county level correction (inaudible) essential. I continued on I was chief steward until about the mid '80s, and I was doing a lot of business at that time.

(Long inaudible due to static.)

A And I was one of those folks who was asked to come over, so then I went over there, and I was both the business agent and I was a board member immediately. I started out as the secretary -- not the secretary/treasurer, but the secretary, recording secretary. I then moved up to the position of vice president, and then I finally held the position of president, so I have been in all of those positions.

I was getting close to retiring, so about five years before I did retire I chose not to run again and stepped down from the board. I also wasn't happy with some of the directions it was taking, so I pretty much took over Southern Minnesota law enforcement corrections (inaudible).

In 2011 as I was getting close to retirement, I also won an election against the (inaudible) executive board. It was a historic setting because never has a Teamster standing executive board ever been (inaudible). All of my stewards and members that ran with me all won, and we went out and represented Local 320 at the convention, and part of what went down there is we are not (inaudible). Our slate was called (inaudible). We won that election (inaudible) against their top secretary/treasurer at that time Sue Moore. None of them got to go. We went.

Knowing the writing was on the wall, as it had been for Mr. Perkins, who was our campaign manager but was not running in the election so he did not have the protection of the federal magistrate like I did, but knowing the (inaudible) and the writing was on the wall, I went ahead and retired on July (inaudible) 2011.

I left in good standing, and it was during that time that I was getting close to retiring, I also won an election against the (inaudible) executive board. Rob Fowler was not only working on a -- on (inaudible) fee basis, and it was working out quite well, and Gary affirmed that (indicating) Rob was doing fine.

I also knew that at that time he had (inaudible) of his own, so on top of all of the experience he had gained working with Pat Kelly's office and (inaudible) for Local 320, was also to go out on his own and act not just as an attorney, but also as a business agent and negotiator and (inaudible).

So I sat down and said would this not work for a setup like ours and what would it take on your end. He said, yeah, it should work, and part of why I went.

(Long inaudible due to static.)

A If they don't call us, we don't call them; and when they call us they are usually pretty well ready to go.

(Long inaudible due to static.)

A At any rate, when a group is ready to go and they are that upset, that is just the way it is, that is a fact of life. I don't need to go out and (inaudible) these people about anything. Again, they are ready to go, we simply tell them here's what we
have got, here’s what we are doing. You’re all adults, if you want to come in, come on in. We aren’t going to (inaudible), we aren’t going to call you or anything else. We are going to come out here, lay it out (inaudible) we do it and I am going to leave. If you like the idea, if you want to come on board, well, then do it.

I’ve even extended to every group that I went out was the key organizer in that if there comes a day when you aren’t happy and you show me a majority, we will just sign off. And indeed one group has chosen to not stay with us, Lakeville, and I honored that right there. We aren’t going to go against all things that go on there like that.

Now, politically I had a new idea too. Obviously we were going to take a little time to get going, and obviously there is some big issue out there that we share in completely. You talked about Tom Emmer. Well, I don’t want to swear in here, but that is what I could have assigned to Mr. Emmer. Yeah, I don’t care for Mr. Emmer at all. I backed Mark Dayton.

I am a little taken aback that AFSCME decided that all 8,100 votes to put Mark in the office were all from them. I talked to over 700 police officers and laid it out to them what was going to happen with Emmer, and I only had two out of 700 that told me they were still going to vote Republican, so we are not a Republican organization in itself.

I have got to say that while I am sitting here looking around, I have got to command the AFSCME people that they come here, and you know what, we may not be in agreement with everything, we may be at odds right now, but you’re here, and you have had the courage to stand up and come in here, and, you know, you’re starting to -- you’re starting to actually make me believe that you care more than maybe I thought.

Our experience didn’t come from you. Again, Tom and I and Dave Deal were with a different union, and our negative experience came out of there. I also have to say it’s interesting to me that none of their board members or their attorneys show up here. A hired gun shows up instead.

