JOINT HEARING
SENATE AND ASSEMBLY JUDICIARY COMMITTEES
Saturday, May 10, 1975

Senate Members Present:	Chairman Close
	Senator Wilson
	Senator Bryan
	Senator Foote
	Senator Hilbrecht
	Senator Sheerin
	Senator Dodge
Assembly Members Present:	Chairman Barengo
	Assemblyman Hayes
	Assemblyman Meaney
	Assemblyman Hickey
	Assemblyman Polish
	Assemblyman Sena
	Assemblyman Lowman
	Assemblyman Wagner
	Assemblyman Banner

Chairman Close called the Hearing to order in the Las Vegas Convention Center at 9:15 a.m. He announced the purpose of the meeting was to hear testimony on BDR 41-1925 which provides for licensing of casino employee representatives. SB 614

The first speaker was Mr. Stewart Ross, from Hogan and Hartson, Washington D.C.

Mr. Ross:

Thank you Mr. Chairman. It's a pleasure to be with you all today to participate in person in the process that we started several weeks ago when we were retained by the Committees on the basis of joint consultation. I have reviewed the draft that is before us this morning and while I won't at this time go into the specific language changes, I'd like to address a few remarks to some concepts that the present draft contains which I think will be of importance in proceeding. You will recall that the memorandum that we prepared for the Committee and transmitted on April 28, of this year, adopted the basic conclusion that the Committees could legislate in this area and that when they got around to drafting specific legislation, great care should be taken to insure that constitutional freedoms were not abridged in any fashion. Keeping in mind the major thrust of the recommendations for the legislation should the Committee determine on a policy basis to go forward, we determined that the appropriate fashion, and so recommended to the Committee to legislate in this area, was on the basis of what could be called a functional analysis; that is, rather than attempting to single out for regulation and licensing a labor union as such

or any other organization, it was our recommendation that a functional analysis be taken and that any person who engaged in specified areas of conduct which were critical to the gaming industry be required to obtain a license. Now I noticed that the draft before us today which picks up some of the recommendation we had, does not, in my opinion, go far enough in making the distinction between the licensing of a person who is engaged in a specific act of conduct and the licensing of a labor union per se, and I think it very important that in considering this legislation we make that distinction. While I cannot sit here and say that the actual conduct involved will not be conduct which in many instances could be undertaken by representatives of organized labor, it is also conduct, which, in my opinion, could be undertaken by people who were not representatives on a full time basis of organized labor. Someone could be retained as an outside consultant to perform some of the functions as has been listed here. So I feel it very important in both the legislative finding section and in the critical operative sections of the bill to distinguish between the requirement for licensing a labor organization, as that term is defined, and licensing a person who is engaged in the specific conduct that has been enumerated in Section 4. It is the latter licensing requirement that I think permissible in this area and I think desireable in this area. Keeping that in mind, I will have some recommendations, changing, in some respects, the findings that the Committees will draw up as part of a parcel of this bill. I will also have some specific recommendations which deal with the definition of a "person" as distinguished from a labor organization. Now it may be necessary to ultimately define a labor organization in this bill, Mr Chairman, because of the substantial impact it could have upon some persons who are affiliated in one capacity or another with labor organizations, but I think our primary emphasis has to be on our definition of a person. In addition, I'm going to recommend to the Committee that in defining labor organization we use the definition which the Federal law basically uses to define what a labor organization is.

In addition, Mr. Chairman, I feel that this bill should be specific, should the Committee decide to go forward on a policy basis, in pointing out what areas of conduct it does not seek to regulate. I would not recommend that we get into the business of attempting to regulate anyone's right to speak out on the issues of unionism. There were some earlier drafts which, in my opinion, went too far in that direction, Mr. Chairman, and I think that we have to be particularly sensitive to first amendment freedoms, and I think that the representatives of the labor movement have quite clearly pointed out in a very succinct fashion that we should not be involved in abridging one's freedom of speech in connection with their views on unionism. That's something that is clearly protected, and the Supreme Court cases hold for that. So I'm glad to see that the new draft makes that even more explicit. I don't think, and I

will recommend to the Committee we should be in the business of attempting to regulate the conduct of a representative of an international union who should appear in this state for purposes of attempting to organize a labor union, and I notice that the draft bill adopts in substantial measure the regulations that we made dealing with the actual conduct of an already organized union as distinguished from attempting to regulate conduct of organizing a union. I think it is very important that this draft clears up that distinction and does not seek to regulate organizational activities of the unions in this state. While I do feel that there are some aspects of organizational activity which could be regulated, I think the bill is stronger if you do not attempt to reach out to those particular areas of conduct. I think that you have a much closer connection between the states interest in insuring that the integrity of the gaming system is maintained when you are talking about dealing with someone who is performing an actual function for gaming casion employees as distinguished from someone who is merely seeking to organize gaming casino employees into a union for purposes of collective bargaining. I think that it has to be made clear throughout the bill that it is as I said before, for instance in Section 4, C, and here I am amending some language that I offered up myself the operative language to act as an officer, member of the governing body, business agent, or in any other policy making or supervisory position in any organization or labor organization because it well could be an organization that was not a labor organization, so I think that you have to cover both. In addition, I am going to recommend that all of Section 5 be deleted and that the sentence in that section which deals with the commission promulgating regulations defining the nature of policy making or supervisory positions be moved up to Section 4, C, the section I just had reference to. Section 2, Mr. Chairman would as presently drafted require a labor organization to register. I disagree with that. I think it should be any person and not a labor organization, and I will recommend changes designed to effect that.

Senator Wilson: You mean paragraph 2 of section 3, Mr. Ross?

Mr. Ross: On page 3 at the bottom it's actually paragraph 2 of section 4. I'm going to recommend another change. On page 5 there is a subsection 2b. I believe that should be made a little bit clearer or could be made a little bit clearer by stating that the applicant's moral character and integrity as evidenced by his prior conduct are such as to create a reasonable doubt that the granting of a license to the applicant would be consistent with the policy and then I would insert "of this state" that gaming be conducted freely and honestly. I would end the sentence after the word honestly. It seems to me that if we attempt to get into the area of defining what is good for the welfare of employees of the gaming industry, we are in a very touchy area because it is only gaming casino employees who can determine what is good for their welfare. I don't think that we have to go that far, and I think the legitimate interest which we should be protecting is the interest of the state in maintaining

the integrity of the system.

Mr. Chairman, in addition on page 7 of the bill, Section 14, subsection 2, Let me stop there for a moment. There are, after the substantive and operative provisions of this bill, the draft bill, several items which appear to me to be conforming amendments to the existing statutory scheme of regulation. I believe that there are some inconsistencies in connection with the substantive approach we are taking here on the due process safeguards which would have to be built into this particular area of licensing, and I think that a good deal of scrutiny would have to be given to insure that we are totally consistent, and I would offer up a few examples at this time: We state on page 7, The commission shall have full and absolute power and authority to deny any application for license, or to limit, condition, restrict, revoke or suspend any license, for any cause deemed reasonable by the commission. I recommend that we have a different requirement here that the person who would be applying for a license that should be turned down should receive notice of the reasons why he was turned down in a public hearing. I gather that although it is the practice in this state in most instances to give an individual who is applying for any gaming license reasons for denial, the statutes read differently. So you are getting more due process in the actual procedure than the statute would appear to give on its face. I think that we have to be explicit in this area since we are dealing in an area where the Federal Government has entered into the field of regulation. Therefore, it is our obligation to point out quite clearly that there are certain due process requirements which could be different in this situation as distinguished from the normal gaming situation- normal licensing situation.

In addition on page 9 --at the bottom of page 8 there is a conforming amendment to include in an otherwise existing section or for a license to represent gaming casino employees and down at subsection E in the middle of that page there is still in existence a requirement that the applicant pay all or any part of the fees and costs of investigation. It seems to me that in this particular area that the State, through one of it official agencies, should be responsible for bearing the cost of that particular investigation. The reason I say that is that I am not unmindful of Federal pre-emption in this area-- the argument, rather, that pre-emption could be applicable. What you must take into consideration is the fact that Federal Government through the NLRB certification process or as a result of voluntary agreement under the National Labor Relations Act you would have an individual who was performing collective bargaining services and functions which he was allowed to do under the scheme of Federal regulation. It seems to me that you must be careful to insure that there is no technical impediment to that individual continuing to perform those services. If you put up a substantial financial burden on him to pay for an investigation for the services that he has already been certified to perform, it could be regarded as an effort to frustrate the Federal policy of free and collective bargaining.

Therefore I would recommend in this area that we do not have a requirement that an individual pay for his own investigation.

In addition, there are other changes in the back which I think have to be made consistent. And by consistent, I mean consistent in that they would recognize that although the State has the ability and the right to act in this area to continue to preserve the integrity of the gaming industry insofar as it relates to this particular aspect of licensing, we must be very clear in insuring that all of the safeguards which we have discussed in our memorandum are present. Mr. Chairman, with that I will yield.

Senator Hilbrecht: There is one other item I wish you would please comment on. It's some language that has received some attention and hearings on SB 399 and is carried forward in the draft on which you commented. It appears on page 4 section 6 1 subsection a the term "real party in interest." It was called to our attention by some of the prior testimony of the bill that this might cause difficulty in the case of people attempting to organize a labor organization or attempting to represent a labor organization.

Mr. Ross: My opinion on that is that I don't see any impediment to that requirement and that it is legitimate to require the individual who's actually performing the function to be regulated to be the individual who must become licensed.

Senator Hilbrecht: The real party in interest then would not be the group or individuals whom he represents but he himself with respect to the functions he intends to perform. Is that your construction of that phrase?

Mr. Ross: That would be the construction that I would put on it. Yes Sir. And the construction that I would recommend. I believe this is consistent with our recommendations that we not attempt to go out and require labor unions to come in and be licensed simply because they are labor unions.

Senator Close: I might point out that Frank Daykin, the legislative bill drafter, has now arrived. He sits with Mr. Ross. Also Senator Foote and Senator Dodge have now arrived from their flight down from Reno. As you come to testify, we ask that you state your name and the organization, if any, that you represent. At this time we will hear from the proponents of the Bill.

