SENATE COMMITTEE ON FEDERAL, STATE AND LOCAL GOVERNMENTS

Minutes of Meeting -- April 17, 1971

A meeting of the Senate Committee on Federal, State and Local Governments was held on Saturday, April 17, 1971, at 9:30 a.m.

Committee Members Present: James I. Gibson
Coe Swobe
Carl F. Dodge
Chic Hecht
Warren L. Monroe
Lee Walker

Also present were:

Harry Reid, Lieutenant Governor
Procter Hug, Senator
Archie Pozzi, Senator
Mahlon Brown, Senator
Boyd Manning, Senator
John Fransway, Senator
Emerson Titlow, Senator
Kevin Efroymson, Labor Relations Consultant
Adolph M. Koven, Attorney - Arbitrator
Robert Rose, State Board of Education
Keith Henrikson, Peace Officers - Fire Fighters
I. R. Ashleman, II, Attorney
Richard Morgan, Nevada State Education Association
Robert Petroni, Clark County School District
William Adams, Asst. City Manager, Las Vegas
Robert Maples, Washoe School District
Curt Blyth, Nevada Municipal Association
Edmond Psaltis, Washoe County Teachers' Association
Jan McEachern, League of Women Voters
Ernest Newton, Nevada Taxpayers' Association
Press

Chairman Gibson called the meeting to order. The primary purpose of this meeting is to hear witnesses on:

AB 178 Extends amended provisions of local government employee-management relations act to all government employees; provides for binding arbitration; specifies certain prohibited practices.

(Attached hereto is a statement from the Nevada Taxpayers' Association on AB 178 which is Exhibit "A".)

Mr. Robert Rose of the State Board of Education read into the record a statement to the committee from Mr. Burnell Larson, Superintendent of Public Instruction, a copy of which is attached hereto as Exhibit "B". He also noted for the record that he did not vote on this motion.

Senator Dodge: I was interested in the last suggestion, Mr. Rose. Did you have anything specific in mind as far as the public agency to do this? (Referring to subparagraph (c) of the attached Exhibit "B".) Frankly, one of the real reservations that both of us have to a terminal procedure which makes binding arbitration without any right of review questionable, is that the arbitrator in a lot of cases is not accountable to anybody. He may be from outside the state, he makes an award, he gets on a plane and goes home. We live with the deal for time immemorial. Now, if we were going to have some sort of procedure where there would be some review in a person as suggested by Senator Hecht, the Governor, or another group of people, to add some sense of accountability in the State of Nevada, this is worth pursuing, and frankly, I think this is ultimately what is going to evolve in the public sector as far as terminal procedures. But specifically now, did you discuss any structure to this public agency?

Mr. Rose: We did not as a board. I agree with you that there are problems involved and I think you clearly understand the difficulties. Again, I'm not speaking for the board, but as I understand it, there is the Uniform Arbitration Act that was enacted by the State Legislature at the last session that I believe has the safeguards in it pertaining to awards issued by arbiters. But again, I think you would have to ask the legal people. I'm not a lawyer and I can't respond. I do believe there is some attempt in the amendments in the bill as you have now presented to safeguard this particular area. For example, the people that are sent in, we have an advisory arbitration in Washoe County, and the American Arbitration Association sent in Dean Francis Walsh who is the ex-Dean of the University of San Francisco Law School, who is now, I believe, expert in this particular area. But I know there has been a reference made in Washoe County that he came in and made an award in a very short amount of time without pronouncing all the various factors behind it. That was not his fault. That was the fault of the parties forcing him to do that because we had an agreement that required the arbiter to issue an award very quickly and he did not have the amount of time necessary to set forth all the findings of fact. But these people that are sent in, I think, are neutral, and try to do a comparable job.

Senator Dodge: I'm not questioning their neutrality. I'm questioning their accountability. One other question: Do these recommendations of yours have the blessings for the school trustees, the school boards around Nevada?

Mr. Rose: This particular resolution? As far as I know, no. We have not presented these positions to the school trustees. As a matter of fact, I am not aware of a formal position taken by the school trustees. As far as amendments are concerned, I do know that the consensus seems to be to oppose any changes in the Dodge Act.

Chairman Gibson: I received a letter from them in answer to your question. (Chairman Gibson then read a letter from Mr. Seeliger, a copy of which is attached hereto as Exhibit "C".)

Mr. Rose: Senator, if I may, I think there is one other point. Senator Dodge and I have had several conversations on the negotiations process and I believe the Senator correctly recognized the need in having a uniform act to set down the procedures to follow in the negotiation process. I personally feel -- and I am only speaking as an individual now, and having some experience in the negotiation process -- in the act that's passed it has to have procedures in it so that the parties before they go to the next step have to answer this question: Pursuing the process further, do we have the potential of losing what we have already established? There has to be a question of some doubt in the minds of the parties at the table and I do believe the amendments to this particular act build in a process to try to make the parties reach agreement at the lowest possible level. When I work on negotiations -- and I am sure my colleague here, Robert Maples, also has the same philosophy -- that it's best to try to resolve these things as quickly as possible.

Chairman Gibson: When you wnet to advisory arbitration did you stipulate that it would be binding?

Mr. Rose: No. As I recall in the last session there was a line in the act to allow the parties to stipulate to binding arbitration prior to the submitting of their package to the fact-finders, but that was deleted. Of course, without that in the statute, then I don't believe the governmental employee will stipulate to this.

Chairman Gibson: If you have binding arbitration in there, what would cause you to want to settle ahead of arbitration time?

Mr. Rose: Well, of course, the way this bill now reads, it is not automatically binding arbitration. There has to be shown to the Employee Management Relations Board as I read it, I think the only term in there now is "safety", so there is a question of doubt.

Senator Dodge: Well, not as to this presumption of threat to safety when they can't agree, is that correct?

Mr. Rose: That's how I would interpret it.

Chairman Gibson: Have you reviewed other areas where they have arbitration in relationship to teachers and what their experience has been with arbitration? In the cases that I have seen the arbitration award always seems to create some problem. I'm thinking of the Los Angeles case where they went far afield.

Mr. Rose: Well, the only real experience I think with arbitration in the public employee sectors pertaining to teachers would have to be outside of the United States. I would suspect Sweden and Canada.

Chairman Gibson: In Los Angeles, that was the teachers' strike.

Mr. Rose: Yes, but I think they settled. I do not know all the details, but I thought they settled through the mediation process and not through a binding arbitration award. I'm not sure on that. I did not realize they had gone through binding arbitration.

Chairman Gibson: Well, it was my understanding -- I heard the newscast.

(At this point, Chairman Gibson requested that Mr. Keith Efroymson and Mr. Adolph Koven come forward and testify on AB 178)

Mr. Efroymson: I am Kevin Efroymson from Las Vegas. I am a labor relations consultant down there and I've handled all the negotiations for the Clark County School District for the last three years. I have approximately 12 years' experience in the field, five years on the union side and seven years on the management side.

I'm not sure quite how to approach this except preliminarily, I do want to thank the chairman and thank the members of the committee for going beyond the call of duty holding hearings on Saturday to afford me the opportunity of appearing here. Prior to my appearance here there was a meeting held with representatives of the firemen, teachers, myself, the Governor and Mr. Koven who is a special arbitrator, and I think as a result of this meeting there was some evident disagreement, but I think at this time there was a great possibility of working out some form of a compromise. Now, I can address myself to those things now. I know time is of the essence. I know some of you would be interested in some of the ideas that we have discussed.

Chairman Gibson: I wonder if you could perhaps lay the base for this. As this bill is before us, if you could point out the things which should be given additional consideration and then go on from there.

Mr. Efroymson: I think the most immediate and most publicized problem comes up under the provisions of 288.190 and 288.200, which currently provide for initially fact finding with recommendations by three-member panel, followed after that by additional

negotiations and then by advisory arbitration. I should say that advisory arbitration in the field is considered synonymous with fact finding and recommendation, so that you eventually get through with the same kind of hearings, one after the other, on the same issues.

I should mention preliminarily, in the legislative years the fact-finding hearing is actually potentially broken into two pieces, so you can have two fact finding hearings, one advisory arbitration and then call a hearing by the Employee Management Relations Board, which I refer to as the EMRB. The EMRB under the proposed law has the authority to determine that the particular arbitration is binding. However, they also have the authority under the law to modify the arbitration case so in essence you have a third hearing.

The basic problem is, of course, whether or not you ought to have binding arbitration. Secondarily, you've got the question as to whether or not you've got compulsory or advisory arbitration and whether you want to have three hearings. I suggest that one hearing would eliminate disputes, whereas, in my opinion, I think three successive hearings would create disputes, because the law says nothing about the precedential effect of the first hearing and the second and the third. And if you want real trouble all you need is to go through two hearings, the first one awarding three percent and the second one awarding ten percent, and I think you are guaranteeing yourself problems that aren't necessary.

