

SENATE COMMITTEE ON FEDERAL, STATE AND LOCAL GOVERNMENTS
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

MINUTES OF THE JOINT MEETINGS OF MARCH 21, 26, and 29, 1973

MEMBERS PRESENT: JAMES I. GIBSON, CHAIRMAN)
JOHN FOLEY)
LEE WALKER) SENATE COMMITTEE
CARL DODGE) FEDERAL, STATE AND
STAN DRAKULICH) LOCAL GOVERNMENTS
COE SWOBE)
CHIC HECHT)

JOSEPH DINI, CHAIRMAN)
JAMES ULLOM, VICE CHAIRMAN) ASSEMBLY COMMITTEE
EILEEN BROOKMAN) GOVERNMENT AFFAIRS
PAUL MAY)
JEAN FORD)
HAL SMITH)
ROY YOUNG)
VIRGIL GETTO)

SEE ATTACHED LIST FOR THOSE ALSO PRESENT:

THE MINUTES OF MARCH 26 ARE THE FULL AND COMPLETE TESTIMONY
OF THE WITNESSES APPEARING BEFORE THE COMMITTEE.

CHAIRMAN GIBSON CONDUCTED THE MEETINGS.

GOVERNMENT AFFAIRS COMMITTEE - JOINT HEARING March 21, 1973

Mr. Bob Gagnier presented the committee with a statement concerning the State of Nevada Employees Association on S.B. 370, 453, 466, 499 and Assembly bills 418 and 548. Statement is attached.

AB 632 - Extends power of government under local government Employee Management Act to make certain fact-finding procedures binding. Mr. Morgan told the committee that the employees group felt that the public school system was different because their budget was set by law at the time which the Governor must make a decision. This extends the Governor's powers by ten days after the legislature adjourns and the fact-finders are given ten extra days to put in their report. There is a divisional problem in that sometimes each fact-finder finds differently, and there is a difference of opinion as to which fact-finders should be held valid. This bill would provide forty-five days after the session to decide which fact-finder's report would be used.

One page two, lines 12 and 13, Mr. Morgan stated that this was not part of the bill request, and he has noted the same language in some of the other bills. Mr. Morgan encouraged adoption of the bill with the amendment.

SB 370 - Includes employees of State of Nevada and certain other government employees within scope of government employee-management relations procedures.

Mr. Ed Pasaltes spoke on this bill. His statement is attached.

AB 600 - Allows the establishment of limited medical facilities and ambulance services for outlying areas.

Rights of local government to administer to its employees. Mr. Keith Hendrickson spoke on this bill. He said that the employees groups support this bill but would prefer no action at all on this matter.

AB 633 - Enables certain employee associations to sue and be sued. This is a housekeeping bill. Mr. Hendrickson stated that the organization felt that they had this power, but in a recent case in Las Vegas it was ruled that they did not. This would make it clear and certain that they did have it. Mr. Hendrickson stated that his group and the other state employees groups were for SB 499.

SB 499 - Includes University of Nevada System within scope of Government Employee-Management Relations Act.

Mr. James Richardson representing the National Association of University Professors spoke on this bill. He explained that it is intended to include Professors and academic personnel of the University in the Dodge Act.

SB 453 - Regulates relations between the University of Nevada

system and its employees. Professor Richardson stated that his group opposed this bill 100%. They consider it completely unworkable. It has several major problems. (1) There is no procedure to deal with an impasse. There has to be a basic change in policy if this bill is to be workable. (2) His organizations disagree with the definitions of administrative personnel and supervisory personnel. Under this bill department chairman would be considered supervisory personnel. Department Chairman at the University of Nevada Art do not consider themselves supervisory personnel, they consider themselves employees. The University Professor's Association considers a Dean as supervisory personnel. This would eliminate department heads from being part of the negotiation unit. The organization objects to Section 25, feels it is absolutely unnecessary. The organization feels that this bill lacks general flexibility. The timetables are not correct and would not be workable.

Senator Swobe stated that he had taken an informal poll of the University of Nevada at Reno professors and had found that the majority of them favor SB 499.