PROPONENTS

Mr. Harry Wald: Mr. Chairman, my name is Harry Wald, President of the resort association. I would like to read into the records the interested parties that are here if you wish them to appear to talk on behalf of the bill. We have certain individuals that will give testimony in regards to the bill. From up North we have Mr. Carr and Mr. Higgins from John Ascuaga's Nugget. Mr. Harry Bergman, Mr. Harvey Gordon, Mr. Joe Zimberly, Miss Gloria Mapes Walker and Bill Walker, Sil Petrozini, Charles Franklin, John Gianotti, Warren Nelson, and Les Koefod. Representing the various establishments of the Southern Nevada people we have Frank Shattuck, Frank Johnson, from the Hilton Hotel; Joe Buckley who is personnel director of the Desert Inn; Billy Weinberger, who is the President of Caesar's Palace, Zak Taylor, the President of the Chamber of Commerce, Ken O'Connell, who is the Executive Vice President of the Chamber of Commerce; Jim Codius, Personnel Director of the Dunes Hotel, Jess Hinkle, President of the Sahara Nevada Corporation, Frank Scott, President of the Union Plaza, Sam Boyd, President of the California Hotel, Phil Arce, of Caesar's Palace; Major Riddle of the Dunes, Leo Lewis of the Hilton Flamingo, Harold Campbell of Caesar's Palace; Dick Danner of the Sands; Jackie Gaughan of the El Cortez; Mr. Al Benedict of MGM; Vern Daniels of the Sahara, Keith Ashworth of the Sahara Nevada Corporation. We propose to have Mr. Franklin talk, and also Mr. Bill Campbell, Mr. Bill Rosenthal and possibly Mr. Harold Campbell of Caesar's Palace. I would like at this time to turn this over to Mr. Charles Franklin of Harrah's.

Senator Close: I will mention to you also there there will be a time limitation to the various sides. There is another hearing that will be presented here today on the Consolidation of Clark County in Las Vegas. Several members of both Committees by necessity will have to leave this hearing for the purpose of serving on the Consolidation Committee. Those hearings will commence at 1:00 p.m. and therefore, we are going to terminate our proceedings here by noon. I think that the proponents and the opponents can each take up to one hour. We hope that the remarks will not take the entire time so we will have time for rebuttal and also remarks by Mr. Ross. And so if each side would conduct their remarks within the time frame, we would appreciate that.

Bill Rosenthal: Mr. Chairman, and members of the Committees, I am masquerading under false colors. I am not Mr. Charles Franklin but Bill Rosenthal, and for whatever reasons I have been chosen to kick off our presentation today in terms of the proponents of this particular bill. I had the pleasure of addressing the group previously in Carson City under somewhat less auspicious circumstances as far as the weather was concerned.

We have no hesitancy and no difficulty in feeling that the bill now

before us for consideration essentially accomplishes the objectives of the proponents of legislation seeking to license persons, individuals who are going to represent dealers in Casinos in sensitive situations. I think indeed that the Committees and their Counsel are to be congratulated for having obviously devoted such time and effort intelligently and well to clearing up what were deficiencies in previous legislation. Substantively, I think that this Bill in draft form accomplished the objectives of the prior bill. I think it does so with considerable less impact upon obviously sensitive areas, and for that the industry is indeed greatful because, as I said in my original testimony, and I repeat again so there will be no doubt whatsoever in anyone's mind, this industry is not engaged in attempting to calumnize any group much less any labor organization. This industry which lives and deals with unions on a day to day basis, is not anti union or engaged in union busting. Now I know that this is a self serving statement if you want to use that legal phrase, but it just has to be said. Let there be no misunderstanding about the intent and purpose of the proponents of this legislation and this statutory scheme are concerned. (1) We have never sought or do we now seek to in any way restrict or constrain freedom of speech and assembly of union organizers, international organizers, local organizers, international representatives, or local representatives. (2) We do not seek in any way, shape or form to put any impairments in the way of any employees choosing their representatives and being represented by persons of their own choice. (3) The sole intent and purpose of our objective is simply to shore up what we consider to be a loophole in the existing statutory scheme where conceivably unscrupulous criminal elements could seek to infiltrate the gaming industry through the back-door. Now let's look at what the bill does in that respect. The emphasis is upon the licensing of persons or individuals at such time as they stand in a direct relationship to dealers in casinos, in a position to make some significant change or to have some significant influence upon their day to day operations. Certainly, there can be no question, none whatsoever from any source, about the fact that if an unscrupulous, criminally motivated person or individual stood in that position they might attempt to use that relationship in order to achieve selfish and criminal ends. That would be to the detriment of the industry, to the detriment of the employees, and indeed it would be to the detriment of legitimate labor organizations that abound in this state. I don't think you can assail that proposition. That indeed is the proposition that we're talking about because the statutory scheme to this point has really not addressed itself to that. The entire emphasis of the scheme of gaming control as we understand it is that it imposes obligations upon owners and their representatives, and the only the gaming control board and the gaming commission can basically seek to enforce the act is by imposing their will through regulation hearing and control upon owners. So let's be clear about that. We heartily buy the

idea that this bill presently before you limited to persons, individuals in the act of actually representing, dealing with grievances, collective bargaining and representation matters- these are the people we want to make sure, just as we now try to make sure the casino owners are above reproach, they should also be above reproach subject to the same standards. Not labor unions, not labor organizations. If that was not clear at any of my prior conversations with you let me repeat it again. Let it be clear now so that there is no doubt as to our intent.

As to the other aspects of this particular bill, I listened with great interest to Counsel's statements as to prospective amendments, and I agree; I agree that to be consistent in all respects we have to get away from any concept of so called unions or labor organizations; we have to get away from the concept of employees entirely. That was never the intent, is not now the intent of the proponents of this bill, and we welcome these amendments and any other amendments that will shore up that particular point. We are not interested in having a labor organization come in already qualified, already representing people, particularly one that we have dealt with for years, and that we know intimately and well, and saying to them, ok now you have got to be registered and licensed in this sensitive area. What we are interested in is saying that as to individuals that you labor organizations may not even themselves be able to control entirely; we want to be able to have the state take a look at the character and qualifications of those specific individuals. So I agree, Mr. Ross, that in terms of section 4, 1c, I think your amendment is quite pertinent. It should be amended to make sure that there can be no question that this bill draft seeks in any way shape or form to control a labor organization or to require a labor organization to, in some way, shape, or form, register. And consistent with that any of your suggestions that are designed to carry out that particular theme we will wholeheartedly support because it is in no way inconsistent with the objective of the industry. I would make bold to perhaps quarrel with you in one small respect in terms of whether or not there is any pre-emption problem when it comes to changing the statutory scheme so that applicants are not required in the case of those who seek gaming casino licenses to, in effect, reimburse the Board or Commission for the expenses of investigation. I don't quarrel with the concept, and it may be a good concept, but if I were to suggest adoption of that, and I think I do inferentially, it would not be because I note any pre-emption problem. Indeed, I think you would agree with me that perhaps an even stronger inpact upon the clearly resolved rights of persons comes in a strike situation. Employees strike. As far as labor unions and the employees that constitute them, there cannot be any stronger right, I should think, than their right to withdraw their labor constitutionally guaranteed by Federal scheme and I would assume guaranteed by almost every state scheme that I can think of. And yet it has been held no

impediment certainly on federal pre-emption for strikers to be denied unemployment compensation on the grounds that the citizenry need not subsidize tneir activities in that respect. So if you will permit obviously legalistic bit of a quarrel with you on that score, I don't see the pre-emption problem that you perceived in requiring those applicants for casino licenses to bear the cost as is the present statutory scheme. We don't hang our position on that, however; I just thought it would be a matter of perhaps informational interest to you to consider the fact that the strikers are not subsidized out of the public fund.

So far as the aspects of the bill that go to the possibility of some conflict with first and fourteenth amendment rights of free speech and freedom of expression and assembly, quite frankly, I did not feel that any prior language came in conflict on this score. As I recall the prior hearings, there were some very appropriate comments made by the Senators and the Assemblyman and ladies to the effect that is it conceivable where you use the term "employee" or you use the term "organizer" that this could be an impingment upon those rights. And my recollection of our testimony at that time was, well if it is, it is not our intent, and it can go out without doing any disservice to what we saw, but I do believe that an affirmative statement such as is proposed in this draft bill that nothing therein shall in any way shape or form be deemed to restrict anyone's right with respect to freedom of expression or assembly or anyone's constitutional rights under the constitution of the state of Nevada, we not only can live with, but we support in all respects. There should certainly be no question whatsoever of any possibility of a conflict with first and fourteenth amendment rights or with state constitution.

Insofar as the Due Process provisions of the draft bill, I can only say that it would be the fervent wish of the industry that, in terms of the control act and its application, all parties that appear before the Board, and all parties who subsequently appear before the Commission, be entitled to and receive the fullest possible abundance of due process. Certainly, it would be somewhat inconsistent for owners who have to be licensed and key employees who have to be licensed to be quarreling with anyone about the due process provisions to which they are entitled, and rightfully so, and so there is absolutely nothing from that standpoint that could be written into this draft bill which would be conceptually inconsistent with the desires and intentions of the owners. We would be very happy to have all of the due process to which we believe we are entitled to at all times. And let me say this: Because happily or unhappily I have had the opportunity to work closely with persons in the industry, attempting to understand something about industry problems as well as trying to work in the area of legislation, I do understand that the control board under the direction of Mr.

Hannafin and the Commission, under the direction of Mr. Echeverria is very zealous in extending due process as a matter of fact under their regulations to the parties that appear before them.