The essential problem I have with the negotiation process that culminates with binding arbitration is that in my considered experience and opinion this will totally frustrate the collective bargaining process, because it represents another "bite at the apple." If I were an employee who went through the collective bargaining process, and was given certain things at the bargaining table, I would never ratify that contract because the odds are 90-1 that I'm not going to lose anything in arbitration. I'm probably going to gain more and I think the end effect would be a rejection of the contract and then go into arbitration to find out how much more you can chase. So, for this reason, I think it is necessary that in essence the law -- although I think it should provide for a hearing -- provide for a non-binding hearing or advisory hearing.

However, this poses additional problems: How do you culminate the collective bargaining process if you don't give the employees the right to strike which they enjoy in the private sector? And I guess after some discussion what we considered, and which as I understand it is acceptable to the employee organizations as well as -- in my opinion I think it would be a fair resolution to give the Governor of the State some sort of -- I call it "quasi-emergency power", as the result of which in a particular case he would have the right to dictate that that particular

arbitration before the fact is final and binding, or the right to dictate not be final and binding. The law would provide it's not binding unless he, in his emergency authority, dictates it be final and binding.

The end effect of this would be that throughout the course of negotiation, neither party would know whether they would have binding arbitration at the end of the process as the result of which I think the collective bargaining process would be a viable process as distinguished from the situation where you know you have got final and binding arbitration at the end of the line. I think what you've got is a basic jockeying of positions trying to get in the best strategy and the best position for the arbitration table, as the result of which nothing gets resolved at the bargaining table. But this is the only way that I would accommodate or go along with the theory of final and binding arbitration. I think that even the representatives of the employee organizations recognize the potential frustration and disruption that results from three separate hearings. To me, you're just buying trouble.

The other point on which I have already expressed an opinion two years ago to one of the members of the committee is, I don't really feel that you gain anything with a three-member panel. I would anticipate that in substantially all cases the representative of the employee organization would be prejudiced for the employee and the representative of the employer would be prejudiced that way. They do afford a sort of kind of by-play for the impartial arbitrator during the thought processes, but I would suggest that he can get that same kind of by-play from the representatives of the party in hearings. I can elaborate a good deal on this -- I'm trying to condense it a bit to reflect some of the discussions we've had this morning.

I've got a couple of other problems with the bill as proposed. One is regarding the proposed unfair labor practices in the new Section 17. First of all, it separately provides for good-faith mediation and good-faith factfinding or arbitration, in addition to demanding good-faith bargaining by virtue of making it an unfair labor practice to refuse to bargain in good faith. The law has been construed since the passage of the refusal to bargain provisions that it is construed to mean using the same good faith if you have got mediation involved in the collective bargaining process or if you've got factfinding or arbitration. I think that clearly would be construed to include those parts of the collective bargaining process.

The major problem I've got with Section 17 is making a violation of the contract an unfair labor practice and throwing the jurisdiction over all grievances to the Employee Management Relations

Board. First of all, these people are not experts in the local arbitrator, who is essentially the person who traditionally resolves alleged violations of the grievance procedure.

Secondly, and I'm sure Mr. Koven can acknowledge through his years of experience as an arbitrator, in 95% of the arbitration cases he handles, both sides vehemently disagree as to whether the company or the employer did violate the contract, and if they did they obviously didn't do it intentionally. It's just a difference of opinion in the interpretation of the contract. And to make something like that a violation of law I think is not conducive to good labor relations. I think that it poses problems in that the EMRB, which is made up of three members who are non-paid, who have other full-time occupations, is going to stall a grievance procedure in the state because they will be theoretically handling all cases under all the contracts under all the public employee groups throughout the state. And what I would envision is that if somebody went to them with a grievance, they'd say, "Oh, yes, we'll get to a hearing in 12 months." And that certainly isn't conducive to good labor relations.

I should mention that in the school district contracts under the grievance procedure we had, and what we have already tentatively agreed to for next year, we exclude from the grievance procedure any act by the employer, the school district, concerning which the employees have a remedy at law. Now, this was initially designed because of the Professional Practices Act, as the result of which when we've got the discharge of a teacher, it doesn't go under the grievance procedure, it goes under the procedure of the Professional Practices Act.

Now, if Section 17 were passed as proposed, you would make all grievances subject to a remedy at law by a hearing decision by the Employee Management Relations Board, and as a result of which there goes the grievance procedure.

Senator Dodge: It's Section 11 now. It's (h) under Section 11.

Mr. Efroymson: It's 1(h) and it's 2(e), and as I understand it, the employee organization representatives are perfectly agreeable to leave in an amendment that we delete that provision from the list of unfair labor practices.

The other problem I had is in 288.170 which describes the criteria for the determination of what is an appropriate bargaining unit. Now, I would tell you going in that these are essentially the criteria from the private sector under the Labor Management Relations Act. However, they significantly leave out one of the provisions of the Labor Management Relations Act that although the extent of organization among employees may be a criteria, it is not to be the determining criteria. That's specifically set forth in

the Labor Management Relations Act. One of the problems I have with this is I see it as another provision which could eventually create dissention. For example, in the Clark County School District, the Clark County Classroom Teachers' Association have a district-wide bargaining unit. You've got the American Federation of Teachers as a competitive organization which represents to my information, something like three to four hundred teachers in the district.

The new criteria proposed here, as distinguished from leaving it as it was, is to talk about in general, a community of interest with the initial determination made by the employer. I submit it could result in the American Federation of Teachers organizing one school to two schools to three schools and arguing under the new criteria that they are the appropriate bargaining unit because of a stronger community of interest, the extent of organization is just that school, the desire of the employees is just that school, and you can end up with tentative organizations being recognized as the same kind of employees working for the same employer, and that creates, of course, more negotiations and a greater chance of disruption. And I still think that what the law should ideally provide for is the largest possible bargaining unit with people of a good community of interest bargained for all in one group by a majority representative.

There is another provision that isn't contained in the bills that I feel strongly about and I think I ought to talk about for a minute and that is the private sector. In the private sector you've got under the Labor Management Relations Act Section 14(b) which allows states to pass right-to-work laws, as the result of which employees do not have to belong to the employee organization unit. However, even in a state where you've got a right-to-work law, that employee organization has a mandated responsibility to equally represent the non-members in the bargaining unit as well as the members in the bargaining unit. The law says nothing about participation by the bargaining unit as a whole in terms of either the negotiations or any ratification of a collective bargaining agreement.

We had a very substantial problem in the Clark County School District last year because the employee organization only allowed the members of the association to vote on ratification. The initial ratification prior to factfinding resulted in rejection. The second one which followed after the factfinding decision issued resulted in ratification. But the idea of disenfranchising members of the bargaining unit I think has a disruptive effect, and I say that regardless of which way the non-members might vote. I think it's critical that they be guaranteed right of full participation as a member of the bargaining unit.

Why don't I let Mr. Koven say a couple of words at this point.

Senator Dodge: Well, let me point out to some of the members of the committee who are not familiar -- we had a basic decision to make two years ago in this bill about what . . .

(end of tape)

(Senator Dodge continued) . . . on the part of local employee management that this might get to be an unworkable thing because you've got too many different groups you are trying to work through and which would complicate negotiations. The teachers particularly were interested in the exclusive aspect because of this AFL group in Southern Nevada. The Nevada Teachers Association specifically requested the exclusive right to negotiate, but obviously if they are going to have that exclusive right, as Mr. Efroymson points out, they need to represent all employees.

Mr. Efroymson: I should also mention in that regard, Senator, that as I understand the new Executive Order for Federal employees, which was issued by President Nixon, I believe, about a year ago which amended 10988 which was President Kennedy's , made that significant change under the Kennedy Executive Order. It granted sort of percentage participation to different groups representing some of the same employees. It now provides in the tradition of the private sector that the majority representative represents the whole group and, of course, it also provides, as I understand it, for full participation by all members of that group in the determination made by the organization.

Senator Dodge: Could I ask a question here about your observations about this community of interest criteria, which was all I knew to write in the Act two years ago. I didn't have knowledge enough of how you more specifically define it. I thought you just had to evolve it. Now, my question is specifically directed to you and to others here. Have there been any particular problems about the resolution of this matter of appropriate bargaining organization based on community of interest? If there have not been, then I don't see that we need to further elaborate in the bill. If there have been, then we probably need to consider them.

Mr. Efroymson: My position would be that there have not been because of the law as it stood. Two years ago if you knew what followed in the bill under the statute as it stands, the public employer is mandated to recognize a group who comes in with their charter, with their by-laws, the names of their officers, and with the membership saying we represent this group, and if it's over 50% of the group, to recognize it. The problem we had in the Clark County School District is the initial recognition process. It ended up with the school psychologists being recognized as one

group and the teachers' association being recognized as another group which included the psychologists because they were certificated personnel. We held the hearing pursuant to the act to determine the community of interest and finally put them all in one group represented by the teachers' association. I think it worked; well, I think the psychologists accepted it. But I think with the criteria that is presented here, it would have dictated a separate bargaining unit for the psychologists, it would have dictated a separate bargaining unit for counselors, it would have dictated getting into something like the classified employees of the districts, who are all the hourly people who aren't on the certificated scale. You've got bus drivers, you've got maintenance-type people, plumbers, electricians, carpenters and so forth. You've got your whole clerical work force, you've got your janitorial work force and you could potentially end up with eight or nine bargaining units, which would make an impossible situation, because each group would be trying to get a little more. I think it would become practically impossible and unworkable.