UNIDENTIFIED MALE: Objection

THE WITNESS: Where are they?

BY MR. FOWLER:

Q Well, I think that sufficiently covers your background up to today.

A Yeah.
1 or a full share member of MNPEA, came to your board
2 and said we don't believe you're a real union?
3 A No.
4 Q Just in general, are the members happy
5 that are part of MNPEA?
6 MR. CORWIN: Objection, calls for
7 speculation, lack of foundation.
8 MR. FOWLER: I will rephrase more
9 specifically.
10 THE WITNESS: Well, who would know
11 if I didn't?
12 BY MR. FOWLER:
13 Q Let me rephrase. Let me rephrase,
14 Mr. Golen. So has anybody came to you with a
15 complaint about MNPEA not being -- not representing
16 their interests in terms of terms and conditions of
17 employment?
18 A No.
19 Q Have you had disagreements with members?
20 A I reserve the right to tell them what I
21 think, but I don't get a vote. So, yes, there are
22 times when members certainly see things different
23 than I do, but ultimately they get the vote to vote th eir
24 way.
25 Q Do members vote to approve the settlement
26 of their contracts?
27 A Absolutely.
28 Q In fact, have members voted to reject
29 contracts that you have recommended?
30 A Absolutely.
31 Q So can you think of anything that is
32 undemocratic about MNPEA?
33 A I tried, and as the other board members,
34 to make it as democratic as we could. We went in
35 excess of the union we came out of in our bylaws to
36 make sure that would happen.
37 Q Are you referring to the veto of
38 70 percent clause?
39 A That would be one. The rights of business
40 agents to have due process would be one so that they
41 can't be flunkies of whoever is in charge. They
42 actually get the right to speak their mind and stuff
43 too.
44 Q So you have just cause -- do you have just
45 cause protections for your employees?
46 A Yes, we do.
47 Q Is that different than say the at will
48 arrangement that you had at Teamsters?
49 A Obviously, yes, that is different.
50 Q Mr. Golen, have the bylaws been amended to
51 allow for elections every four years?
52 A Yes.
53 MR. CORWIN: Objection, this is
54 repetitive.
55 MR. FOWLER: I'll move on if I can
56 get an answer.
57 REFEREE BEFORT: He said yes. Yes is part of the
58 record?
59 REFEREE BEFORT: Okay.
60 BY MR. FOWLER:
61 Q Have you been in existence longer than
62 four years?
63 MR. CORWIN: Objection, this is
64 repetitive.
65 MR. FOWLER: I will move on, Gregg,
66 but --
67 REFEREE BEFORT: Go ahead, I will
68 let you answer.
69 A We have been in existence since I believe
70 it was August of 2011.
71 MR. FOWLER: I don't have anything
72 further for Mr. Golen.
73 CROSS-EXAMINATION
74 BY MR. CORWIN:
75 Q Sir, you testified that people just come
76 to you, you don't do the active solicitation, you
77 don't try to raid other organizations, is what your
78 testimony was?
79 A We have no money or organism or process of
80 going out and organizing. All of it is word of mouth
81 that comes back to us, yes.
82 Q That is not what happened with Arrowhead
83 Regional Corrections, is it?
84 A Absolutely, they contacted us.
85 Q First?
86 A You would have to ask Shawn Birk because
87 that would be who it was because he did the
88 organizing, but --
89 Q You went after them, didn't you, you
90 deliberately attempted to raid that AFSCME --
91 A Absolutely not.
92 Q You say you don't have a vote, but you're
93 a member of the board, right?
94 A I said I didn't have a vote on the
95 contracts.
96 Q But you vote in the way the union is run,
97 don't you? In fact, there is only three of you that
A: Yes.
Q: And you have never really been elected by anybody, have you, except for the five members that showed up at a meeting once?

A: Actually, every single group that has come to us knew who the executive board was and elected to come to us; and when our time comes, yes, we will have elections just like you guys.