Charles Livingston, American Association of University Professors Nevada Southern. He concurred wholly with the remarks of Mr. Richardson. His organization fully supports SB 453. The binding arbitration concept of SB 453 is most acceptable to all University personnel. Senator Gibson asked Professor Livingston if the University professors wanted the right to strike. The answer was no. Senator Dodge asked if he represented all of the professors. He answered perhaps 15% of the University of Nevada at Las Vegas campus and perhaps 25% of the University of Nevada at Reno professors.

AB 591 - Employee organizations to be represented by a licensed attorney in negotiations under Local Government Employee Act. Mr. Hendrickson stated that this bill was extremely important, as the Reno Police department was denied the right of attorney in negotiations. He urged the support of this bill by the members of the committee. He felt that the intention of the employee management relations act was not to deny an attorney to the employee.

Senator Dodge asked if they did not have the right now to have an attorney. Mr. Hendrickson said that this point seems to be in doubt and would like to see this bill passed so that there would be no more question as to whether they had the right of an attorney or not.

Mr. Neil Humphreys, Chancellor of Nevada, Reno and his staff presented the following statement, See attached statement.

Mr. Proctor Hug, attorney to the University of Nevada Board of Regents, spoke to the committee saying that there were five points that he would like to cover. (1) where it is said that there is no provision to cover an impasse situation, under SB 543 this is not necessary, as the meet-and-confer concept is offered and should be acceptable to everyone. The State of Minnesota has had

this policy in operation for a number of years and it has worked quite successfully. He felt that there would be a constitutional question in the case of hiring an arbitrator as he is not a state official, and could money be spent on this. (2) The definition of academic and supervisory personnel. A board of regents and the administration of the University consider a chairman of a department as part of the administrative and supervisory personnel (3) the designation of bargaining units defining who is and who is not is a problem. Some sensible solution has to be found. (4) the bargaining agent. As it stands now the University Senate works well. (5) The criteria for recognizing bargaining agents. He feels that each organization should have to present a financial statement. University records are public records and he feels that the records of any bargaining unit should also be public. This is necessary and desirable. Assemblyman Ullom asked if there was any input by the academic personnel into the drafting of AB 548. Mr. Huff answered no, that the bill was drafted under the guidance of the Governor and his staff and they did not feel it necessary to consult the academic personnel of the University. Senator Dodge asked what channels of communication had been used in the past to agree on salary and fringe benefits for the personnel at the University. Mr. Huff answered (1) It has been done in the formal way through a chain of command, and (2) through the faculty senate. There is a representative of each of the five faculty senates that sits in on all Board of Regent meetings and is free to give advice and counsel and speak whenever they feel there is something that they wish to contribute. Senator Swobe asked if the University of Nevada discretionary fund was public record. Mr. Huff answered yes. Senator Gibson asked Professor Richardson if he was opposed to the meet-and-confer concept for negotiations. He answered yes. Senator Gibson asked how many states have the right for university personnel to strike. Professor Richardson said that at the present he thinks five states, but he does not know for sure, and will present to the committee a written report of these states. Senator Foley asked if there were limits on the provision for the right to strike in the other states. Professor Richardson said that most states had an 80 day cooling off period.

Professor Richardson stated that the University of Nevada professors did not want the right to strike; did not feel that this was the proper way to gain things that they wanted. They felt that a strike hurt not only the students and the general public of the State but the professors themselves. Therefore they prefer binding arbitration. Mr. Huff said that he was opposed to binding arbitration because each side went into the arbitration with the idea that the final outcome would be decided by the fact finders, so, therefore at the lower levels of negotiation there was no real attempt to find a solution to the problem, and find agreement.

Professor Richardson again reiterated that the University of Nevada professors didn't want the right to strike. What they want is a way for impasses to be dealt with. They feel that binding arbitration is the right way.

AB 548 - Establishes collective bargaining provisions for state employees.

SB 466 - Establishes collective bargaining provisions for state employees. Mr. Wittenberg gave a prepared statement to the committee. See attached statement.