In the concept of general community of interest in there, as I recall, included the interest of public employer. I think they prefer to handle it as they handled it in the past and that's to make a whole group of classified employees, but I think a darn good argument could be made to the contrary under the criteria you have in 288.170 at the present time.

Senator Dodge: What's the problem with the firemen, Keith?

Mr. Henrikson: Yes, Mr. Chairman. We did have a problem in Reno in that the City did not recognize our entire fire group. They recognized part of it and said that the other part was part of another group. They wanted to split us up into several bargaining groups and our idea was to have one bargaining group for all fire department employees, including the chief and assistant chief, of course.

Senator Dodge: What was their rationale?

Mr. Henrikson: Their rationale was that these were management people, that they had a different community of interest. For instance, they said the fire prevention bureau didn't have the same interest as the hosemen did; the captains didn't have the same interest as the hosemen, or the fire prevention, people like these who are an integral part of the fire department did not have the same community of interest, which of course, we dispute. We figured with the wording that's in the bill now or that we are asking for, that we could get back into one bargaining unit. Now, this is what was desired to do. Mr. Koven tells me that the wording here is basically a guideline that's been set. Maybe we could get him to elaborate a little bit on that.

Chairman Gibson: Reny Ashleman?

Mr. Ashleman: We have had a problem. The American Federation of State and County Municipal Employees and the City Employees of Las Vegas have had a very protracted dispute with the council over appropriate representation. We initially, although we have now solved the problem in Las Vegas, had the same problem with firemen; somewhat different factors, but we did have quite a problem with that because of the wording and the language in the City of Las Vegas. I think Kevin has some other proposed language, as an alternative to this change that I think we would be able to accept, and perhaps solve our problem. Now, as long as I have the floor, I want to say that his other remarks, we felt we would be able to go along with the things he has talked about here today are generally in speaking true.

Chairman Gibson: Mr. Koven?

Mr. Koven: My name is Adolph M. Koven. I live in San Francisco and I have an office there. I am a full time arbitrator and have been doing that work for 12 or 13 years. Part of that time I was a mediator with the California State Conciliation Service for a dozen years. Prior to that time I was on the National Labor Relations Board interrupted by some military service. I'm a lawyer. I don't practice law. I'm not too fond of clients; I like parties. That's much more pleasant.

At the outset I'd like to say that most of that which Kevin discussed I agree with, and I think that some of the areas of disagreement are a matter of emphasis, first of all, and I don't even know whether we do have a serious disagreement. But on the theory that everyone is in agreement on what the goal of this legislation means, perhaps as I understand it. First of all, may I say that I don't presume to be an expert on Nevada. We in San Francisco are very parochial, we only really know our area. I've heard many cases here in Nevada; I hardly would say I'm an expert on what goes on in Nevada, and I wouldn't presume to that.

Now, the arbitration is a substitute for economic action. That's the definition in short for arbitration as to what its purpose is. Some people feel it has something to do with being arbitrary, and it's true that in the Latin it comes from the same word, but at least, hopefully, it doesn't. It is also an extension of the collective bargaining process and the question is how do you reconcile those two matters. That is to say, as Kevin pointed out, that if you have binding arbitration as the final step because you don't want any strikes in the public sector, and that's certainly a goal with which most people would agree, differs materially from goals in the private sector. There are many other considerations there. Here other people are affected directly. You have all sorts of other problems of who is the employer, et cetera.

But if you want to have the collective bargaining process have real vitality, how do you do that and still have absolute security that there will not be any strikes? By making arbitration the final and binding step. Obviously, there will be some circumstances where the parties will not bargain until they get there, to preserve their positions. That has some variation, depending on the way of life that people have together. It's done to a greater or lesser extent. It doesn't naturally fall, because people look at each other and they have a way of liking each other. And what was discussed by Kevin as to a solution it seems to me would be acceptable to people, certainly would be a way of handling it that I think would be acceptable.

Now, with respect to the entire bill and some of the particularities, it may need some modifications here and there as far as details, but my overall judgment if your goal is not to have any strikes in the public sector, it will accomplish that and still provide collective bargaining.

Now, there are many definitions of compulsory arbitration. One definition of compulsory arbitration is that system where an arbitrator is super-imposed upon the parties, and the parties have nothing to say about the selection of their arbitrator. That's compulsory arbitration. You could say that compulsory arbitration exists when the parties voluntarily have written a contract provision providing for arbitration. During the life of that contract they have compulsory arbitration.

Now, one of the problems with the public sector is that even though we must look to the private sector, it will still be a different type of arrangement. The question of economic action is much more serious, and the pressures of the parties over the people involved as well as the people who are negotiating for "management", is considerable. It's beyond the question of putting one's paycheck on the line. There is the mixed feeling that people have because they are citizens and they are dealing with the public and with their neighbors. It's a question of taxes, and so on, and they share in that. And so the question asks for new ideas, and for getting some guidelines from the private sector as to what's been taking place there, but also some variations in the system.

My judgment, as I say, I only glanced through the bill, is that it is workable. There are some things that ought to be improved. This is a three-man board business, first of all -- and there I speak from what I believe is objective reality in my experience -- and I give you of what the arbitrator does and thinks sitting there. He's presented with a complicated wage package and contract package involving pensions, health and welfare plans, vacations, seniority, differentials, shift differentials, classifications, he doesn't just sit back there and pick a number. What he wants to do is meet the reasonable expectancies of the parties. There isn't any successful arbitrator around and most of the arbitrations, 98%

of the arbitrations are done by 2% of the arbitrators in this country. That's about how it works. He knows that he wants to meet the expectancies of the parties, but he doesn't want to be a "bull in a china shop". And what he needs for that is communication with the parties. He's an active mediator with what we call "interest disputes", as against "rights disputes". Rights are those grievances that come up under a contract; interest disputes are those who are resolving the terms of an entire contract.

Now, it also provides another kind of value it seems to me. Let me say that when he has these other members of the board he's able to confirm, get their thinking, and do some negotiating to narrow the area because as he narrows the area the chances for his disappointing the parties becomes less. It gets narrower and narrower until finally he may hardly be making a decision at all in some situations. And as I was telling a gentleman earlier, there was a strike with the bus drivers out in the Contra Costa District. I was the arbitrator there. We had many, many meetings and I worked very hard and the disagreements were very wide to begin with. But ultimately the area of decision that eventually I made was an infinitesmal part of that entire package of that million two that I gave away, so to speak.

I'm now saying that in 1965 I was the arbitrator on the interest dispute. I've heard many cases from 1965-70 and in 1970 I was again selected to hear that despite the public pronouncements by the parties because those were political for their people. You see, one had to take credit, the other had to take the non-credit so to speak, because they were looking for a fair increase on one side and the union felt that it really could have gotten more had they not gone to arbitration. But we all know what goes on and that is the important thing.

The other thing, I believe, is that since the question of public opinion is so important in the public sector when you have a formal three-man board, it gives the parties an opportunity to have a minority expression so that if there isn't a solution that is acceptable, the public ought to know. Or perhaps it ought to be made flexible enough. You can waive the requirements of a three-man board. We do it all the time, you see. The facility is there, but you can dispense with it as you choose, so that you can tailor each situation to what it needs.

Now, I agree with Kevin that there are too many steps. What's going to happen is that the union is essentially a political institution. The leadership is elected by its members, and that makes it a political institution. There are politics on the employer's side, but it's not a political institution in quite the same way. And there is no judgment involved. Those are one of the conditions that prevail in industrial life.

(end of tape)

(Mr. Koven continued): . . . at that stage that they were not going to get more than that 3%, and at the stage they are not going to get more than that 10%. I don't think that any harm would be given to this process by compressing the number of steps. I don't believe that would be an area of difference. It should not be. It may be there are special circumstances here that require that. I don't think it's crucial because if your goals are to preserve the collective bargaining process within the framework of the goal of making it impossible for strikes and the damages that occur from that, both sides, I don't think that should be too much of a problem.

Now, I don't know what in particular you would like to hear from me.

Chairman Gibson: As an arbitrator, how would you interpret this language at the bottom of page 4, subsection 9, on over to the top of page 5? Specifically, I would like to know as you view these additions here that are taken into account, what weight you would give them and how binding you feel they would be and what your responsibility is in this process.

Mr. Koven: The problem in interest disputes, let's say on wage arbitrations, most of them revolve around the question of a set of criteria that the parties do not agree on in advance, and so they are each pushing his own set of criteria.

In that Alameda central county they didn't agree in the transit district on what the criteria was; consequently, the union was pointing to the Bay area and the transit district was pointing to transit systems throughout the country. And so you have these parallel tracks of evidence coming in, and I had to decide which set of criteria I would select. Now, if the parties agree in advance on the criteria, then your arbitrator's decision is to circumscribe by that. He has to base his decision upon that criteria. So that if, as you set forth the financial ability, he has to be able to tell -- in my opinion there is some difference among arbitrators -- he would have to tell the employer how they can pay if he orders an increase. They say they can't pay, you see. Or if it says that they can't pay and that is conclusive, then that's the criteria. Now, generally, the arbitrator will look to certain accepted standards, but if you specify the standards, then he will be confined by that, and I believe as I read this very quickly, you set forth in general what the standards should be. And I don't think that would be elaborated as you go along in the cases, but these are the standards.