Senator Wilson: Mr. Rosenthal, let me try and clarify. I drew an inference from your comments and I do not want to draw a mistaken one that you referred to the due process standard which we afforded an applicant for license and stated that you would like to see the same standard accorded to someone functionary in a labor union. Under our scheme of regulation, as you're aware, the burden is on the applicant for a license or applicant for approval. That burden does not shift to the Board of Commission. The applicant has to sustain it, and that really vests broad discretion for the commission in the last analysis in determining whether or not an applicant is suitable. Not only with respect to payment of investigative fees but simply with respect to the burden of proof. It never shifts, nor does the burden of proceedings shift in a procedural sense. I infer from Mr. Ross's comments that we're talking about a different standard, with respect to not just the union but the individual involved with the labor organization or negotiations or grievances. But where in the case of the licensee we were talking about admission to a privileged industry which sustained our method of licensing in this state, but in this case we're balancing entry against the first and fourteenth amendment rights to speech, assembly, and association which, if I understand Mr. Ross correctly, imposes a different standard on us and indeed may shift the burden. The point of my question with that rather long preamble is to ask you, Bill, whether or not you recognize a distinction in the burdens which attend the applicant who seeks approval under this bill to conduct labor negotiations, grievances or whatever as distinguished from the applicant for a license.
If I have muddled the question tell me. Otherwise I'll leave it there.

Mr. Rosenthal I think, Senator, your question is quite clear and it is, if I can rephrase it, if the industry is interested in equality of due process, what kind of equal due process is it if you carve out some exception for an applicant for a casino license. I think that that has to be answered in two ways:

Senator Wilson: It's not equality of due process and that's my point. I don't know if we're talking about the same thing. If I understand Mr. Ross, it's the point that we're not dealing with equality and due process. We have one standard for an applicant for a license because he has the burden of proof. If I understand Mr. Ross, he's talking about another standard, because we're balancing it against the first and fourteenth amendment rights.

Mr. Rosenthal That's the reason, I think that you have to approach it in a two fold way. I did not necessarily read Mr. Ross' comments in that area to be inferring that there would be a conflict with first and fourteenth amendment rights that go as to freedom of speech, expression and assembly. If you were

to impose the same standards upon applicants for casino licenses the same standards of proof- the same quality of standards, as you do now under the statutory scheme upon owners and their key employees; rather, what I read him to say was that it may be necessary under existing law, and I'm not going to try and put words in his mouth, but I think he might be referring to some other aspect in the law rather the the constitutional first and fourteenth amendments alleged disability to treat with those applicants for certain reasons in a different way. Now, I have two reservations about that: My first reservation is this; Will this in any way, shape, or form impede the statutory scheme, the control of the state, or will it accomplish the objective without so doing. If the answer is, If it is the determination of the Committee, and certainly they are receiving excellent counsel in this area, and they have the advise of proponents and opponents of the bill, that this is necessary in order to accomplish a scheme of control within the State that it would be presumptious of me to suggest that you shouldn't go in that direction. If it is a necessity, if it becomes a legislative necessity to opt in this area because in the balance of interest you are going to accomplish the subjective purpose of the control act and shore up the area where we feel the control in needed; that is for you, gentlemen, to decide.

Mr. Ross May I interject something at this point to clear the record a little bit? The reference that I made to the due process standards really relates to the difference between an individual who is applying for a license, having no vested right to that license, and a person who has already been certified with the National Relations Labor Board to carry on collective bargaining, having to meet another requirement to carry or that particular activity, and that takes into account not first or fourteenth amendment problems but rather the problem of federal pre-emption. Where you have someone who is already legally and lawfully engaged in collective bargaining, it would seem to me that you would want to make your statute absolutely clear insofar as the necessity to supply him with specific reasons for denial of a license to continue to carry on the activity he had been certified to carry on, Senator. That was the thrust of what I was getting at, and with one addition--I was addressing myself to a situation where a statute could be challenged on its face as distinguished as applied, because I gather in your own situation now, very often, reasons for denial of a particular license are given, but if someone merely challenges the statute not in the context of a denial of a license, but rather in the context of the way it existed or put another way on its face, and there was no requirement in the area of a collective bargaining agent that he be given a reason for the denial of the license

then I think you would be in trouble.

Senator Hilbrecht: The simple question is are you suggesting a dual standard-a different standard for licensees seeking to engage in the privileged industry from the standard which presently exists and apparently withstands court challenge, or are you suggesting that we have to enlarge that standard as well to accommodate the consideration you just mentioned.

Mr. Ross: I am suggesting that if you are going to pass a law, which regulates the conduct of people that the federal government has said they are certified to be engaged in, that you have to give them a reason , and I'm going to answer your question by saying that if it was necessary to have a new and distinct chapter in your state code to handle this particular aspect with protection to the gaming industry, I would say yes, you could go that way. As a matter of fact this morning I mulled over in my mind when I was reviewing the conforming amendments in the back of this particular bill whether or not, because of the inconsistencies, the proper way to go would be to have a separate chapter which dealt with this particular problem, so I think the answer to your question is possibly yes.

Mr. Rosenthal: May I get back into this thing? It's my time.

Senator Close: We'll give you five more minutes, but I first want to ask Mr. Ross a question because I want to clarify in my mind the answer we've been given now, and then you can respond in just a moment. Do I understand then, Mr. Ross, that what you are saying is that there can be a different requirement of proof in this area? Senator Wilson indicated when the management of a hotel is being licensed it is the obligation of that management to carry the burden of proof. Now I understand Senator Wilson inquired as to whether or not when labor people are being licensed, he wonders now whether the State must carry the burden or management. I understand you say the state must carry the burden because of the NLRB licensing of the union people. Is that the correct understanding?

Mr. Ross: I'm saying that there is a rebuttable presumption that someone that was certified by the NLRB to engage in collective bargaining would probably get a temporary permit under this scheme. Now that could be rebutted if he fell within any of the specific areas of conduct which are set forth.

Senator Close What happens now if the union individual does not have prior NLRB approval? We were told during our last hearings that some unions will be formed likely without NLRB

approval. What is the burden of proof in those areas?

Mr. Ross: It is upon the person to demonstrate that he does not fall with any of the proscribed areas of standards that are set forth i.e. he was not convicted of a crime, nor is he an individual of bad moral character or whatever the specific statutory wording would be.

Senator Close: And so in those areas the burden of proof would remain with the individual?

Mr. Ross: In my opinion, yes sir.

Senator Hilbrecht: We deleted, and I thought appropriately so, subsection C of section 4, page 3 which is alluding to board certification. I think we did so for good and sufficient reasons anticipating that recognition may well come to be the standard and not the exception to the rule rather than the board certified elections. So are you suggesting another difference, namely if it happens that a NLRB election is called, and a representative certified that in that case some presumption would arise whereas in the other case where simple recognition was granted that we would resort to the same standard that the industry has?

Mr. Ross: Senator, you have confused me with your question. Could you refer me back to the specific part of the draft that you are referring to?

Senator Hilbrecht: I understood your remarks to be that we are going to delete all or part of subsection c of section 4, on page 3.

Mr. Ross: No, I did not recommend that Sir.

Mr. Rosenthal: I took particularly good notes and what Counsel was saying was that he felt that that section should be clarified so there would be no question that it was the obligation of the labor organization to come in after having been certified to be licensed. He pointed out that even the present language is a little bit ambiguous in that area, and it should more accurately say those individuals who directly work with the dealers after certification will be the ones to get the temporary permit. If I understood his comment, and I think I did understand it, it was almost ministerial; it was not a substantive comment in that area. Let me get back in to what we were discussing. I don't see any first or fourteenth amendment problem at all, and I don't see it arising regardless of the burden of proof in a privileged situation in a sensitive industry, and I think that you can cite almost literally dozens and dozens of instances where that has been an unassailable legal proposition. I think the problem does arise, and indeed we tried to cover it in the originally proposed legislation, where you have the direct injection of two things. You have the NLRB processes

having been involked, and the employees themselves having exercised their rights under section 7 of the National Labor Relations Act to choose a bargaining representative of their own choice. Then if you gentlemen and ladies will recall my earlier testimony, you get directly into a no man's land. You have an edict issued by the Labor Board against the employer saying that he's got to bargain in good faith with the elected representative of his people, and you have the employer then, subject to the control act, being placed in a position that if he deals with someone who is basically unsuitable, the control act may come down on him. I'm sure you recall that I pointed out as graphically as I know how that this was exactly the dilemma that we were involved with some years ago at Caesars in connection then with the efforts then of local 7-11 to organize dealers. It created a problem. It was one of the things I thought had to be considered when we were contemplating this law. Now you definitely have a direct conflict there. You've got to reconcile it in some way shape or form, and I agree that the only you can reconcile it without really getting into a pre-emption problem is to say in that instance on an NLRB certification where where a duty is imposed upon an employer to bargain, you have got to say to the individuals, and I agree with that proposition, come in; we will give you, once your names are given to us, a temporary permit to operate and carry out the mandate under which you exist as a result of the NLRB certification. No more, no less. I didn't understand Mr. Ross to say there would be any change standard in the case of someone just simply coming in saying I want to represent people where there is no election, no certification process. Now keep in mind again, there is another factor that comes up here, and it's a practical consideration

Senator Hilbrecht: Then you are suggesting that this burden of proof problem does not arise in the latter case where there is simple recognition and no Board certification?

Mr. Rosenthal: That is correct, and I'll tell you why.

Senator Hilbrecht: Then do you suggest that there be a differentiation between the two or should we treat the two situations similarly in view of the fact that the NLRB also acknowledges that recognition is an appropriate procedure to follow without the necessity of a board election.

Mr. Rosenthal: Let me give you my thinking on that, because that did not just appear here as a matter of happenstance, it did so after there was a substantial amount of thought given to the very fact that recognition can be accomplished and frequently is accomplished informally. The reason it didn't appear in the bill is because of the basic objective of the bill, which is

to try to prevent to the extent that you can humanly do it, the illegal elements from attempting to subvert people who are legitimate from attempting to come in here. Now here are the reasons for that. The Board process subjects persons who want to represent people for purposes of collective bargaining to public exposure. Under a statute there is an actual process that they may go through. It is not totally necessary as you state. On the other hand, anyone who has any knowkedge whatsoever of labor history in the sense of those instances where some very ligitimate labor unions, and God knows as far as I'm concerned, all of them are, all unions are legitimate until proven otherwise, have been subverted. And one of the classic ways they have been subverted is because of conspiracies between employers and unscrupulous characters trying to represent people. They are known as sweetheart contracts. All that is necessary under those circumstances to comply with federal law is for the employer to say I was assured that a majority of the people had chosen the XYZ group to represent me. And he can make any kind of a deal that he wants. And the records that are before any of the commissions that have observed this phenomenon are absolutely replete with horror stories of instances where the workers have no real say in the matter, cards were phonied up; all kinds of things were done, and indeed the employees who should have been the recipients of it were sold down the river. Not by legitimate labor unions because legitimate labor unions don't do this sort of thing. They go out and effectively represent the interests of their people. So it in note mere happenstance as I say that this particular section was worded as it was to take into account the certification process as opposed to the recognition process. Does that answer your question, Senator?
May I then proceed with the remaining time that I have because we do have some other people we'd like to hear from in connection with the proponent's bill.