Senator Swobe asked if perhaps the supreme court or the employees management relations board could not be the board used for accepting the decisions for the fact finders. Mr. Wittenberg said that perhaps this could be worked out. Assemblyman Ullom asked if Mr. Wittenberg opposed SB 370. Mr. Wittenberg replied that he did not find it entirely unacceptable. He preferred the other bills, however. Mr. Orvis McCoughlin City of Las Vegas Personnel department stated that he favored SB 370. Chairman Dini pointed out that the two bills under discussion dealt with state employees, not city or county employees. Mr. McCoughlin stated that AB 600 limits rights of local governments to administer its employees; completely emasculates management. If this bill is passed, management will not be able to do its job. He opposes it strongly. Senator Dodge asked if there had been problems. Mr. McCoughlin said that there were not, but there could be. However he felt that such problems could be resolved. Assemblyman Ullom stated that the areas of negotiation were fairly specific; wages, hours, and working conditions are the three areas. Mr. Tom Hood, negotiator for the Clark County Classroom Teachers Association stated that his association favored AB 418. He felt that there were many areas that should be open to negotiation which were not. He cited the case in Las Vegas in the transferring of teachers, of hiring substitutes, and posting of new job regulations. He felt all these matters should be open for negotiation.

Mr. Jim Guest, Clark County Employees Association, offered a Clark County's attorneys personnel stating who was supervisory and administrative personnel. He said that this ruling takes membership away from the employees organization, as almost every member of the organization could be designated a supervisor. The opinion of Clark County District Attorney is included. He stated that this excludes perhaps 60% of the members of his organization. Mr. Wittenberg stated that as far as binding arbitration is concerned, the role of the Governor is not a comfortable role. Mr. Maples, Washoe County School District stated that they favor SB 376, AB 433 and AB 600. He felt that AB 433 had real merit. He felt that the existing bargaining units were not realistic. They could, if one reached far enough, include the superintendent of schools. He felt that it should be spelled out just who negotiates so that it is more workable. He absolutely feels that a third party is not necessary in negotiations. He also pointed out that not all employees of a school district are members of any employee group. Therefore they do not want to authorize any organization to represent them. He felt that the American Arbitration Association should not be included as a fact finding board in any way. He felt that the citizens of the state would be more concerned with the problems, deal with them better as they were the people that would have to live with the decisions, they were the ones who should make the decisions. Senator Gibson said the meeting would be continued on Monday, March 26, at the P.M. adjournment of the Senate.

The Nevada State Association's Position on SB 370

The general philosophy of any negotiation's act is to resolve problems that have arisen between the employer and his employees. The general principle of problem-solving is the mutual understanding of each other's problems with a dedicated attempt to resolve in a harmonious fashion. We in the public sector fully understand that harmony and understanding always produce an excellent product.

Under our current NRS. 288, we have the start of the proper approach to the settlement of many of these difficult problems. It is acknowledged that the NSFA has submitted changes for NRS 288. However, in reviewing SB 370, we find the changes suggested therein to be a reversal of the positive thrust in negotiations.

Specifically, page two, section 7--definition of supervisory employee--the addition of the words "or any individual having authority effectively to recommend such action" would simply mean that the employer could designate an association officer or chief negotiator as supervisory personnel. This could possibly occur before any negotiations commenced, or before grievance or arbitration occurred. In essence, this provision would allow management to control the make-up of any bargaining unit at will; management could remove an officer when they so desired and could generally involve themselves in the operation and internal affairs of any recognized association. It should be noted that in our present statute, and in SB 370, this would be considered a prohibitive practice. This mere change in definition alone would find us appearing before the Employee-Management Relations Board even more frequently.

Concerning section 8, subsection 1, page 2, the proposed change of composition of the EMRB from three to five members is acceptable.

However, the requirements of the background for such a board member appear to be impractical.

As regards to subsection 2, of section 8, we have no disagreement with the designated terms of office, but our organization does wonder whether this Senate committee desires to be the group making the appointments for the board.

As to section eleven, page 3, we feel the current statutory language is clear and has provided appropriate guidelines for the board.

Section thirteen, also on page 3 as presented herein would, in our opinion, do away with negotiations per se. The proposed changes, in fact reduce the act to a nullity. The current language as to the scope of bargaining, although initially thought to be an obstruction to negotiations, has worked to the satisfaction of the general public.

Section fourteen--we disagree with the election procedures set forth herein as being prohibitive and unwarranted. If the committee believes that a change is desired, an election system similar to that used by the National Labor Relations Board would be satisfactory. The NLRB rules for the decertification would also be acceptable if change is required.