Chairman Gibson: Well, where it says financial ability, would that be in the judgment of the arbitrator?

Mr. Koven: That's right; based upon the evidence. He'd have to justify it by the record. It's a troublesome question.

Senator Dodge: Would you agree with me that the problem that faces the Legislature in trying to evolve terminal procedures in the public sector and whether we all agree that we need these rather than leave this thing open-ended, the problem is how do we insure that the award will say in an arbitration is something that is within the existing revenues, which incidentally, was a condition in Governor O'Callaghan's message when he said he would support this idea, that it had to be within existing revenues. Without unduly altering priorities that have been established by elected representatives of the people, and somebody has to make those judgments and those judgments have presumably been made by a board of 5 or 7 people, and the question is, are you going to have an arbitrator in the position of overruling these priorities?

Now, the other factor, which I think you will agree with me, that separates the public sector in the consideration of your terminal procedure from the private sector, is if in the opinion of management in the private sector the award of binding arbitration is beyond the present revenue structure, they have some flexibility because they can presumably go out and ask more in the market place for their product and absorb the cost, so to speak. Now, what can you say to us about the safeguards that we can write into this piece of legislation which would not unduly obstruct local priorities by the board and would assure that the legislature wouldn't have to turn around and levy more taxes on people in order to carry out the award because with any subdivision of government, at least in Nevada, they simply can't make local decisions. The school district is a classic example. There is no way short of charging tuition to students, which is not acceptable in our concept of free education in America -- there is no way that school district can raise more revenue than they have. The question of how you cut up the pie, of course, is the thing that is at issue. What safeguards can we evolve in the public sector that will help give us some reassurance about whatever we establish here as against the latitudes that are available in the private sector?

Mr. Efroymson: Well, I had sort of a unique experience in this regard that bothers me a good deal, Senator. Last year in the factfinding panel in the school district, the basic defense of the employer was no ability to pay. Now, I agree that the party representing lack of financial ability had the duty to prove it, and we put in close to 100 exhibits which broke down the school district's budget to laymen's terms understandable to me, first of all, and secondarily understandable to the factfinding panel. And I essentially think we did the job.

My argument to the impartial factfinder was that, now if you come back and disregard this somewhat, you have the responsibility if you say there is $500,000 there for salary increases, to tell us where it is because we have laid out every penny of revenue and every penny of expenditure. That arbitrator, who is another

well-known, well-qualified arbitrator, with whom on this issue, Mr. Koven agrees, agreed with that theory, and at the annual meeting of the National Academy of Arbitrators held a couple of months ago in Los Angeles, he presented a paper on this that, as I recall his comment now -- he said that you can't leave the parties, if you will, with a preliminary solution that doesn't really address the problem. He commented on Will Rogers. He said you can't play Will Rogers during the first World War, they asked Mr. Rogers how to solve the submarine problem of the Germans in the Atlantic Ocean. Mr. Rogers came back with the comment that it was easy; you just heat up the water in the Atlantic Ocean to 250° F., you cause the submarines to rise to the surface, and then you shoot them all out of the water. They said, well, that's wonderful, how do you heat up the Atlantic Ocean to 250° F.? He said, that's your problem, that's the detail. And this arbitrator was saying you can't play that kind of a game with public employees, saying 10%. Where you get the money -- that's your problem.

The unfortunate experience was, two other highly-recognized reputable arbitrators, one of them you might know quite well, got up and violently disagreed with him and said, all we do is look at the equities and gee, if these poor teachers aren't making as much as teachers someplace, we give them 10% increase. Where you get the money isn't our problem. We are not CPAs, and so forth. I violently disagree with that kind of theory.

The only concern I've got is that just in terms of the way this is phrased, although I think it is pretty clear, I don't want anybody to construe (b) and (c) in the criteria as containing an inference that if these people are lower paid than comparable people in the public or private sector, that therefore, you've got the right to exceed the financial ability.

Chairman Gibson: Well, that was the reason for my question here. You list three things and I wonder, does the arbitrator give equal weight to those?

Mr. Koven: Well, you see, the arbitrator is a realist too, and in the private sector when he orders a wage increase implicit in his award or he implies that the employer will have to find it either by raising his prices or economies or sharing his profits, he's giving them what Kevin is saying and I agree with, he has to give the parties in the public sector. How are they going to get the money? Now, you have listed other -- there are going to be cases which do not involve the financial ability and involve these other factors and you would want that criteria there, because when that is present then you want the arbitrator to roam in the Gobi Desert picking out any criteria that he likes. In my view, the arbitrator wants to have criteria that the parties have agreed upon. He wants to make a decision consistent with what their expectancies are and what the realities are.

Senator Dodge: The other day we had a hearing in here. I offered an amendment which in effect had no binding arbitration award. That's assuming we left this paragraph in. No binding arbitration award could exceed the existing available revenues which again was the Governor's language in his message -- within priorities and at a property tax rate and a fee and license schedule determined by the local government employer.

Now, as far as I am concerned, if we were to write that kind of provision in the law, I would have no reservations about binding arbitration and I would offer them to all employees as a terminal procedure because I think I would be relieved of the fear that we were going to nail ourselves to the cross on an award which exceeded really the ability of the local entity to absorb.

Mr. Kovan: Well, I only have this observation: I don't have reservations in quite that way. You have a little different problem in public. You have a Taylor Law in New York City, and it's on the books but you know, it doesn't mean very much. Whatever criteria, whatever is done, has to be realistic with what is possible. For example, setting in the criteria so strictly that it really doesn't mean anything -- this time it can be this financial ability argument within the priorities, et cetera, that no matter what takes place, the people feel that there is no way out and you do have this kind of situation that evolves in New York. You're not going to go out and arrest everybody and put them in jail in violation of the Taylor Act. You can't. And that's one of the problems of -- in fact on the other side a union does not come in and ask that the employer give each employee a Cadillac to drive each employee to work in the morning. The reason they don't, when you get through all the logic on it, is that the people themselves would not support it. They would not go on strike for that point, you see. And so the thing works the other way. If it is realistic, and this is why I don't have reservations, but you are in a better position obviously, Senator, to know than I, whether that would still leave room ...

Mr. Efroymson: One of the problems I have is that it is a well known fact that in Michigan in certain situations and in New York, arbitrators have awarded more than the financial ability to pay, and in some cases the agreement of the parties is trying to impress some of the Legislators. Now, there is a unique difference in both situations when you've got Legislators perpetually in session so that they're up there in Carson City, if you will, to put the pressure on. We have a biennial Legislature that's long gone and nobody likes special sessions and all those kinds of problems.

I think that what you have to have -- and there is no perfect criterion -- I think that what you have to have is a preliminary

criteria regarding financial ability. Then if you decide that there is financial ability or some financial ability, the things that you've got to consider are items like what do people in comparable public entities receive in terms of wages and salaries, what kinds of increases have been afforded to other employees of the same employer, or an argument that we successfully made last year is that you just can't give something to the teachers and forget the fact that we have 1700 other employees in the school district and not leave anything for them. If you use up all the money in the first arbitration case and there is nothing left for the rest of the employees, you've got a real problem -- an impossible problem. You've got the question of priorities, you know. Sure, we've got two million dollars, but should that two million dollars in the school district go to reduce class size or go for teacher's salaries?

One of the other advantages in the public sector, in my opinion, for the public employee is, if they save money in the salaries, for example, if they only give a million dollars in salary increases as opposed to two million dollars, the other million dollars is not a profit to the employer to take home. It's spent for another function of that public entity. And when you talk about something like reducing class size, you are creating more jobs than the bargaining unit. You are talking about more teachers, and the teachers are going to have only so many students. However, the reality of the situation is the people currently in the bargaining unit aren't concerned about getting more teachers. They are more concerned about taking home more money. And it's understandable. It's only human nature.

Senator Dodge: I have two other questions: I don't want to prolong this part of the discussion. You have both indicated that you think there are too many steps in the procedure, particularly if you want some terminal procedure. Are you both saying that if you adopt a terminal procedure you ought to go directly from the negotiation to the terminal procedure? Is this what you are indicating?

Mr. Efroymson: Would you play that back again?

Senator Dodge: I say you have both indicated that you thought there were too many steps in the procedure if we adopt some terminal concept . . .

(end of tape)

Mr. Efroymson: (Answering Senator Dodge). . . an interim process of mediation, and this is for Mr. Koven's benefit -- mediation by arbitrators from the AAA, and I really think that whether or not mediation is used as an interim step, which is only mediation and not a hearing of any sort -- it's the mediator playing with the role of his persuasive ability. I think that ought to be left to the discretion of the parties. If they feel that it helps, let them use it. If they don't feel that it helps, don't make it mandatory to use it. It would be just a waste of time. There's

a good chance as Mr. Koven suggests -- the hearing officer, the arbitrator, whether he's advisory or what he is -- might well do some mediating himself. There is nothing that prohibits him from doing it, obviously if the parties don't cooperate with him he's going to get nowhere mediating, but you know when he's the man that's going to pencil out that decision you have to pay some attention to him. You might not agree with him. So I say, there's always the opportunity of some mediation in that whole structure.