I don't want to go back and plow any furrows; I think the time is long past for that; I think the thing to do is to look ahead and to move forward and to get back into the same old legal argument and the same old problems that we addressed ourselves to a while back will not serve anything. I'll be glad to answer any questions that you might have, but I don't want to go in that direction because I think just about everything that can be said, has already been said. I would like to address myself to something that I didn't get an opportunity to say, at least I didn't say fully when I appeared previously. That is this question raised by the opponents of any legislation on the question of legislative history. I'm not standing before you as an expert in this area, and please don't misunderstand what I'm going to say, but I do think this. What we are doing here today is not being done in any vacuum. We're not pioneering.

We're not in an area that hasn't been explored and covered before. The statutory scheme of the state of Nevada long since decided is that you have a sensitive and unique industry, which is a tremendous target for unscrupulous people. Therefore, it was determined a long while ago that there had to be some form of effective state control over that industry, and at that particular time, the control manifested itself in saying that we're basically going to go after the employers, the owners that come here; that we're going to require them to obtain a license. Now as as have gone down the road, as I understand it, at various times by regulation and sometimes by legislation, you have expanded upon this basic premise. I think everyone sitting here in this room, including myself, literally a stranger here, if I come here again, I won't be however, but at any event, that's how I consider myself, is aware of the tremendous strides that have been made in accomplishing and achieving the integrity of this industry in the eyes of the outside world in protecting this industry, and it's a heck of a tribute to the legislature, to the executive branch of the government of the State, and to the persons that are charged with the responsibility of the gaming control act, and I know I will get no cavil whatsoever from the strongest opponents of this bill because they themselves are as much the beneficiaries of that action as any owners could possibly be. It is just as important for employees and for labor organizations who live and work in this industry to maintain the integrity of the industry. And you won't get any objection as far as I'm concerned from anybody on what is an unassailable proposition. Now we are faced with a different factual situation and literally one for the first time. We have a case really where we have found out that a quite legitimate labor organization has obtained bargaining rights. Or put it another way. That the employees properly have opted to be represented for purposes of collective bargaining. I think that brings into sharp focus that the time is here and the time is now for you to consider as you are doing whether or not it is necessary in the completion and furtherence of a statutory scheme already well established to go that one step further and now consider that this is the loop hole that must be closed. In my opinion, it is not necessary to stand here ad Nauseam and talk about how criminal interests regard the industry. We know that. It's not necessary to put expert testimony on here to say that criminal interests thrive on illegal gambling receipts, dope traffic, hijacking, that many of things that we know are the cards, the stock in trade, of criminal sindicates are financed and sponsored by illegal gambling. And we know, of course, that there was involvement in this industry at one time, and I think we can all take notice, judicial and otherwise, of the fact that if we let our vigilance down, we are still the same target, there are still those people out there who look at us and say all we need

is that one chance to get into the industry, through the front door, the back door, through the side door, the attic. So that's what we're talking about. I think that it is such an important subject that it is more important for you now to consider as quickly as you possibly can the efficacy of this legislation. It has been proposed here in draft form. On behalf of the members of the industry that I represent, and indeed at the moment the spokesman for the proponents of the bill we say go ahead. We have no problems with the bill. It accomplishes the only objective we have ever sought to accomplish. Thank you very much.

Senator Bryan: Do you agree with the recommendation of our Counsel as I understood it with respect to the cost of the investigation for he applicant under this chapter. That those costs must be worn by the State?

Mr. Rosenthal: I'm going to say that I'm not going to dispute the recommendation of your Counsel in that respect because I don't think that it is that consequential in contemplation of the industry. I might, in the interest of having a legal debate, contest the necessity for it, but as far as I'm concerned speaking here for the proponents of the legislation, This would be nothing for us to say there is a problem. There is no problem.

Senator Wilson: Conversely, I gather you see no problem whether the applicant pays the fee or the State pays the fee. In your mind either would be permissible?

Mr. Rosenthal: That is correct.

Senator Sheerin: In our last discussions about 399 we seemed to be very much concerned about the prior restraint about having a licensing requirement before the people could go out and represent the individuals. Why then on page 3, section 4, line 6 do we still have language without having first appeared for a license? How are we consistent?

Mr. Rosenthal: I hope I understand your question. And if it is like I understand it, how are we avoiding a prior restraint problem by requiring that in the representation of gaming casino employees individuals must still be licenses? Is that your question, Senator? Prior is a word of art which as far as I'm concerned is meaningless. What we are talking about in this scheme is when and if that point and time comes, where for whatever reason the employees are to be represented , this gets us back into the question of certification, recognition or what have you, before an individual can deal directly in that area, that individual under this scheme would have to be licensed. Do I make myself clear? It's not a question of an individual having to be licensed to go out and attempt to represent, so if you have any apprehensions on that score, please put them behind you. An individual may go out, petition the labor board for an election, solicit authorization cards, hold all the meetings in

the world, talk with everyone and obtain a representation or right. There is nothing in this bill, and indeed, I didn't think in the prior bill that placed a limitation upon that right. The only limitation that the bill seeks to impose is where an individual is designated , some individual, not a labor union, not a labor organization, but some individual stands in the direct relationship of representing casino employees in sensitive positions in their wages, hours, and working conditions, and dealing where his influence can be directly felt , then that person shou'd be subject to examination. That person's character and suitability should be subject to an examination in the same sense that a key employee's character is subject to an examination now.

Senator Hilbrecht: We also were concerned in trying to go into the organization. The ability to raise money, now as I recall the other bill practically prohibited any dues raising ahead of time. Is that problem taken care of in this particular draft?

Mr. Rosenthal: I don't think the other bill, Senator, with due respect prohibited the dues raising; I think it had to do with the handleing of dues. I can think of several ways and I think I suggested several in which funds for organizational purposes could be obtained short of characterizing them as "dues". What we're trying to do here as I understand It, and there is really a similarity between the bills in this limited respect, is, again, a person who is going to be handleing substantial funds gain should be a person whose character and suitability should have been checked in advance when it comes to this area. I think Bill Campbell has some comments on that score, and I wouldn't want to use a horrible word, pre-empt, him, by commenting perhaps prematurely on that aspect.

Mr. Ross: Senator Sheerin, in response to your inquiry the legislation which I envision would have no control whatsoever over organizing activities or raising of funds for organizing activities.

Mr. Heaney: That was my question too, Mr. Chairman, that I sought to clarify. I'm trying to distinguish in my own mind whether A and B are were activities carried out once organized which at that point we seek to require licensing in order to carry out as opposed to prior organizational activity necessary to get to this point where the activity specified in section4 of 1 A and B are carried out, and I thought that was what Counsel was telling us in subsection C that we needed to clarify any ambiguity there to make sure we were seeking anything that could be considered a prior restraint in organizational activity as opposed to activities once organized.

Senator Hilbrecht: Are you aware that the NLRB has any machinery at all for determining and connection with certifying a collective bargaining agent whether or not he is a racketeer or whether he is a gangster or anything of this kind.

Mr. Rosenthal: Yes, I'm aware; they don't.

Senator Hilbrecht: I don't see why we then distinguish between recognized and people certified by the NLRB.

Mr. Rosenthal: Well, I do not like to use analogies, but let's put it this way. There is a provision in the act that someone, in order to invoke the act's processes has to be a labor organization. There is a definition of labor organization within the meaning of the act, and in every NLRB representation proceeding, one of the questions that must be asked by the hearing officer is whether or not there is a stipulation as to labor organizations and if this is not so, then the hearing officer will put a representative of the organization on the stand and say do you exist for the purpose of representing employees collectively and do you admit to membership employees for that purpose. Now you ask the question as to whether the Board had any machinery for determining racketeering. My answer to you is NO, they don't. That's what we're here for. That's what we're here about, and that's exactly what they told us in the 711 case when I raised that issue before the Board. they ignored it. They came back and said once we found that 711 was a labor organization that's it. At least we were stuck in the dilemma of that certification so I'm suggesting to you that the certification doesn't necessarily cleanse in all respects, but it does impose a different obligation on the employer than a merely recignitional process.

Mr. Bill Campbell, Director of Labor Relations of the Nevada Resort Association, was the next speaker. See attached his written testimony.

Mr. Ashleman: I, too, enjoy highly technical legal debate, and in fact would enjoy going even much more deeply into it than we have, However, I think we need to put this in some sort of perspective. First of all, I received some rather strong indication from those who speak to me in the Legislature that contrary to popular belief they are not going to stay in session indefinitely. Secondly, I get the impression that something very interesting has happened here. We had a draft of 399 that came out which was precipitiously withdrawn. We had 399 itself come out, resulting in, I think, although no formal action was taken, a short and horrible death for it. The third thing we had was the hiring of special Counsel; we received a lengthy report. The fourth thing that happened, we found it necessary to examine the special Counsel, and a phone call as to the many things that were not covered or that had questions that existed upon. The fifth thing was that we had this additional meeting to try to explore this really techinical complex area, which is what we are doing here today. I think it should be obvious to even the casual observer that all that has taken place in this. We're acting in an area that is very difficult to act in, becuase we are here today working on the seventh thing which is another draft, or perhaps we are wroking on the eighth thing--that we need a new chapter or a new statute. I think these things give us a little bit of problem trying to do these things properly and correctly in the remaining time.

I think that is further enhanced when we look at the situation where we are told by your Counsel that you need to have the State itself pay for the cost of these investigations. This draft is without a fiscal note. I don't know, nor does this Committee know, nor does anyone in this room know how much it will cost to undertake these investigations, but proponents of the bill have strongly urged upon me that it will take a half a million dollars or more to conduct a proper investigation in this area. Certainly, to pass this without a fiscal note and without going to Finance and Ways and Means, with that kind of information available-with that kind of rumor available, would be an act I don't think this Committee would likely undertake.