In our opinion, if the changes suggested on page five--line 6 through 43--were adopted, employer controlled organizations would prevail in the state.

As to section seventeen, AB 632 should clear up this difficulty.

We feel that section 17, subsection 7, the governor's involvement in binding arbitration, should remain in effect. It was a plan that we all agreed upon in 1971 and we feel that its effectiveness has not been truly tested. Further, in section seventeen, the new section 7a, starting at line 28 and ending on line 2 of page 8, is not consis-

tent with the operational procedure in the fact-finding process since the basic conditions are predetermined. Essentially the changes in section seventeen would also nullify any concept of problem solving through the fact-finding process.

I might add in passing on page 7, lines 47 through line 2 of page 8 there is an attempt to make longevity and merit pay increases part of any general pay raise. It must be noted that this runs contra to the Phase III Federal Guidelines as well as general case law which have excluded such increments as part of any general salary increase to employees.

Section twenty-four appears to be indicative of the philosophy of this bill, and that is simply to destroy collective bargaining in the public sector in Nevada. Accordingly, it is our suggestion that SB 370 should not leave this joint committee.

My remarks to AB 433 would be the same. Neither of these bills do justice to fair play.

Thank you,

ED Psattis

INTER-OFFICE MEMORANDUM

August 16, 1971

TO:

GEORGE DAMMIER, President
City Employees Association

FROM:

R. IAN ROSS
City Attorney's Office

SUBJECT:

Definition of Negotiating Unit

COPIES TO:

It is the opinion of this Office that the term "negotiating unit" as used in NRS 288 has the following definition: a negotiating unit is a group (ASSOCIATION) of employees that is recognized by the employer, for the purposes of collective bargaining and includes all members of the group (ASSOCIATION).

4. Labor Organizations. Section 2(5) of the Act defines "labor organization" as follows:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

It is thus obvious that a "labor organization" need not necessarily be a union. In *NLRB v. Cabot Carbon Co.*, the Supreme Court held that an employee committee that discusses with management various subjects pertaining to working conditions, wages, or grievances is a labor organization within the meaning of Section 2(5). The Court ruled that there is no requirement that such a committee must engage in actual bargaining or in the negotiation of contracts. The Board has similarly held that loosely formed committees are "labor organizations" where their purpose is to represent employees' interests in dealing with employers.

Bona fide unions are obviously labor organizations, but councils of unions are also considered labor organizations within the meaning of the Act, even though employees do not hold membership directly in such council.



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STATE OF NEVADA EMPLOYEES ASSOCIATION

P.O. BOX 1014

(303 EAST PROCTOR)

CARSON CITY, NEVADA 89701

PHONE (702) 882-3910

AFFILIATED WITH THE
ASSEMBLY OF GOVERNMENTAL EMPLOYEES
(AGE) REPRESENTING INDEPENDENT
PUBLIC EMPLOYEE ASSOCIATIONS.

March 21, 1973

TO: Members of the Senate Federal, State and Local Government Committee and the Assembly Committee on Government Affairs

FROM: Rob Gagner, SNEA

SUBJECT: Various Public Employee Negotiating Proposals

My comments for the present will be confined to SB370, 453 466 and 499 and AB418 and 548.

Regarding SB370 it is our contention that the drafters of this legislation have little or no knowledge of state government and the differences between state and local government. The SNEA objects to being included under the provisions of the local Government Employee-Management Relations Act. We have a number of reasons, one of which is found on page 2, line 2, which would set up every agency of state government as a separate negotiating unit. State employees have uniform benefits, a uniform classification and pay plan and a uniform promotional structure which crosses departmental lines. Having separate negotiating unite for separate agencies very probably would cause the destruction of the state merit system along with its uniform structure and

like pay for like work.

NRS 288 was designed from its inception to solve the problems of local government and its relations with its employees. Massive amendments would be needed to fit the needs of state employees and state government. An example can be found on page 6, section 16 which was designed to fit it with the budgeting process of local governments. This is six to eighteen months out of phase with the budgeting process of state government. The negotiating time table, mediation and fact finding time table would be of little value to state employees. By the time local governments are commencing their negotiations in even numbered years, our budget process has already been completed. Also as you are aware, local government has annual budget, state government has biennial budgets.