Senator Dodge: In other words . . .

Mr. Efroymson: The other thing that concerns me again, Senator, is I am opposed to a guaranteed binding terminal procedure. I think it destroys the collective bargaining process. I think that if neither side really knows and if you've got somebody like the Governor who can determine at that time before the fact that in light of whatever . . . case by case, so that if I'm negotiating with the teachers, and we don't know that there is anything at the end of the road, so we go through the collective bargaining process and it's a real process and we end up in a real impasse and go to this hearing, either side would have the right to appeal to the Governor that in light of the circumstances that it be made final and binding. He's got the option, and it's sort of an emergency procedure you give to him. He might make the decision there to make it final and binding and when the firemen come up not make it final and binding because of the circumstances. You put the pressure on the Governor, but he's got to take into account the situation. He's got all these facts to consider. Whether it's final and binding in a particular situation, I still think . . .

Senator Dodge: What's your idea about how many steps should be involved?

Mr. Koven: Well, I would agree. I start from the proposition that this is a relationship and also as Von Klausen has said, "The first principle of war is never to lose contact with the enemy." You've got to have contact and if it's necessary to explore, and it might be informally, there ought to be a mediation step because the parties can then move away from formal positions. You may be able to do some exploring. To make it just a spurious process -- sometimes it will be, there's no place for it -- to super-impose a thing it loses its dignity, it loses its usefulness, begins to get other kinds of meanings, which are negative meanings, which I would agree there is no reason to stretch out the process to cause some of the problems get complicated simply by the passage of time. You can resolve some issues if they are handled quickly and those same issues become very difficult. The question of back pay to an employee a year and a half later, where a two-week disciplinary suspension would have been okay, now you are faced with a back-pay award, and you say, sitting there as the arbitrator, well, it took them all the time to get here and it's very clear that the person was unfairly discharged, it's not my fault, it's not his fault, and now you are in a position of having to face that issue, while

if you had heard the case as we do, incidentally, in the canneries where I am a permanent arbitrator, we hear cases and the grievant waits outside, and we give him the decision of this board.

Senator Dodge: I have one other question that I am really interested in from both of you because I know you are both working in this area, and we will all agree that this sort of procedure in the public sector is relatively new, isn't it? I mean, the Taylor Act was probably the oldest in the country, and when I was working on this bill two years ago there were actually only about 13 or 14 states that had fairly conclusive comprehensive-type bills since that time. It's fairly new. Now, my question is this: Are we getting any indication yet as to what will evolve in the public sector in America as far as terminal procedures? See we -- this again, I think, is one of our dilemmas here in the Legislature. Is the thing that you are suggesting about the Governor, what we ought to nail ourselves with as against something else that might evolve in the public sector that wouldn't appear to be a better terminal process?

Mr. Efroymson: I really think that in the context of where we are today, you are looking at something that is acceptable and avoids some of the pitfalls that you see. I think this is a good procedure. However, if the Governor ever developed an element of predictability, where he always makes it binding, or he never makes it binding, one or the other, then I think it takes away a critical aspect of the workability of this procedure because then the parties will start to rely on what they anticipate he is going to do in each and every situation, and I think that could destroy the process that I've talked about.

I could give you a good example. As you know, I am also involved with the Nevada Test Site and hundreds of procedures -- you've got a presidentially appointed panel, atomic energy, labor management relations panel presently chaired by Father Brown. They do not always intervene, they don't even always intervene when both parties ask them to intervene -- so there's no predictability there. So you're not sure you're going to get them when you want them, if that's what you're relying on in negotiations, and as a result you don't rely on them, you use them selectively, and you use them where in effect you have got no other alternative.

I happen to believe, contrary to a lot of people, that giving public employees the right to strike at the culmination of negotiations is not the end of the world. I happen to believe that, just like in the private sector, and maybe more so than in the private sector, there are many things that would dictate to the public employer, who are generally elected officials not to take the strike because of the repercussions in the community and not going to get re-elected type thing. There's an awful lot of pressure on both sides to avoid the strike even though it's legal, and the same is true in the private sector. There's different kinds of pressures that are

certainly there. The employer doesn't want his work to stop, you know he certainly doesn't want to take the strike if the employee doesn't think in the last analysis the strike is going to be successful and we're just going to be throwing paychecks down the drain.

But I think over a period of time as I understood it at the Academy meeting there are two states -- Pennsylvania and Hawaii, I believe they are -- which presently allow the right to strike as one of the potential end effects of the negotiation procedure. You've also got the possibility of adopting the emergency procedure, you've got the federal law. You always have the right to strike, however in an emergency situation the president has the right to intervene and call for an 80-day cooling off period in which the parties return to the bargaining table. There is some talk now about giving the president some sort of limited form of a right in the emergency procedure -- I guess that's been before the Senate for a year and a half or so -- in which in certain selected situations he can impose compulsory aribtration. But again, the key factor is -- it's not guaranteed. There's no predictability there. The parties have to initially rely on the collective bargaining process and I think that's vital.

Now, I have just a couple of other comments.

Chairman Gibson: Senator Hecht has a question.

Senator Hecht: You alluded to something that I saw in the bill. As far as the EMRB Board, I have had several Senators ask, who is on the EMRB Board, and my first answer was, what is the EMRB Board? No one knows. They are strictly political appointees. So I introduced an amendment here after reading where it says "If the parties failure to agree endanger the safety of the State of Nevada." Now, only the Governor can call the National Guard out if the State of Nevada is in danger. So if this is going to be the criteria for binding arbitration, I substituted the word "board," for "governor," which I gather from your comments you agree with.

Mr. Efroymson: Well, what I'm saying is something else. Other than a hearing as this provides for by the board, before the fact, before you go to the arbitration either side would have the right to appeal to the governor to, before the fact, say this is going to be final and binding. It is or it isn't.

Senator Hecht: So you agree that he should be the one. My argument is that the governor should be the final man on binding arbitration.

Mr. Efroymson: I think he's the appropriate person as the chief executive of the state, but what I'm also saying is that I don't think the concept dies, Senator, if you've got somebody else. The key point is that No. 1 it cannot be guaranteed during the collective bargaining process, so they have to rely on that; and No. 2, it's got to be somebody responsible. So we've got to weigh these problems, if you will, whether an emergency exists, whether health, safety, welfare, or anything else are involved, to make that determination at that time, and it could vary in various circumstances, and I say you've got to look at that one particular situation and make that decision.

Senator Hecht: Do you agree on that? That the governor should be the final man?

Mr. Koven: Yes, but by final man what is being referred to is that he will be the final man insofar as deciding whether there will be an arbitration.

Senator Hecht: That is strictly what I am saying. The board can say that, so I am substituting the board for the governor would be the final man to say whether arbitration should be binding or not. Have you seen the amendment?

Mr. Efroymson: I have not. Let me make a couple of other observations. One problem that I see here that is traditional throughout all of labor relations is the problem of control of the employee by the organization. One of the fears I have and I've gone through some very bitter experiences, is the lack of control on the part of the leaders of the organization over the members of the organization over the bargaining unit. And assuming, for example, at the present time there is the Clark county school district, we of the board prefer a monetary action. We have been negotiating with underwriters, so we have got about 17 articles left out, we are making much better progress at a much better level than a year ago. I think both sides will agree.

Now, we hate to see a situation where if we ended up in an arbitration as the result of which the items we all agreed to at the table all got re-opened so that they ended up going

into arbitrate four or five issues as opposed as to the articles really in dispute which might be five or six. And there have been proposals made and significantly. Approximately a year ago the president appointed a commission for the construction of a street made up of four construction industry people, four public members, and four significant union people. It was very interesting that the first set of recommendations they approved was for a law to be passed which gave the authority to the bargaining committee to make a binding decision, if you will, or a final agreement at the table without any kind of mandate for ratification. Now ratification can be a good thing in that it relieves political pressures and membership reaction.

One of the things they contemplate is the possibility of pre-ratifications to that -- and this has happened in some of the negotiations that I have had -- a man goes in there who has already gotten his authority from the membership and when he reaches an agreement at the table, it's an agreement, as opposed to being subject to being re-opened over and over again as you go along the process. That's a difficult one to treat and I recognize this, but I throw it out as a problem that should be considered.

Let me move on to just one other point here I want to stress. I, as an individual, have no fear of arbitration, binding or otherwise, because I've got confidence in my ability to present a good case and you know, if I've got the evidence, I've got confidence in my ability to get that evidence in a persuasive manner before an arbitrator. Of course, I've been doing this for quite a while. The only problem I've got with it as a guaranteed process, is the one I mentioned, it frustrates the collective bargaining process.