The second thing I think we should look at very strongly is this, and it is something I don't think anyone has said to this Committee. No such legislation as this exists in the United States of America. The Congress of the United States that has been determining labor policy intensively spent, I presume, millions and millions, and millions of dollars, and has never, in over 40 years, seen fit to pass this legislation. No State of the United States, and they too have their sensitive industries, has passed any such legislation. You have no model or precedent to act upon. However, what you do have is contrary to what the proponents are putting forward to you.

Let us look first of all at the fact that your Counsel and the opposition, at every draft you've said you must make legislative findings. The model for those legislative findings as told to you by your own Counsel, and is told to you by every memorandum in front of you is the De Veau Case. The De Veau case had the following kind of investigation to establish its legislative findings. It had hearings by New Jersey; it had hearings by New York; it had further hearings by special commissions and further hearings by the Governon of New York, and it had further hearings by the Congress of the United States. Everyone of those hearings was adversary. Everyone of those hearings had sworn testimony, and the findings in those cases was not simply that there is a special relationship. The findings were actual and pervasive and existing and long existing and direct corruption in a key industry you have no such evidence before you. You have no hint of any such evidence before you. You have evidence, in fact, that unions have certain powers. You have evidence that certain things can happen that are already contrary to law. You have evidence that once upon a time somebody improper tried to enter this field, and you have evidence that everybody now involved today is legitimate in their opinion, and it is not the unions that are now involved today with which they are concerned. The need for haste in this area with all of these problems, I don't think can be evident to anyone. Quite the contrary, everything you have before you indicates that now if ever is not the time to act upon this and certainly, not in this fashion.

Let's look at what those findings would have you say and see if they will support an intrusion upon the Federal law because of a special local problem which is the language used in the De Veau Case. I don't think the special relationship in a collective bargaining organization is going to get their significant control over the day to day working lives. You know what that means. It means indeed we get to write contracts with these fellows, and indeed if you're going to write a good contract, it has things about when you get a break. It has things about how hard you can work; it has things about what hours you can work; it has things perhaps about whether you get meals free or not. That's the kind of day to day control that we're talking about. Any suggestion that we can control 7,000 people with our organizers and agents outside of that contract is preposterous.

Secondly, this control that we exercise to influence significantly the conduct of his gaming operation by an employer not if the employer will use the law, not if the employer will defend himself. When you get a sweetheart contract, you've

got a sweetheart on both sides; you don't get it by having it on one side. A sweetheart contract by the way is a term used to talk about the horrors of union participation, but a sweetheart contract by its definition is (1) that because of collusion between the employer and the labor union benefits the employer. It is (tape inaudible) that's the beginning of a sweetheart contract. There was never a sweetheart contract in the United States by definition that ripped off the employer. If it did then it would not be a sweetheart contract. Now looking for a moment where we are with just the law itself, I have made for you a copy and distributed them today of the State of Florida v Smith because that is the case that your Counsel most strongly relies upon. The case of Florida v Smith is the follow-up of the Hill Case that we have all talked about at such great lengths. It is the case which says everything in the Florida act can work except those that restrict the freedom of workers and the selection of their collective bargaining representatives except for thise with respect to any activity that they might engage in as to the collective bargaining representative of the union. All Florida did was charge you a dollar and demand that you register and you be approved under some very loose controls if you worked in the collective bargaining area. I think I know what collective bargaining means, and I want you to look at page 3; I want you to look at section 4; I want you to look at lines 8-9 subsection A. This bill says that to adjust grievances for negotiate, negotiate or administer the wages, hours, working conditions or conditions of employment. That negotiating, adjusting grievances and administering the contract is not collective bargaining; then collective bargaining does not exist.

It is absolutely clear that your Counsel has advised you to regulate the very conduct to the case it cites to you as an important one upon which you should rely, says cannot be regulated, following Supreme Court pronouncements. Prior restrain--What does that mean? That means putting up a condition that chills the effect at exercising either Congressional freedoms or Constitutional freedoms. This bill, and I could not believe some of the testimony I heard, and I hope you won't believe it either--

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This bill as drafted says you cannot do the following things without having first procured: alright you can't first of all engage in collective bargaining without first procuring a license. Secondly, you cannot solicit, collect or receive any dues, assessments, levys, fines, contributions, or other charges within the state without getting that license. Yes, there are unions large enough and powerful enough and wealthy enough to subsidize organizations of employees if they want to, but we are precisely at the point once again where we are being asked to adopt an act that would stop these follows from having any local of their own or would stop any union that was not wealthy and powerful. What a paradox, What a contradiction. The only ones that are going to be let operate here are the ones that profess to be afraid of them in many ways. What is absolutely clear in this bill is that you cannot in any way finance yourself. You cannot in any way ask the workers in the industry that are asking for your help to help you with the financing. You've got to go do it free for them. That's not what they'll tell you will happen, but that's what the bill tell you will happen. It takes some simply reading.

Secondly, they talk about the certification. That's down in subsection 2 on the same page, page 3. It tells us that you have to get a license if you are certified by the National Labor Relations Board. It does not tell us what you have to do if you are recognized. Recognition can occur without certification as I'm sure you all know, as we've pointed out before, and everyone has admitted. If you are worried about sweetheart contracts, If you are worried about collusion, why would you take out licensing in those cases where you would be simply recognized but keep it in where you have to be certified? An absolute contradiction of terms and an absolute showing of the kinds of fundamental problems the draftmanship of this bill's got. The reason why you have this is to force the union to go for certification even though federal policy says you don't have to be certified to represent. A clear interference with federal policy here.

Senator Hilbrecht: I'm not sure that I read that section the way you do. I'd like to hear a comment from our Counsel. I think that this NLRB reference has to do with the temporary permit only and not the requirement for a permit. I think a recognized agent would also have to get a permit, would he not with respect to those specific items which you have alluded to under 4A and B, for example. What you just said I don't think the act says. You said that we wouldn't be concerned about licensing someone who was merely recognized and I think I don't read it that way. Maybe I'm reading it wrong.

Mr. Ross: Are you referring to section 4C?

Mr. Ashleman: I am not. I'm on page 3 referring to 2.

Mr. Ross: I think that the record will reflect that at the

beginning of our discussion today, one of the changes which I have written in here and I think he quite properly perceives it, is that this sentence would have to be amended so as certified by the National Labor Relations Board "or validly recognized pursuant to the National Labor Relations Act as amended". That was one of the threshold things I did address myself to earlier but I think he makes a good point.

Senator Hilbrecht: That relates only to the temporary permit.

Mr. Ashelman That was the point I was approaching. I did not hear his amendment, but that would remove that particular problem. Obviously both should have a temporary license if either does. That was my point.

Going on through the bill, page 7 under 2 you find that the gaming control board and the gaming commission are apparently, the board at least, is going to enter an injunction to continue to observe the conduct of all licensees to the end that licenses shall not be issued to nor held by persons whose operations are conducted in an unsuitable manner or for unsuitable or prohibited places or locations. Again, if we encroach in the constitutionally protected areas, if we encroach in areas that have a great deal of pre-emption in them, I think that language is absolutely objectionable because that is the broadest kind of language, unqualified, disqualified, and unsuitable, and it makes this act not just a matter of getting a license and proving that you are a good fellow and that you have never been to jail and so on, it lets the Board watch you at all times to decide if they think what you are doing is suitable. Quarry: does that mean like having a provision that you can't discharge someone without just cause. I don't know, but I certainly raise the issue. I think it brings us back once again to all of the problems perceived with the earlier bill.

Mr. Ross: I agree with the testimony there. That was also one of the remarks I made in response to some preliminary statements. It is inconsistent with the due process standards there. That was another one that had been picked up. I hope that the witness does understand that this was a discussion draft and that this was the initial imput that I have had.

Mr. Ashleman: I'm not saying and never have said there couldn't be some regulation; I'm trying to show this Committee that in its remaining week with the need to go through 4 committees, there is simply no way that we can get this job done. And I understand very well this morning that you didn't show evern change you would make; I'm merely trying to find illustrations of the kind of changes and the very deep problems we've got here. When we look at the situation, it's kind of a simple situation. The question has come up, and I think it is a very provocative one regarding where you put the burden of proof and how you go about denying an individual a license

whether you have to give him any such information as to why. Now it is clear by the testimony we've had here that we must do that in the union area. What I think is starting to come clear to you because how you lose or gain a license is a due process problem. It is not a problem of pre-emption. Whether you can get into the field at all, is the pre-emption problem. But what you do once you get into the problem is simple due process, and due process, at least theoretical under the law is the same for everyone. And you are going to end up creating a bill that either removes some of the existing, at least on the surface, safeguards that you've got in gaming control or you are going to be creating a bill that puts up different standards for different people now as to whether or not you regulate them, but as to how you regulate them and how the hearings conduct. I think that endorces exactly what I have been telling you all along. When you start playing with the gaming control act, and particularly when you start having to re-examine it, with people looking at these critical questions, You're getting yourselves into very grave danger at changing the gaming control act to where it either is not as effective as the board and commission want it to be or to where in fact it is subject to legal challenge. When you get legal challenge, you tend to challenge everything under the sun, and if the courts rule with you, they tend to give you every ruling you requested. And you're going to start knocking out very tight control over the licensee, and we even have admissions from your counsel, a telephone call, and in a due process area that can happen. Now that is quite a thing to do on the state of the record that we have here today. And quite a thing to undertake with the time that the legislature has left.

Mr. Ross: So that the record is absolutely clear, I would like to say that my remarks and documents that I have introduced will speak for themselves on most of these issues I hope, Mr. Chairman, as distinguished from someone's interpretation.

Senator Close: Mr. Ross, I think for the benefit of the Committee we are not all attorneys here, and we may not all understand the documents that you have put in significantly enough to permit that assumption, and so I think that at the end of the hearing, if you have any comments that you would like to make for the purpose of clarifying the remarks made by any witness, we would appreciate your doing that.