This bill is also deficient in that it does not recognize the basic difference between local government and state government. This basic difference is quite simple, employees in local government deal with a body that is both administrative and legislative and has the power to implement items of agreement. State government, on the other hand, is composed of two clearly different bodies. The Executive branch can implement some items of negotiation, however, most issues of consequence must be submitted to other policy making bodies such as the Personnel Advisory Commission, the State Board of Examiners and most importantly the Nevada State Legislature. Therefore any agreement reached between the Executive branch of government and its employees is primarily composed of joint recommendations to other bodies.

In summary SB370 does not recognize the basic differences in levels of government and could, in fact would, cause fractionalization and splintering of state workers.

We We have other comments regarding SB370 that are not directly related to the state versus local government issues but feel we should speak to these issues. On page 3, lines 47, 48 and 49 along with page 4, lines 21 through 26 is an attempt to frustrate the negotiating process by giving management absolute rights which do not exist. Further the measure set further management rights which strike at the heart of the negotiating process. An example is the management right to classify employees without regard to any negotiating or appeal rights. In state government at least, classification is a very important key because as classification goes, so also will the salary and employees must retain the right to have some say in their classification. Another example is the management right to promote. We are not suggesting that an employee organization have the power to negotiate who will be promoted but rather should have definite input into the manner in which promotions will be handled.

On page 4, section 14, line 36, is a definite attempt to further limit employee organizations from certification. Even the national Labor Relations Board does not require this 50% rule. In subsection 2 of section 14, SB370 would require an election in every case of recognition. We wonder whether the fiscal impact of this unnecessary provision has been taken into account for the State Labor Commissioner, if not, certainly a fiscal note should be prepared to determine the costs of these expensive elections. In subsection 3, on page 5 management is obviously trying to further divide employees by permitting extremely minor organizations on a ballot even though they have no chance of doing anything but divide the vote. Subsection 4, on page 5 is another attempt by those opposed to Labor Organizations to prevent certification. This subsection would require an organization to receive a majority vote of all employees rather than

those who vote. Management has only to discourage those employees from voting and thereby a double vote against an employee organization. In subsection 5 on page 5, lines 24, 25 and 26, a process could be set up whereby the employer could thwart the negotiating process at his whim and engage in meaningless elections to stall fruitful negotiations. In sections 24 on page 10 the drafters of SB370 wish to place additional burdens on employees and seem to be overly concerned with possibilities that neither occur nor are threatened.

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Regarding SB453 and 499, SNEA does not represent college professors and cannot pretend to speak on behalf of the non-classified employees of the University System.

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SB466 is identical to AB548. These two pieces of legislation are apparently products of the state administration, at least this is what we have been told. At no time has anyone in state government discussed an administrative proposal with us, even though our legislation, AB418, has been drafted for many months and was discussed with administrative officials.

SP466 and AB548 are primarily meet and confer legislation that bestow little on state employees. We do have some specific comments regarding these bills. Section 15 of the bill demands fiscal information from an employee organization that is of no concern to management other than the possibility of devising ways to run the employee organization out of money. SB466 and AB548 insert two bodies in a supervisory position of negotiation. Both bodies are composed of gubernatorial appointees. These bills also require elections regardless of majority of membership in any unit and place the entire burden of costs on the employee organization despite the fact the

employee organization has no control in how such costs will be incurred.

These bills attempt to segregate supervisory and confidential employees from all other employees. This type of segregation may have a place in private industry but has been totally unnecessary in government. Under this type of segregation a Senior Clerk Typist making \$6000 a year could be considered supervisory, again, as in SB370 these measures would lead to fractionalization of state employees and the possibility of non-uniform benefits. There are only three rationale for separation of supervisory employees. One; to have some supervisory employees to provide continuity of operation in case of a strike and this is already illegal. Two, to assure that those employees in a position to adjudicate grievances are not in the same unit with their subordinate employees. This is unnecessary because state government already has an excellent grievance procedure contained in the Personnel regulations and not to be included as a portion of a collective bargaining agreement. Three, to assure that those policy making employees who will be doing the negotiating are not in the negotiating unit. This concept we agree to and have embodied in AB418.