The other problem we've got to treat and I don't have a real good solution to it -- in some of your smaller counties where you've got, you know, relatively small employers, you're going to find a lack of expertise in terms of how to present a case. Essentially you will get into a series of representations with one side saying you don't have the ability to pay, and the other side saying you do have the ability to pay, and so the arbitrator sits there in essence without evidence and he needs to make that determination.

Mr. Koven: May I address myself to that. Nine times out of ten whether its new expertise or little expertise on one side, it's a concave-convex situation -- the other fellow also doesn't have the expertise -- you are dealing with two non-expertises

Everybody starts out wanting to be a Perry Mason and they all turn out to be Hamilton Bergers, is about what it amounts to.

Well, anyway, I think first of all I'd like to fix a point and then go on to the question of binding arbitration. One of the things we can learn from the private sector, it seems to me, is that the uniform, the arbitration provisions and greivance procedure, particularly arbitration, the binding quality of the arbitration is not illusory. The reason for that is they have given up the right to strike -- it always goes together.

Senator Dodge: Public employees don't have that right.

Mr. Koven: Well, that's another big question -- there's an argument as to what we mean by "right," because if they think they can go out and so on, you know, it's a big argument. But talking about it in a realistic way. Now, the problem of getting the membership to follow -- I don't know of any case, maybe you (Mr. Efroymson) know of a case -- I don't know of any case in the private sector where there's been a strike against an arbitrator's award. Do you know of any?

Chairman Gibson: What about the railroad.

Mr. Koven: Well, of course that's shot through with other problems -- the national mediation board and you've got a lot of other problems there. I'm talking about the garden variety, and I don't know of any. I don't believe that given a bonafide arbitration system that you have that. The chances are very, very, very great that there would not be a strike against an arbitrator's award in the public sector, because the pressures are too great. First of all, they had the procedures, if you have expert people, and if you select reputable arbitrators, the chances are really not to be considered as a possibility. And so I get to the question, should there be a review of what the arbitrator has done after he issues his decision. In the private sector the California statute on arbitration is a typical one . . .

(end of tape)

(Mr. Koven continued): . . . give the parties a chance to present their case.

Senator Dodge: This isn't the public sector is it?

Mr. Koven: In the private sector under the arbitration statute. All right, now, there are some other reasons there, but they are not really important. Those are the two big ones. I don't know of any case in California that an arbitrator's decision has been vacated.

Mr. Efroymson: I do.

Mr. Koven: Do you? Whose?

Mr. Efroymson: Spencer Pollack's decision in the Harvey Aluminum case.

Mr. Koven: Full time arbitrator?

Mr. Efroymson: No.

Mr. Koven: But my point is solvent.

Mr. Efroymson: In the terms of a contract where you've got a right to a greivance dispute regarding a violation of a contract I agree with you, and you put in a no-strike clause in the contract for a reason beyond the statutory penalties and that is it gives us the contractual right to sue the organization in the event they violate the no-strike clause, and in exchange for that we gave them final and binding arbitration of greivances. And the theory of that arbitration is, of course, that arbitrator is just deciding what the parties have already agreed to -- he's interpreting what they have agreed to -- that's different from an interest dispute kind of situation. The interest dispute kind of situation where he is dictating what the terms of the agreement are going to be.

Mr. Koven: But the same theory ought to apply because the standards have been agreed upon -- the criteria in advance. Now, he doesn't have an open-ended arbitration where he can just sit down and say well, I'll talk to my daughter, Judy, and find out how she feels about this. And the evidence is not admissible unless it relates to this criteria.

Senator Swobe: Did either of you appear before the Assembly committee?

Mr. Koven: No. I did not, no.

Senator Swobe: And did you mention Kevin, that you changed your presentation?

Mr. Efroymson: Well, okay, you know the basic thrust was binding arbitration or no binding arbitration and in that context I was opposed to binding arbitration, because I think it destroys the collective bargaining process. During the

session with the Governor this morning as I was sitting there, you know, a light bulb lit, and I said that I was the one who actually raised the possibility of a non-predictable determination by him at the time before the fact as to whether or not the arbitration would be final and binding.

Senator Dodge: Is there a precedent for that? In the public sector?

Mr. Efroymson: Sure. You know, I can't pick out a state.

Mr. Koven: There are a tremendous number of things going on in the country. I was a speaker at the University of California when they put on an institute, some 400 or 500 people came, on the public sector. And, I love togo to these institutes even though I'm the speaker. I learn more than they get because you see all sorts of people involved in these different areas, and what's going on is really remarkable in terms of city ordinances and county ordinances and legislation is really remarkable. And of course, we've had, in California a number of very important disputes -- we've had the fire fighters in Vallejo, we had the police in San Francisco, in Los Angeles. Well, just the beginning of that whole evening, the two areas in American industrial life or American collective bargaining life, which is really moving forward, I believe above all are agriculture and the public field.

Senator Dodge: Well now, you didn't comment on the question I had. Kevin did. In all of these things that you have attended in your judgments about them, is there anything evolving yet in the public sector about these terminal procedures or are we still booting around different possibilities?

Mr. Koven: I don't think I could say there is anything evolving in the sense of the kind of thing you have in the public sector, I mean the private sector. There are all sorts of things being trie,d and after all we are searching to solve their particular problems.

Senator Dodge: We are searching too.

Mr. Koven: Understandably, and we should be, because the time to look at it is ahead before it happens. And there are also some other problems that develop aside from the immediate disruptions and so on. I differ with Kevin. I

confess it's my own self-interest perhaps. But as a matter of philosophy in the approach, I prefer to see people resolve the problems rather than fight on the street. I don't think he's saying that he prefers to have that. But I am devoted to the system of finding a substitute, maybe not an absolute substitute, but a relative substitute, if that's all that's available, for fighting with each other that way. And I like certain principles. Generally, I think that the health of the private sector depends upon a real collective bargaining system, but we are talking about another kind of set of interests.

Senator Dodge: Do you have any appetite for the suggestion that President Nixon made -- in order to make the prior steps meaningful, and I agree with you 100% if you have binding arbitration, you might as well wipe out the rest of it because I don't think it's meaningful.

Mr. Koven: Or to make the mediation available if the parties want it.

Senator Dodge: The suggestion that President Nixon had, I think it was in the railroad dispute again, that there be a binding arbitration, but that the arbitrator would have to make the award without either the position of the employees or management.

Mr. Efroymson: I wouldn't want to take away that kind of responsibility from an arbitrator. I think that -- you know, you asked if there was a certain procedure developing in other states. The reason why there is no definite procedure developing in other states is because the situation in many states differs from any other states. In many states, for example, the school district has the authority to initiate a tax override -- you know, to get more revenue. They don't have that here. So in that case an arbitrator might well say, 10% now, and go try and get your tax override and if the people vote it in you got your 10%, and if they don't, of course, you don't know where the money is coming from. But that is not the situation you've got here, but I think to a certain degree you've got to tailor some of these situations. And of course the other point is there is nothing to say that the procedure adopted or developed in Nevada might not be a leadership provision in terms of some other states who are wrestling with the same problems.

The other thing I would add, that I think went without saying, is that in the procedure contemplated where the governor would have this kind of authority -- nonpredictable authority -- there would still be the provision for the parties to agree that the arbitration be final and binding and not even bother the governor, you know, if they are in agreement. And in that context, the political power of either party would do well to, you know, if they have a good case, recommend final and binding arbitration. If the other side rejects it, go to the papers and say, you know, we are in agreement . . .

Chairman Gibson: As a practical matter there, if you have that in, can you ever avoid going to arbitration?

Mr. Efroymson: Sure.

Senator Dodge: One of the reasons why I opposed that two years ago, and I don't know that I ever publicly expressed it, but it seemed to me that the party that would normally refuse to make a voluntary decision to go to binding arbitration would be management, local management. It always seemed to me that the question was a psychologically disadvantageous position because of the fact that the employees would then go to the public and say the reason they refused is that they weren't on sound ground with their position.

Mr. Efroymson: Sure, I mean you've always got that right.

Senator Dodge: You're not concerned about that?

Mr. Efroymson: My feeling is this -- there is some concession you can make to a proposal, but the one thing I emphasize with a school district and the board of school trustees, is that the mere fact of arbitration is not a guaranteed matter in binding arbitration and the employees are going to win. I have a group of teachers I met with who asked me if it was possible for them to get a wage decrease, and I said, sure that's a possibility. It's happened in arbitration cases I've handled, and you know, the way this could be done is if the financial structure of the school district was so bad that the only way they could stay alive for nine months would be by the employee who represents 90% of the expenditures of that district, taking a tax cut. . . . and if you can put it on and prove your case, the arbitrator in the final and binding decision, which incidentally is binding on the employer organization, might well award that -- it's a possibility -- not a probability, but a possibility. You've got the right to argue what you want to argue and they have that kind of freedom.

Chairman Gibson: Our time is nearly up, but I want to be sure. When you started you had some suggestion where you thought the bill might be improved. Have you laid out all those suggestions?

Mr. Efroymson: I have not, but I would say, Senator, that I could spend a good part of the rest of the day with Mr. Ashleman and some of these people and work out something that's mutually acceptable.