Mr. Ashleman: In the sense of your counsel's remarks I would like to direct your attention to the April 30, 1975, supplemental memorandum to Attorney General List which I understand you have a copy of. One of the great debates we had earlier legally speaking was whether or not Nash vs the Florida Industrial Commission and whether or not Tyree v. Edwards known in the Supreme Court as Alaska v. Operating Engineers supported my proposition which is that the Hill Case is clearly alive and

kicking because the Hill Case says clearly that you can't do what you purport to do here. I direct your attention to page 2 of Mr. Ross' letter to Attorney General List. I address your attention to the first full paragraph to the last sentence The Court's reliance on the distinguishing language in De Veau is, however, as we noted in our memorandum misplaced and inapplicable. I think what this amounts to in part ---- that was the the distinguishing language that said that De Veau turned on the congressional approval of the compact and the enabling legislation that accompanied it. And in effect said that the Hill doctrine, the fundamental pre-emption doctrine is fully alive. What your Counsel has told you here is when it uses the words misplaced and perhaps when it uses the word inapplicable is that they have reached the point where we simply have to say we don't agree with that Court. That's what they're saying. That puts this legislation and its validity in an entirely different posture because they're saying that the three judge federal district court which last examined this doctrine is wrong and that the Supreme Court's procurium and unaminous therefore, approval of that three judge panel's decision was mistaken. Now, that may be so, but it stands as our precedent; it stands as the law in the field, and your Counsel is reduced to simply saying well we don't think that's applicable and we think that they misplaced the reliance upon the words. It stands that the latest authoritative pronouncement we've got is wrong. Well that may be so, but I don't think you want to act hastily, with a scanty legislative record, in an area of such great concern hoping that your Counsel is right and the Supreme Court and a three judge panel in Alaska are wrong. I don't believe that this Committee will behave that way. And that's what they have told you with their advice.

And I want to direct you again to De Veau and again to one point that was overlooked both in the memorandum and in the phone call and that is very simply the part in De Veau where the Court expressly points out to you, and you will find that in the copy of the Case that I gave to the Committee on Tyree. I don't think we all need to hunt for it now because it's very short. On the 6th page of that document which is no. 70, 670 at the top, and in the second paragraph and it's the second sentence. It begins "finally it." Now this comes after the discussion that there had been the compact, that there had been all these hearings, that there had been expressed congressional approval of the encouragement of the pre-emption doctrine. Then they say finally it is of great significance that improving the compact Congress did not merely remain silent regarding supplementary legislation by the States. Congress expressly gave its consent to such implementing legislation not formally part of the compact. This provision and the consent by Congress to a compact is sole extraordinary as to be unique in the history of compacts. The case also points out to you elsewhere that the Congress knew at the time that it gave that consent that there would be legislation in the area of licensing union

agents. That is how they distinguish the Hill Case. "The sum of these considerations, I am now at the top of that same page, in column 2, the next paragraph, is that it would offend reason to attribute to Congress a purpose to pre-empt the state regulation contained in Section 8, referring to the New Jersey Act. The decision in Hill in no wise obstructs that conclusion. An element most persuasive here, congressional approval of the heart of the state legislative program explicitly brought to its attention, was not present in that case. Nor was it true of Hill v Florida, as it is here, that the challenged state legislation was part of a program, fully canvassed by Congress through its own investigations, to vindicate a legitimate and compelling state interest, namely, the interest in combatting local crime infesting a particular industry." This case also tells you that they found as part of their legislative findings that the corruption was pervasive, long continued and not isolated and not as here hypothetical or projected. De Veau tell you clearly and Tyree reinforces it and Hill v Florida reinforces and the case cited by the opposition, the state of Florida v Smith reinforce it that at most you can regulate the collection of dues. And that's all that happened insofar as any legislation similar to that proposed to you here today. That's all that happened in this case, and it tells you that you can only do that with Congressional approval.

Senator Sheerin: Are you taking the position that we have to wait for mobsters to take over the industry before we can legislate?

Mr. Ashleman: The question is too broad in that context, Senator. I'm telling you that as far as some elements of this legislation to wit that that directly interferes with collective bargaining. You cannot legislate without congressional approval. It doesn't matter what's happened. Now certainly you can legislate to make the evils that are apprehended in this industry unlawful. Certainly you can legislate to have the commissioners, the Attorney General, the District Attorney or special counsel, or whomever you can constitutionally set up investigate any violation of such evils. That you can do. You cannot require licensing in the collective bargaining area. That's exactly what all of these cases directly and clearly tell you, without congressional approval because the congress has decided rightly or wrongly how you pick labor representatives for collective bargaining. That is to be done by the organization itself and by the processes and rules and regulations set up by the National Labor Relations Board. That's what I'm telling you. It's absolutely clear, and I think the easiest thing is to go back to back to Smith v Florida, the state that has tried hardest to do this. There even the State Supreme Court said we're only going to uphold this regulation, which is similar to the proposed regulation, insofar as we continue to hear what the United States Supreme Court has told us once before in Hill v Florida and that is you don't regulate collective bargaining because the Congress has pre-empted.

Senator Hilbrecht: I take it there have been no conferences

between you and members of the Industry as the Committees at one time requested with an eye toward working something out. Assuming without admitting that the only thing we can regulate is the collection of dues that would nevertheless, as pointed out in the De Veau Case, be a pretty significant area of regulation would it not? In other words if it was found a person were indeed a racketeer or undesirable under reasonable standards as we recognize in the gaming act and we visit upon the labor orgainzation or the bargaining unit the alternative of either severing that relationship or, as in De Veau bein unable to collect dues, then that would be a considerable area of regulation.

Mr. Ashleman: It might be depending whether or not you were following the approach given by Counsel and I think by the proponents of simply regulating an individual or saying get rid of that individual or saying that the organization can't work.Yes, I would think if you have the power to tell them to get completely out of the dues collection scheme or you will be in trouble that would be a regulation of some significance. I think the important thing in that area, and I'm not saying that will constitutionally stand, but it's got the best chance and it's clearly a lot less objectionable than anything else you are doing. The thing that you might gain from that is is the same thing you might gain if you have a special commission to properly study this and work on it and that is You might at least gain the power to have some investigatory ability in this area, which we do not oppose. We are not concerned with being investigators. We are concerned with 30 years or more and the setting up of the proper way to handle collective bargaining severely hampered us and cost a great expense to go the the courts to straighten it out by the enactions of the legislature at this time.

Mr. Barengo: If we can regulate the collection of dues, then can we regulate the collectors of the dues.

Mr. Ashleman: I think you can only regulate the collector of the dues. I don't think you have any powers to talk about what the dues might be or how they are used except in a legal manner. All the licensing in the United States that now exists and there are four address themselves to if you are an ex felon of specified kinds, you can't be a dues collector.

Mr. Barengo: What about suitability? Beyond an ex felon?

Mr. Ashleman: You dont really have any viable suitability set up. The general language on good moral character that exists here was struck out in Florida, struck out in a number of more minor cases and is not being used in the New Jersey New York compact which I think stretched the law as to what the states can do to the fullest. I think that's one reason, Chairman Barengo, If I can speculate, and I don't want to put words in anyone's mouth,but I think that's one reason why the Industry has never been warned of this because what you do even in that area is very narrow, but it is doing something.

One other final legal point the Labor Management Reform Act of 1959 has been quoted to you as saying that this eased federal pre-emption. It did not. Section 603 simply said this act itself, doesn't bar state regulation either in the criminal area or other areas that is traditionally regulated. Well, the pre-emption doesn't come in the Labor and Management Reform Act. Pre-emption comes in the National Labor and Relations Act, and the act certainly didn't address itself to say its curing pre-emption in the National Labor Relations Act. All of our legal history shows quite the contrary that that still exists to its fullest extent other than simply passing laws that says that there may be some regulation and I would assume consistent with the Federal which as a five year limitation and so on ..... ex felons participating in affairs.

Senator Dodge: You indicated that there has been no intent with your people and the industry to try and come up with something acceptable here, and I'm interested to know as an objective in the State of Nevada labor unions would support the concept of trying to keep undesirable influences out of our own unions. Would they support that concept?

Mr. Ashleman: Let me qualify this just a little bit, Senator Dodge. The union movement in Nevada is not about to give up its constitutional or congressional gains in protection as a whole and set erroding precedents. Even though we might be willing to do this in this case, we simply could not do that. we would destroy what the movement has done. We don't have any objection to having this industry kept as clean as possible. We desire that.

Senator Dodge: I'm sure as knowledgable as you are in this area you have given some thought to this. We tried to get you to make some contributions to the Committee in that respect before, and whatever your reasons you didn't do it. But you offered us the types of regulatory things the state of Nevada could do that you think would accomplish that objective that would be satisfactory to you.

Mr. Ashleman: I think that there is an area to move in, and not to quarrel at length, Senator Dodge, but I did offer this. I have given it in previous testimony. Nobody has taken be up on it. I think you could work in the area of adopting an anto-racketeering statute and attaching thereto some investigatory powers. I think that is what you really want. It is the investigatory power that is important. It's not the banning of individuals. Chairman Hannafin has said many times, and I don't want to quote him too far out of context , that his great tool in control is financial investigation. That's much harder to do in the union area. We're not moving millions, to build large buildings and so on, so creating a front would not be that a difficult a task in the labor area. I think if you went back and properly investigated you would probably find what they did in New Jersey wasn't all that effective. I think

you are going to have to make your controls in the areas of what may and may not lawfully be done. Obviously, you can have investigations apprehending conspiracys and apprehending danger and damages . We're just simply talking about criminal state laws now. Again, we don't want to get crippled by it and we don't want to have 1984 type of legislation here, but the type of carefully thought out, well-drawn criminal regulation if any be needed after an examination of what already exists in the federal law and in the state law, we would support. And we are still ready to sit down and talk with the industry about going in that direction. I have not only on the floor and in front of them said I would do that, but I have told them personally I would do it, so it's a two way street, the other fellow has got to talk to us too before we can work with them.

Senator Dodge: What about the situation that exists now where we are actually in the area of issuing work card permits. Would that be amplified as far as authorities with or without labor unions involved, as far as employees with the pulling of work cards.