These measures go so far as to say that the physical environment of work areas is non-negotiable, even SB370 does not go so far as to say that this type of working condition is non-negotiable. These measures do not provide for any form of binding fact-finding or arbitration making useless the entire act; for without it state employees have no more than they have at the present time.

These measures to into a great deal of explanation regarding strikes and penalties for strike and this would appear to be needless legislation in that NRS 288.230 through NRS 288.260 are applicable to state employees already.

Overall it would appear that the proposed legislation embodied in SB466 and AB548 are more punitive and limiting than they are progressive.

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AB418 is the product of two years study by the SNEA in which attempts were made to avoid the problems and pitfalls that have compounded the negotiating process in state government in other states. It is not all that we would like it to be but few pieces of legislation ever are. This bill was drafted and re-drafted six times before being presented to the state legislature. We attempted to resolve many anticipated problems. We discussed the concepts involved in the bill with the Director of Administration and the Personnel Administrator as long ago as one year.

There are two drafting errors within AB418 which I would like to call to your attention. The first is section 8 on page 1, lines 20 through 23 should be deleted as they were inadvertently included. On page 5, line 13 the date is incorrect and should be December 1.

In drafting AB418 we attempted to take advantage of much legislative work that has already been done in this area and many of the provisions parallel the local government act. Some of the major points to consider are, one, recognition could not be withdrawn for a period of one year after being granted nor during the period of any written agreement with the exception of the last 90 days (Commonly referred to as a contract bar), two, an effort has been made to prevent fractionalization of our merit system and personnel procedures by creating one bargaining unit for all classified employees with the exception of those employees who head divisions, and, three, a unique system of arbitration, remembering the past debate held before this body two years ago regarding outsiders making important policy

decisions regarding Nevada government. Section 17 of AB418 was the most difficult part of our legislation to prepare and reach a consensus of agreement. We looked at every provision for arbitration now in existence and discarded them as either being unacceptable to our members or probably being unacceptable to the legislature. Our suggested form of arbitration leaves it in the hands of people elected to office and responsive to the needs of the state. We would certainly be willing to accept other forms of arbitration such as professional arbitration or a larger group of legislators instead of the number mentioned in our bill. We are not even totally sure that this type of arbitration will be beneficial but would certainly like to try it for several years.

It must be remembered that any form of arbitration between the employees and state government does not have the direct financial impact of arbitration at the local level because arbitration of financial matters must still be presented to the state legislature.

I will be happy to discuss any of these bills further or answer any questions you may have regarding AB418 or the other bills.

1/14/60
 DATE: 21ST

NAME	DESIRE TO TESTIFY	BILL #	REPRESENTING
Alon Johnson	No		Phuehill Co. Sch. Dist.
Lou Hirschman	—	—	Phuehill Co. Sch. Dist.
R. Maples			Washoe Co Sch Dist.
T.G. Exley	Yes	S.B. 453	Univ. Nevada System
K.D. Jessup	"	"	" " "
Neil D. Humphrey	"	"	" " "
Procter Hug, Jr.	"	"	" " "
Robert L. Griffin	No		public
Harvey Donders	No		Clark Co School
Ernest K. Kears	No	SB 499	Univ. of Nevada - NSP
Allen Atkinson	No	SB 499	Univ. NSP
James Shields	No	SB 370 453 499	UNR NSP
J. M. Strizby	No		Clark County Teachers Assn.
GARY GRAY	No		CCCTA
Tom Hood	?	SB 370 AB. 600 632 633	CCCTA.
Franklin Newman	No		Nevada State Education Assn.
Will H. Brown	No		NATIONAL EDUCATION ASSOCIATION
Vince Sarracore	No		Clark County CTA.

DATE: _____

NAME	DESIRE TO TESTIFY	BILL #	REPRESENTING
Howard P. Bonds	no		UNR NSP
Jim Witter	yes	AB 548	Dept. of adu
I.A. MacEachern	yes		City of Las Vegas
Robert L. Petroni			Clark County Schools
Richard F. Brown	no		Clark County School District
Don Lusk	No		State Personnel Div
Jim Orr	No		White Pine Schools