Chairman Gibson: We would be interested in seeing that. I had one question on the procedure as the bill stands that's been a bother to me. Is the time schedule in this bill practical?

Mr. Efroymson: A good point. Yes, it bothers me. It's a well structured negotiations procedure, and then you go to mediation in "X" days, and then you go into your hearings on "X" days, and it's been my experience that the parties, if left to their own devices, if you will, as long as the public employer has the right to change money from category to category as he does, leave it to the parties with ju one date in there, and that date would be -- that after this date in any year either side has the right to demand hearing, whether its advisory or binding arbitration. It doesn't mean they have to. And, as you know, there has been an interpretation about these time schedules, if they were mandated. Now, I can think of one negotiation with Mr. Ashleman last year, we mutually agreed to let the time limits slide -- that was with the City of Las Vegas negotiation, and I don't think it worked to the detriment of either party. In the Southern Nevada Memorial Hospital dispute with the maintenance people we again waived the time limits. Mr. Petroni was the attorney and I ended up being the hospital's arbitrator in that case. We ended up with a three-year agreement there. And I think that's good, and I think something has got to be done to hopefully get longer agreements, so you don't have to go through the process every year.

Senator Dodge: What's the latest date then for setting a hearing?

Mr. Efroymson: I will say that setting a date for setting a hearing . . . either party has the right to insist both parties go to a hearing and I don't know -- probably set a date in January or February, I don't know what that date is, but it's essentially leaving the process to the parties. But in the event one party starts to stall, I would agree that either side ought to have the right to bring it to a culmination by virtue of some time after that date saying no.

Chairman Gibson: Senator Brown, did you have a question?

Senator Brown: Senator Dodge, did you have a satisfactory answer as far as your proposal? You placed a question, but I thought we skirted that quite a bit.

Senator Dodge: Well, I'm not sure that I did. As far as I'm concerned they say it resolved the whole thing. The one that he is referring to is the amendment, as I say, that I suggested that no binding arbitration award could exceed the existing available revenues. I reiterate that as the governor's language. But I added "within priorities and at the property tax rate and fee and schedule structure as determined by the local government employer." Now here then it gets down to the "ball of wax" of whether the locally elected governing board, the city or the county or the school board, is going to have that ultimate delegated authority from the public to set the priorities or whether you are going to remove that from the elected representatives by this procedure.

Now, there is one other very important factor that I made some observations about the other day. Occasionally in the history of a state, and I hope it will happen in the future in Nevada, you try to design some sort of a tax measure which will offer some temporary relief to certain types of taxpayers -- that's going on now in California -- that so-called effort and thrust for a property tax report. Or to try to get down that rate on the property taxpayer and maybe transfer the burden to other types of taxpayers. We've had some suggestions in here, one by Senator Gibson that potentially would have done that, but we didn't go forward with the bill. The thing is are we going to be able at the legislative level to preserve occasionally tax relief for a taxpayer or will it be placed beyond our decision by these types of procedures whereby the arbitrator would say, well, you don't have the money now, but you could do it because you still have an opportunity here to raise that tax rate 10 or 20 cents. And, of course, as I say, that would defeat, if that were possible, a deliberate attempt on the part of the legislature to help once in a while, the taxpayer.

Mr. Efroymson: In response to Senator Brown's comment, I really thought the thrust with one exception, and I will speak to that, is what I understood criteria (a) to mean. It means the current financial ability without going out

and forcing the public employer to raise additional taxes to raise school taxes, or whatever to get where he is going.

I want to get into one other problem area and it is a very difficult one and I confess to many prejudices. I like the proposal, but I also confess to being somewhat prejudiced on behalf of the public employer retaining all his rights and these are the people I represent or have represented. Where you throw in the wording regarding priorities as determined by the public employer, that becomes pretty sensitive. And by that, if they go ahead and determine -- they can obviously determine priorities to the extent that they spend the whole budget, then there is nothing left for negotiations. Now, they have that right and that's what they are elected for and they are elected by the people. On the other hand they do have the right to represent those priorities at the bargaining table. You know, I do this for the school district and I have a good feel for what their priorities are and in terms of available money, I'm sure there's going to be some dispute as to what goes to salary and what goes to class size kind of thing. There is a point beyond which I and the district do not intend to go.

Now, when you get down to that ultimate question -- there is a couple of complicated factors here. One is what's negotiable. That provision has been preserved and I think it's clear -- there is a clear intent. As I discussed with Senator Dodge in the first bill the factfinding panel under the current statute had no greater authority to deal with issues than the parties were mandated to bargain on those issues at the bargain table. That is one factor.

The other factor is that, you know, you've still got the right to resist proposals on the basis that they are not affordable in light of your priorities in other areas.

Mr. Koven: Yes, well, you have that in the private sector, you see -- it's in the nature of man's rights to determine how they are going to run the plant. Now, except -- and this is with contracts and so on -- for those other rights set forth in the contract. So that where a public employee group comes in and says, all right, we agree with you that we believe you don't have the financial ability, but the way you have arranged the priorities it's been designed to not have the financial ability to pay us. Now, we would like to arbitrate whether you have done it that way -- that you have done it for the purpose -- whatever it may be. So that may or may not be an arbitable matter.

Senator Monroe: Mr. Chairman, I would like to ask this gentlemen if you remove the possibility of altering the priorities and if you deal on the current income without any recourse to initiate income, then what have you got left on economic issues to arbitrate about? There isn't anything left, is there?

Mr. Efroymson: I think that's one of the difficulties. I confess to some prejudices in that regard because . . .

Mr. Koven: Well, the answer to that is how much do you want to have a no-strike situation and for some harmony and the rest of it.

Mr. Efroymson: One other thing, Senator, I would remind you of is that there should not be a presumption here because in my experience it's not true that a public employer doesn't want to take care of his employees any more than a private.

Senator Dodge: Well, I think that should go without saying. That's why our thinking -- all that goes on, really, on the determination of those priorities -- it's a value judgment and it's a calculated risk. In other words, if the employees are pushing for more salaries and the local entities said, well, we would like to set aside a little money to do this thing, and they made that decision, it seems to me it's a calculated risk on their part whether, for example, the employees are going out. Now, if they think that they are on defensible ground with what they are doing, well, the question is finally, should they be able to determine the priorities? And I clain that that's exposed to all the pressures and all the tugging and hauling that will go on through the bargaining procedure.

Chairman Gibson: I think that this has been very helpful to us. Time is very short and we would like you to see what you can come up with. That's all for now.

Mr. Efroymson: I would again like to thank the committee for setting this hearing for this morning.

(Adjournment) Respectfully submitted,

James I. Gibson
Committee Chairman

Mary Jean Fondi,
Committee Secretary

3-206
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NEVADA TAXPAYERS ASSOCIATION

P.O. BOX 633 200 N. Fall Street CARSON CITY, NEVADA

AREA CODE 702
882-2697

16 April 1971

Mr. James Gibson, Chairman
Senate Committee on Federal, State & Local Affairs
Legislative Building
Carson City, Nevada 89701

Dear Senator Gibson:

I appreciate the opportunity to express the views of Nevada Taxpayers on Assembly Bill 178, which proposes to amend NRS. Chapter 288, the Local Government Employee-Management Relations Act.

Two years ago, Nevada Taxpayers Association had serious misgivings about the desirability of this Act but the experience of the past two years has demonstrated that we were wrong. The Act has provided a useful tool for Employee-Management Relations and the success which has attended its use indicates that the Act was intelligently conceived and offers little, if any, opportunity for improvement.

Considering AB-178, section by section, we offer the following comments:

Section 1. This section proposes to include within the Act, "Nurses employed by the State of Nevada" and we question the desirability of such an inclusion. Nurses are employed by the Department of Health, Welfare and Rehabilitation, and are used in the visiting nurse program and in the Nevada State Hospital. This whole department is under strict regulations from the Federal Government regarding the qualification, employment, compensation and merit increases, and employees are employed, advanced, and terminated in compliance with strict Federal rules regarding the State Merit Employment System. It is our contention that the determination of any of these conditions of employment by collective bargaining will, in effect, wipe out the merit system for any State employees, including nurses, and we do not believe that is a desirable result.

Section 1.5. This section adds as "Employer" the State of Nevada when employing nurses and hospital districts. As far as "the State of Nevada when employing nurses" is concerned, we have the same objections to that inclusion as are voiced in the paragraph next above. As regards "Hospital Districts" we are informed that there are no hospital districts in Nevada and that all public hospitals in Nevada are county entities, and that there are no hospital districts as such. If in the future any hospital districts are formed, we feel secure in the belief that they would be covered under the Act under the wording "other special districts" contained in NRS. 288.060

Exhibit "A"

as it is now on the books.

Section 2. This section adds the words "in good faith" which are words of art, subject to various interpretations, and in our view, add nothing to the effectiveness of the Act. The section also provides that "agreements so reached shall be reduced to writing" which we believe is also unnecessary language in view of the fact that it is implicit that any agreement reached would be, and has been, reduced to writing and signed by the negotiators. The last change in this section provides that the negotiating officer for the State of Nevada, is the Director of the Department of Health, Welfare and Rehabilitation, and that sentence is only useful if the changes made in sections 1 and 1.5 are adopted.