Q: First you weren't going to have elections for five years; isn't that right?

A: Because that is what the international model was.

Q: Whose international?

A: Well, for one the international that I had just come from had a five year conference on.

Q: So you modeled your organization after the Teamsters; is that right?

A: We used that model initially of the five years, yeah, since we are the only board.

Q: Isn't the true the majority of the units that you sought to organize were units that were represented by other exclusive representatives?

A: Sure.

Q: So you are a raider, aren't you?

A: By your term, maybe. By my term, I am a liberator. Again, they came to me.

Q: Now, up until AFSCME filed an objection, you had no intent to reduce your term of office; isn't that true? It was only --

A: It hadn't been brought to our attention.

Q: Huh?

A: Up until then it hadn't been brought to our attention. The Commissioner never pointed it out and had certified us and was fine with it. Let me just say, it was actually more on what Josh had to say without you guys.

Q: And your organization isn't a registered lobbyist, is that correct, you haven't registered in the State?

A: Tom is in the process of registering.

Q: Have you registered yet?

A: No.

Q: So have you done any lobbying up until now?

A: At the Capitol or anything, no.

Q: You haven't engaged in any political activity up until now, have you?

A: Actually, I visited commissioners that I know on behalf of members in Hennepin County and on the fact with what is going on with the hiring process there, and several new workers were hired shortly after that.

Q: So you have lobbied political officials?

A: No, I have gone and visited commissioners I have known to talk about a situation.

Q: Do you know what the legal definition of lobbying is?

A: Well, no, we were visiting. We didn't ask them to do anything. We simply appraised them of what was going on, and I had all the stewards with me. All of our meetings had stewards present.

Q: Why did it take you so long to file for tax exempt status?

A: You would have to ask Dave Deal. It's my understanding --

Q: I can't ask him because he didn't show up.

A: Well, I will try to help you with what I can, Gregg, but I can only answer to what I know, as you're aware.

The first time that there was a problem and it was sent back, as I recall, and part of it tied into the fact that the government was shutdown. Then there was a second time where Dave said -- for some reason they were saying they didn't have everything. He has since sent in everything they need, and the word from them, he has checked several times since we had the first hearing here on the 20th, all he gets back on that is that it's pending.

Q: MNPEA does not as of yet participate in political processes and organizations; isn't that true?

A: What do you mean by that?

Q: Well, I am reading from your flier. It says we believe that the union should not --

A: I don't have that flier, what flier would that be?

Q: Well, it's Exhibit 16. I give you another
copy to read along.

A There is one up here, Gregg.

Q The first sentence says -- pardon me, the
third paragraph, "We believe that the union should not
spend time and money on politicians without the
direction of the members." Right?

A Yeah, our bylaws call for 70 percent of
our members to agree before we get involved in any
political races or anything. Unlike the organization
where I came from where one person made all the
decisions.

Q Isn't it true that up until now MNPEA has
not spent time and money on politicians?

A So far none of our members have saw the
need to do that, nor have they requested it of us.

Q And it says, "As a result, MNPEA does not
endorse any politician or political position without
first having a super majority vote of affected
members." Have you ever had a super majority of a
career of affected members to endorse any policy, any
political position or politician?

A Not yet.

Q So MNPEA has not endorsed any politician
or political position; is that correct?

A Not officially.

Q Well, you would violate this provision if
you did that, wouldn't you, it says it takes a super
majority of a vote to do it?

A No, Gregg. See, I have the right to tell
the members what I believe, and then they're adults
and they go out and do what they do from there. So
it's not quite like you're saying.

Q And I want you to look at -- this is the thing
that I think is the most outrageous thing I have ever
seen. Look at Page 3 of Tab 1, this is your MNPEA
Facebook page, and start reading where it says MNPEA
attorneys have filed a cease and desist, and keep
reading all the way through the next page.

A I can't respond to this, Gregg, because
there is possible litigation coming up.