Mr. Ashleman: I think the work card system is far weaker than it could be. It doesn't cover as many areas as it could. It's also far weaker in my judgment, Senator Dodge, in the law suits that have been won in Clark County on that point and the local district court as to constitutional standard involved. It needs a thorough overhauling, and yes, I think it would be very useful because, if there is going to be organized cheating rings, obviously that is an area that could be controlled with the work card system. And you are certainly an much firmer constitutional grounds.

Senator Wilson: While we're on the point I just wanted to know if we are going to have any comment from the chairman of the commission on what further respects you recommend in typing up the work card procedure? I can see Hannafin nodding his head down there, and I assume you will address this point when you speak.

Mr. Hannifan: Not this session. That will be done next session.

Mr. Ashleman: Let me suggest that further work on the work card permit is a massive job that cannot be undertaken now. Give a thought as to what kind of devestating comment that is on an attempt to enact 399 at the present time. Thank you for your time and attention.

Ms. Wagner: Why was there not a fiscal note attached? I would like to ask Mr. Dakin why that was not designated so because obviously there is a large monetary figure involved here.

Mr. Dakin: The problem there I think was purely mechanical.

I think that there should be a fiscal note with respect to BDR 41-1925 . There was not a fiscal note on the original 399, because it did not involve expenditures from the general fund. There was not a fiscal note on the proposed amendment because the fiscal note does not contemplate that unless the committee specifically requests. As to this bill, however, there should be.

Senator Close: At this time we will hear from the State's Representatives. We have Mr. Echevarria from the gaming control commission, and Mr. Hannifan from the gaming control board.

Mr. Hannafin: Members of the Committee, I've heard the proponents and opponents all attorneys exibiting today a great deal of intelligence and wisdom in what they've said, and I respect what they've said; however, I have to talk to you from a different point of view. While there may be arguments as to how we do this, my point is, in the interest of the state, it must be done. I think we've got to come together. Every citizen in this state has a deep interest in the topic matter before you today. We've got to come together and find not the reasons not to do it, but the way in which it can be done. The policy of our state concerning gambling is reflected in NRS 463130 which states that all establishments where gambling games are conducted or operated or gambling devices are operated and manufacturer and sellers and distributors of certain gambling devices and equipment in the state of Nevada shall be licensed and controlled so as to protect the public health, safety, morals, good order, and general welfare of the inhabitants of the state of Nevada, and to preserve the competitive economy and the policies of free competition of the state of Nevada. I believe this legislature can take notice that one of the primary purposes behind this policy was to prevent the corosion of our culture by the intrusion of those elements commonly referred to as organized crime. Mr. Rosenthal said he did not see a need to go on ad nauseam about organized crime. I would respectfully disagree. I think it cannot be emphasized too much that this is what we're doing; this is our concern; this is the name of the game with respect to the topic matter you are hearing today. Indeed, the gaming control board was created to keep such unsavory persons and organizations out of the gaming industry. Gaming has seemed to be an attractive target for organized crime if you understand that making bets is gambling, But taking bets is not. With that principle in mind, and considering that the Nevada casinos handled more than 4 billion dollars in action last year, then it is clear why organized crime would like to gain a position in this industry. The attraction of gaming of organized crime is not limited to Nevada as can be seen by the investigations and prosecutions of such persons as Raymond Patriarcha, Frank Costello, Meyer Lansky, Gip DeCarlo, and within the past month in Los Angeles the conviction of Peter Melano.

In addition to which, if you noticed the headlines this morning, referring to another recent conviction of 4 individuals connected with organized crime for the victimization of one of our local casinos by means of junket - scan operations. These people are constantly trying to intrude in this industry, and I've given you the reasons why--the fantastic amounts of money that exist in a cash form. In Nevada we have the pertinent history because we know the intrusion in the years past of Costello, of Lansky, of Cerilli. This history must surely make us cognizant of the dangers and the urgent need for constant vigilance at all levels that can impact the gaming industry. Given the recognized desire of organized crime to enter whereever possible our gaming industry and the impediments to entry posed by the existing requirement for licensing, I believe that unions representing gaming employees have and will continue to be targets for the infiltration by organized crime. I do not mean to say that unions per se pose a threat to the gaming industry in Nevada. What I do mean, based on my experience, there have been efforts by organized crime to gain a foothold, any foothold in our gaming industry through the conduit of unions. Our comprehensive scheme of state regulations does not presently afford the board or commission the ability to scrutinize this area of concern, and I believe that it is in the interest of the State and our most important industry to fill that gap. The propensity of organized crime to infiltrate the labor movement is well documented in the report by the President's commission on law enforcement and the administration of justice, and in the classic text on the structure and operation of organized crime in America, Theft of the Nation, by Donald Cressy, but the best source of factual information on this phenonemon is the report of the select committee on improper activities in the labor or management field. This report to the United States Senate 86th Congress is replete with the descriptions of the infiltration of organized crime into Labor unions, and with examples of the manner in which organized crime dominated labor officials have defrauded, exploited, and victimized working men and women as well as businesses. For this reason I see the concept of the proposed legislation as affording protection to individual union members, as well as to the legitimate organized labor groups by giving them and the state some means to determine if their organization is in danger of being victimized. All of this is not to say that business and management groups cannot and have not in the past been infiltrated by similar groups of organized criminals. It is to regard against this potential that the state has required every applicant for licensing to make a showing that he is: A. A person of good character honesty, and integrity B. A person whose background, reputation, and associations will not result in adverse publicity for the state of Nevada and its gaming industry, and C. a person who has adequate business competance and experience for the role or position for which application was made.

Now at this time a new avenue of potential danger to the industry is being introduced, into the senario of legalized gambling

and its control. That is the legal right of employees to join together in collective bargaining. We do not seek to deprive organized employees their right to choose their bargaining representative. What we do seek is to insure that in the pursuit of regulation of our gaming industry that they do not choose an ex felon or someone of not good moral character. In view of our history, experience, tradition, and our vested interest is it unreasonable to seek to provide such safeguards. For the past several years there has been an increasing effort to establish collective bargaining agreements on behalf of employees directly engaged in the conduct of gaming operations. We do not oppose this activity. This does, however, lead one to conclude that the organization of gaming employees will be a fact of life in the foreseeable future. What effect will organization have on an industry that contributes taxes in the amount of 50 per cent of the State general fund and over 10 million dollars additional to several educational funds. We want the effect to be good and to be positive. That is to be in the best interest of the individual employees as well as to be insured that no harm will accrue to the industry that is the keystone of our economy. For these reasons I favor enactment of lesislation which will regulate those persons who perform key functions in the representation of gaming employees. With specific reference to the bill draft that you have, I have one or two questions and perhaps a few comments. On page 2 there is a listing of the various types of jobs that could be classified as a gaming casino employee. I note there there is no mention of boxmen, floormen, or pit bosses, and I would like someone to take a look at that omission in terms of whether or not they are considered to be management in all cases and so excluded from organizational efforts. If they are not excluded from organizational efforts, I see no reason for their omission here. There is one particular reference here "N" Short card dealers. I do not know what that means unless it could be construed to be a cheating dealer. Now, I don't know if we want to organize them. I think that they are organized enough.

In paragraph #2 it states "Labor organization means any organization or group of persons including but not limited to local and international unions. It is my feeling that we should avoid attempting to attach the international unions to confine the efforts of the state to the local.

On page 6 there are numerous references all of which begin Sect 10-14 which begin NRS 463. whatever it happens to be and it give a difinition which definition is now in the process of being amended by S.B. 47, and I would suggest to you that this language conforms to S.B. 47.

On the bottom of page 7 and I speak now to the point that Mr. Ashleman did address that is the investigative capability which the state should rightfully have. At the bottom of the

page "d" and were are referring now to the ordinary course of licensee the state may " demand access to and inspect, examine and audit all papers, books and records of applicants and licensees respecting the gross income produced by any gaming business, etc. I would suggest that we give strong consideration if such a bill similar to this is passed to the ability of the state to demand access to etc.

Again on page 8 section 15 it should be conformed to the language of S.B. 47 and those generally, members of the committee, are the comments I would have.

Senator Dodge: Mr. Rosenthal referred to a potential dilemma on the 7-11 situation and he referred again to it here today. the dilemma would arise where you would have a certification by a national relations labor board and then a notorious situation might develop by undesirable people who were representatives of that union and actively involved in the activities of the gaming industry. Now the dilemma he suggested was on the one hand they could not throw those people out once certified just because of someone's opinion they were undesirable as far as the National Relations Labor Board was concerned, and on the other hand they might be threatened with the withdrawal of their license by the gaming authorities if they didn't throw them out. Now I'd like to ask you, and If you don't feel you have given enough thought on this you need not respond, what do you feel, under the authorities you now have in the act that you could deal with that situation as far as getting that kind of notoriety out of the gaming industry in any other way short of threatening the withdrawal of the gaming license.

Mr. Hannafin: Senator, I think as I testified before, there is no specific jurisdiction currently within our gaming law that goes directly to this point. Now there may be ways by which we will attempt to patch up an approach but it has been my experience that attempting to patch up those approaches leads to a disaster in the court room. As an alternative there is the use of naked power, threats, muscle, and I think I have testified before you that I consider that a wholly inappropriate method by which the state should respond to dangers presented. the state should have specific well thought out law that goes to the problem. With respect to 7-11 there is no question we had no way of moving on 7-11. And as I testified previously, had it not been for the wholehearted cooperation of one newspaper, I don't think we would have gotten them out of here and they would have won an election, and we would have been saddled with them. Had they been certified, had they won the election, there was not a thing we could do with respect to the union short of taking action against the licensee in putting his license in distinct and direct jeopardy.

JOINT HEARING
SENATE AND ASSEMBLY JUDICIARY COMMITTEES
Saturday, May 10, 1975

Senator Hilbrecht: You used the word key functions. On page 3 under sect 4 A-c we're talking about key functions. What are key functions?

Mr. Hannafin: Once I saw this draft I came to the conclusion that it was a sound approach that is to go towards persons and to go towards the particular functions and to isolate functions from merely titles. We do this for example with respect to our key employees in the industry now. We do not license them merely because they hold a particular title. It is what kind of function they perform. Now I'm not all that familiar with labor unions to be able to tell you these are the only functions that we should address ourselves to, but they certainly appear to me to be critical functions and ones which we should address.