Section 3. The additions proposed in Section 3, attempt to create additional criteria for the decision as to what are appropriate bargaining units among employees, and we insist that such additional criteria are completely unnecessary in view of the experience of the past two years. So far as we know there have been no controversies over the appropriateness of bargaining units recognized by employers, and we see the addition of these additional criteria as opportunities for the fragmentation of bargaining units and the creation of an intolerable number of bargaining units dealing with the same employer.

Section 4. This section would delay the beginning of negotiations by 40 days and would make even more likely, the contingency that mediation would be required.

Section 5. This section would require mediation if negotiations cannot be concluded by February 20, and the mediator would need to be appointed within 5 days thereafter (February 25). The Bill as it is now written, makes no provision for payment of the fee and expenses of a mediator.

Section 6. This section provides for submission of the disputes to a fact finding panel upon the motion of either of the parties. The present law requires that the dispute be submitted to fact finding if the mediator fails to obtain agreement. We believe that the tool of fact finding should be mandatory whenever the mediator fails, and we cite as the reason therefor, the success which has attended the fact finding process. We object also to the extended time given for fact finding and point out that the various procedures including fact finding, can take agreement to a point in time beyond the beginning of the fiscal year concerned, and well beyond the time for fixing tax rates and revenue sources.

It should be noted that subsections 4, 5, 6, 7, 8 and 9 of Section 6 of the Bill, are all new language despite the fact that Sections 4 and 5 are not printed in italics. In view of the experience, during this current year, we see no point in the inclusion of subsection 4 and 5. All of the school districts have reached agreement on all matters except salaries, and in

that matter, they have reached contingent agreements, the contingency being the level of support provided by the State for school districts. There is no indication that final agreements will not be reached within the next few days after the adjournment of the Legislature, under the present, very satisfactory procedure. There is no indication that the addition of subsections 4 and 5 will improve the procedure in actual practice since that procedure of delaying final decision on salary matters has been followed by mutual agreement of the parties and no party has found fault with that procedure.

Subsection 6 provides that the parties may mutually agree upon their own mediation or fact finding procedures or waiving the same, and as a matter of fact, there is nothing in the present law to prevent the parties from mutually agreeing upon their own mediation or fact finding procedures or waiving the same. We fail to see that subsection 6 adds a thing to the Chapter.

Subsection 7, provides that the parties to the dispute may agree to make the findings of the fact finding panel on specific issues, binding upon both parties. We believe that the parties have that power now and that the addition of subsection 7 will only have the possible effect of making the "agreement" for binding fact finding a negotiable matter. We do not think it should be a negotiable matter.

Subsection 8, provides for binding arbitration when confirmed by the Local Government Employee-Management Relations Board. If Senator Hecht's amendment is adopted, it would provide that the arbitrator would be the Governor of Nevada, and that his decision, when confirmed by the Local Government Employee-Management Relations Board would be binding whenever the matter in dispute endangered the safety of the State of Nevada or any of its political subdivisions. We believe that such a provision (even with the adoption of Senator Hecht's amendment) would present an intolerable decision. It is stated in the proposed subsection 8 that "a failure to agree involving police and fire protection shall be conclusive evidence of a threat to the safety of the State or any political subdivision" and the argument has been offered that this matter of binding arbitration will apply only to police and firemen. However, there is a vast area of public employment which can easily be found to endanger the safety of the State of Nevada or any of its political subdivisions. We suggest that garbage collection, public school hall monitors, public school teachers who have substantial disciplinary responsibility, crossing guards, all of the officers of city and county courts, all of the city and county highway or street maintenance crews, janitorial staffs for city, county and school district buildings---the list is almost endless---can be a threat to safety. And worse, we can see that the determination of what is or is not a danger to "safety" might easily become the most difficult matter for negotiation.

Subsection 9 presents the most dangerous of all of the proposals in Assembly

Bill 178. This subsection establishes the criteria upon which the arbitrator "whether acting in an advisory or binding capacity" shall base his decision. Subsection (a) grants to the arbitrator the power to dictate to a local government employer, the extent and impact of the local government's entire taxation program. Consider if you will, a county whose elected commissioners have decided not to impose the one-half cent city-county relief tax upon their taxpayers. The arbitrator could say with complete immunity, that any award would be within the financial ability of the local government, even if it entailed the imposition of this additional sales tax. The arbitrator could insist that allocations of funds to any other function of city or county government must be reduced in order to provide funds to pay his (the arbitrator's) award of compensation increases to the employee group engaged in the negotiations.

Unless the Senate and the Assembly are willing to include in the Bill an amendment such as was proposed by Senator Dodge, this subsection 9 of NRS. 288.200, is completely unacceptable.

We insist that the elected city councilmen, county commissioners, and school trustees, are responsible to their respective constituencies. Any shift of that responsibility or dilution of authority is completely out of harmony with the democratic process. The principal responsibility of city councils and county commissioners and school trustees, is to accurately reflect the preference of their constituents as to what functions local governments shall undertake, at what level they shall be operated, and at what cost. These representative organizations must have full authority and must bear full responsibility in the making of their decisions. One of the most important of those decisions is the determination of the level of taxes imposed upon their constituents. Those taxes can take the form of property taxes, sales taxes and charges for services, and that is a responsibility which may not be delegated to a fact finding panel, an arbitrator, or anyone else.

Nevada taxpayers assert that public employees in Nevada are handsomely treated, both as to salaries and working conditions, and as evidence of that fact, we cite the thousands of applications which are received each year for public employment in Nevada. (Incidentally, it is interesting to note that city, county and school district salaries are generally higher than State salaries, and yet, the State Personnel Department asked for additional clerical positions in order to cope with the flood of employment applications. We are informed that in Clark county school district, there were enough applications of new people to completely staff the entire school district).

Section 9. We believe that the amendments proposed to Section 288.260 are inappropriate unless NRS. 288.240 is also amended to provide for injunctive relief against a "violation" as well as against a strike. The Bill does not amend NRS. 288.240 and hence, the state of the law is such that injunctive relief is only available against an actual or threatened strike, and there is no point in providing sanctions against the violation of an injunction since no injunction is available for anything but a strike or a threatened strike.

Section 11. This section purports to set forth a series of prohibited practices and the whole section adds nothing to the present state of the law contained in NRS. 288.140 and 288.150. Additionally, NRS. 288.110 (2) provides a complete and adequate procedure for the resolution of any controversy arising during negotiation or in performance of any contract.

Section 12. All this section does is say the same thing as is now said in NRS. 288.110 (2), (3).

Section 13. We strongly object to the deletion of judicial review of controversies arising under the Act. Without judicial review the board could easily become an uncontrolled autocratic authority and such would not be in the best interest of the State.

We urge you to indefinitely postpone further consideration of AB-178.

Very truly yours,

E. L. Newton

Executive Secretary

ELN/fc

Robert No
3-211

STATE OF NEVADA

Department of Education

CARSON CITY, NEVADA 89701

BURNELL LARSON
SUPERINTENDENT OF
PUBLIC INSTRUCTION

MEMORANDUM

April 16, 1971

FROM: Burnell Larson, Superintendent of Public Instruction

TO: All Concerned

Reference is made to A.B. 178, "The Negotiations Bill" and the Nevada State Board of Education's position with regard to this piece of legislation.

On February 4, 1971, the Nevada State Board of Education passed the following motion:

> That the State Board of Education goes on record as supporting amendments to the current law which would better assure the public interest in a peaceful, effective means for resolving public employee/employer disputes, including:
>
> (a) An expanded scope of negotiations with clear definitions
>
> (b) Specific listing of "unfair practices" affecting both employees and employers, with penalties enunciated
>
> (c) Power reserved to a state public agency to declare factfinding reports binding on the parties

BL:ms

Exhibit "B"

3-21

NEVADA SCHOOL TRUSTEES ASSOCIATION

715 WEST FIFTH STREET - CARSON CITY, NEVADA 89701
PHONE: 882-1150 or 784-6519

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April 14, 1971

Senator James I.Gibson,Chairman
Federal,State and Local Governments
Nevada State Senate
Carson City,Nevada 89701

Dear Senator Gibson:

The Nevada School Trustees Association representing every school district in the State of Nevada wish to again state their opposition to AB 178. The school boards are composed of individual lay citizens,who the people have elected,and who have been vested with the authority to operate the public schools of our state for the benefit of all our children.We are sure that you will agree that our educational endeavors rank high and that these dedicated citizens are serving well.

The enactment of AB 178 with its provisions for binding arbitration would truly be a method of disenfranchising the citizens of Nevada,who are those same people that you represent.

At the present time we have provisions for negotiatiing and discussing our problems of employer-employee relations.We are not aware of any serious problems in this relationship and it would therefore appear logical to remain under the Dodge Act of 1969. We very respectfully request that AB 178 be held in your committee.

Respectfully yours,

Al Seeliger
Executive-Secretary NSTA

cc/

Exhibit "C"