Q You can respond to it, I am asking you the
question.

A What is the matter with you? Don't have a
damn stroke. We have pending litigation, I have been
advised not to discuss this.

MR. CORWIN: I am asking,
Mr. Referee, I am asking --

MR. FOWLER: Let me see what we are
talking about. Let's go -- I would ask that we go
into a --

MR. CORWIN: No.

MR. FOWLER: Let me finish my word,
Gregg. I would ask that we go to have a bench
conference, Mr. Arbitrator, so that we can discuss
this, which is a subject of potential litigation. We
are recording as we are sitting here arguing this, so
I would like to, if possible, like we did on the whole
witness issue, go into a bench conference in a
conference room and talk about this before we spill it
all over the record, which is your intent anyway.

MR. CORWIN: It's already been
admitted into evidence. I am only asking -- if it is
in evidence, it is relevant; and I am only asking him
whether or not they shared personal information about
their members, private personnel data on their
Facebook page.

THE WITNESS: It's not private.
BY MR. CORWIN:

Q You don't think anything in there is private?

A He shared it. We didn't.

MR. FOWLER: Hold on. Nobody needs to answer any damn questions now. Okay. Can we go into conference or not first?

MR. CORWIN: I don't see any reason to.

REFEREE BEFORT: I don't even understand what the position --

MR. FOWLER: That is why I say we need to have a conference. We are not spilling this out over an audio recording for a public hearing. Please.

MR. CORWIN: It says in Exhibit 16 MNPEA holds your personal information --

MR. FOWLER: Objection, he is not speaking. Let's see what the Arbitrator --

MR. CORWIN: I am going to --

MR. FOWLER: I want to hear what his ruling is.

REFEREE BEFORT: Let's everybody stay put, the three of us will --

MR. FOWLER: Thank you.

(At this time there was a mostly inaudible conversation on the recording during the break when the recorder was not turned off.)

REFEREE BEFORT: Okay. So off the record we have been talking about the schedule for doing post-hearing briefs. A matter that is somewhat complicated by the fact that a transcript of today's portion of the hearing still needs to be prepared, and we don't know exactly when that will be. The arrangement that I think we agreed upon is that the transcript will be ordered. Once it's received by the Bureau of Medication Services, copies of the transcript will be distributed to AFSCME Council 5 and MNPEA.

I don't think you guys got the first, Teamsters and the City of Minneapolis, you did not get the first round. Do you want -- if you want a transcript, I think you have to pay for it.

MR. BECK: If I recall correctly, our discussion at the end of the first day of the hearing is that we would pay for a copy of the transcript, not the transcription costs itself.

REFEREE BEFORT: Right, but it would have to be the copy that the transcriptionist charges.
MR. BECK: I understand.

REFEREE BEFORT: Do you want one?

MR. BECK: I will have to discuss that with my client. I can certainly let you know prior to the transcript.

REFEREE BEFORT: Okay. Once the transcript is received by the Bureau, they will distribute the copies and send around in email or send an email to me, and I will then set a deadline three weeks hence at which time the briefs are due. So if it takes two weeks for the transcript, we are looking for a five-week span before the post-hearing briefs are in. That still leaves me having to digest it and write a decision, one that is intelligible enough for the Court of Appeals, and I will try to do that within a 30-day period.

Does that sound like what we agreed to?

MR. FOWLER: Yes.

MR. CORWIN: Yes.

REFEREE BEFORT: Anything else that anyone wants to say before we adjourn today’s session?

MR. FOWLER: The only thing I want to clarify is the record is now closed, correct?

REFEREE BEFORT: The record is now closed.

MR. FOWLER: We will take care of that other issue.

MR. CORWIN: Yes.

REFEREE BEFORT: Thank you all very much. It’s been a big undertaking trying to wrap this up quickly and appropriately.

UNIDENTIFIED MALE: On behalf of AFSCME, thank you, Professor.

(At this time the recording ended.)