Senator Hilbrecht: We are confronted with that problem I think of the concept of collective bargaining which was pretty broad and we have to reconcile that with what I think you might consider to be very important to our significant function with respect to the regulation of gaming. Remember we discussed that earlier 3 weeks ago. Collecting dues, I suppose, is one area every thinks we could look into perhaps legally and permissively, but what do you think the relationship of netotiating grievances would bear to the legitimate scope of the regulation of the gaming industry.

Mr. Hannafin: I see some problems in this way. If, for example, a licensee came to the conclusion that he had an employee who was either cheating customers or cheating the house, and he had information, but that information was normally less than what we would accept in a court room, but sufficient information upon which to make a reasonable judgment that something is wrong, and he terminates that employee. Now on negotiation of grievances perhaps someone sits down and says you cannot discharge this man. If you do, we're going to take some kind of sanction as a labor group. We'll picket you, We'll have a work slowdown, whatever. At the same time that licensee is between a rock and a hard place, because if he keeps that employee engaged in that function, and one of our agents goes in and sees it, the employor's license is at stake. So its a dilemma without solution for the licensee.

Senator Hilbrecht: Can't we predict that a union represetative in grievance adjustment is going to take the position that something apparently erroneous surrounded--that is the facts were inadequate. I don't know why licensing him would make a difference. Assuming he had perfect moral character himself, wouldn't it be his obligation as an advocate of this discharged employee to come in and raise the same issues.

Mr. Hannafin: I think we would have far more grounds to have

some trust and confidence and faith in that individual negotiating should we know of his background as opposed to an unknown quantity, and that's where licensing comes in.

Mr. Ross: I think you have to carry that even one step further. One of the changes I suggested in striking section 5 from the bill was that you move the power up to 4, 1c, the power of commission by regulation to prescribe the nature of the policy making or supervisory position in any organization whose incumbents must comply with the licensing requirements of this chapter. What I'm saying there, I think, is that they are going to have to investigate and come up with regulations which deal with the supervisory and policy making functions. That would be the functions of the commission to suggest some additional standards.

Senator Wilson: I think you better amplify on that Mr. Ross. If you're talking about developing by regulation what we may not be able to do by statute we better talk about it a bit.

Mr. Ross: I'm not attempting to change sections 4 A,B,and C. What I'm saying is when you get to defining what a policy making or supervisory position may be that you should have a power in this commission to prescribe some regulations which would address themselves to that issue. In other words, would someone be in a policy making or supervisory position in a certain situation with respect to adjusting grievances which is a defined standard in section 4, 1A.

Senator Wilson: I'm not sure that is in response to the question raised by Senator Hilbrecht which addressed the question of what do you do when you are in a grievance situation, you want to fire somebody because you know something is wrong. How do you resolve it?

Mr. Hannafin: I am not going to volunteer to become a part of the grievance committee. It is a difficult area. Again, I think the state can have more protection and more confidence in the processes involved in that grievance procedure if on that person conducting it, has himself been examined for character, and if we are assured that he is a person of good character, then I think we can say that the negotiations go forward in good faith.

Mr. Ross: This bill does not attempt to involve itself nor should it in the grievance procedure. What it does say is that certain people could be disqualified from participating in that procedure if in fact they were people who have been convicted of crime or people not of good moral character.

Senator Wilson: That's similar to something I heard Mr. Ashleman say awhile ago..

Mr. Hannafin: There is a distinction that I would draw to your attention here. It's mechanical, but it's extremely important.

To vest the Gaming Control Board or the Attorney General's Office the metro with investigatory powers in that in which we are ordinarily conversant with is certainly not as effective as the kinds of investigation conducted by the control board now where the applicant or the licensee must make a full disclosure. There's a big difference between a person coming forth and making a full disclosure, and you're making an investigation upon that as opposed to making an investigation starting from nowhere and having to do it by circuitous means.

Senator Wilson: What I'm trying to do is reconcile your observations with a comment by Mr. Ross with respect to what may be a permissible statute of regulation in the face of either pre-emption or the constitutional questions we have developed. Do you have any reply?

Mr. Ross: One thing that the committee should be advised of is that when the opponent of the bill spoke, Mr. Ashleman, he read a quote, and I think you have to continue with the reading of that particular quote because it's very important to your consideration of this matter. And the continuation of that quote is" It is instructive (I'm reading now from the De Veau opinion) that this unique provision has occurred in connection with approval of a compact dealing with the prevention of crime where, because of the peculiarly local nature of the problem, the inference is strongest that local policies are not to be forded. When you take that in the context of some of the things we've heard today about the impact this could have upon collective bargaining, I think there is another instructive quote from that opinion which I would draw to the attention to the members of the committee. "This is not a situation where the operation of a state statute so obviously contradicts a federal enactment that it would preclude both from functioning together or at least would impede the effectiveness of the Federal measure. Section 8 of the Waterfront Commission Act does not operate to deprive Waterfront employees of opportunity to choose bargaining representatives. It does disable them from choosing as their representatives ex felons who have neither been pardoned or received good conduct certificates.

Senator Wilson: That's the disqualifying language that I was referring to a minute ago. That does not mean the licensing or regulation. It means a condition. Namely that you not be an ex felon, or that you have been pardoned. We're going to the next step now whether or not we can properly vest and sustain challenge in regulatory powers in this area, i.e. licensing. And that's why I ask you to address the comment Mr. Ashleman raised a minute ago having to do with what I suppose would be an alternative. I don't know if it would be workable or not. I'm asking the question because I think we need some record on the point.

whether or not you can talk about disqualifying conditions for the conviction of a felony or prohibit certain types of conduct in the nature of an anti-racketeering laundry list coupled with the investigatory powers in the Board to investigate. That's a totally different premise than what we're talking about here, but if I understand De Veau it talks about disqualification not regulations. Am I correct?

Mr. Ross: De Veau was a disqualification situation, and essentially I think that's what you're doing with this statute; you're disqualifying someone. And if you don't set up an impediment in the licensing process such as an exorbitant fee to pay for a license, I think you would basically be applying the same standards for disqualification.

Senator Wilson: Are we talking about in the licensing criteria specific disqualifying factors such as in De Veau, or are we talking about the broad criteria of suitability.

Mr. Ross: Specific disqualifying factors

Senator Wilson: Well, conviction of a felony, which was the case in De Veau.

Mr. Ross: Yes, Sir. Are you addressing yourself to the second issue of the applicant's moral character and integrity as evidenced by his prior conduct or such as to create reasonable doubt? I think what you have do there, Senator, is look at the existing comprehensive scheme of State regulation designed to preserve the integrity of the gaming industry. That has been an excepted standard that has been applied, and you're talking about not applying that standard across the board to all unions or licensing of all unions in the state. You're talking about a very narrow application of it. The people who seek to represent gaming employees-- key functions --that's correct. So I feel that the combination of factors gives you the ability to do it.

Mr. Heaney: I have a couple of questions for Mr. Hannifan here. We have had Mr. Ashleman propose to us what he feels might be a reasonable alternative in the form of a specific anti-racketeering statute. I suppose there are some federal requirements or was in this regard. I would like to know 1. If there are and are they adequate at this time and 2. Do you feel that this is a viable alternative for this state to take if the federal statute that exist are not adequate or if Nevada's own criminal laws in this respect are inadequate as opposed to an approach through some sort of licensing procedures we have been talking about with S.B. 399?

Mr. Hannifan: Mr. Heaney, I like dark chocolate better than light chocolate. If I can't have dark chocolate, I'll take light chocolate.

Mr. Heaney: What you're saying is that you would rather have

a more direct approach. I think you indicated that that you have a lot more leeway, I suppose, in your investigatory process or more information in a licensing type investigation as opposed to an investigation that you said you'd have started from scratch taking another kind of a course.

Mr. Hannafin: Exactly, the anti-racketeering statute that you speak of would come in the realm of criminal law, and there is a distinct difference between the application of criminal law and the processes through which you approach it as opposed to the administrative law area in which we currently function.

Assemblyman Heaney: Then it seems to me that at this point whether we are in a position where we feel we need to take perhaps two years to go to an interim study on this whole thing or whether we can say at this time have we got what we might consider a "clear and present danger" to the extent that at this point and time we should take some action, despite what may be the fact that we have come down to the present time of the last week or two of this legislative activity. Do you feel that it is necessary for us to act now or should we wait?

Mr. Hannafin: Given the reservations that I expressed before that I cannot speak to the complexities of the legal arguments that have been forwarded by both sides today, it seems to me the members of these committees can take notice that the activity of which we're concerned is un-going. It is not activity that we expect in the future; it is activity that is happening now. Do we have to suffer in this field what we suffered in the 1950's in the management field --that is to have a scandal concerning the intrusion of unsavory and unscrupulous criminals into this industry before we act? I don't think we do have to have that scandal or should have to have it. I think to stop now when we have the situation developing, when we have the forces at work which could embed a problem in our culture before we can act is to say that we are inviting the scandal in a modern day which we all bore in the past.

Senator Dodge: Obviously, if the State if going to stand the expense of the investigations, the expenses would be a lot more extensive if you had a general licensing act where you had to investigate everybody that came in before you turned them loose. There may be other considerations besides expense, but is there an approach to this matter by an authority not in the general licensing area but an authority for you to move in situations where you feel there are some problems, and to give you the leverage to go ahead and act on those problems if you find them? This is a more restrictive approach. It isn't a blanket approach where everybody has to come in and be licensed. Do you have any thoughts on that?

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Mr. Hannafin: If I understand your question, it would be to this effect that if the Board came in to what could be construed as reasonable grounds to believe that some evil was being perpetrated by these individuals that function as labor officials, what then could we do. Again, I would say if at that moment if that's the trigger--some reasonable grounds--if that's the trigger then again I would ask that there be a requirement of a full disclosure.

Senator Dodge: Is that a viable alternative as against general licensing? That's my first question. Now the question as to how we give you the mechanics to get the job done would be secondary. #1. Is that a viable alternative?

Mr. Hannafin: It's difficult for me to answer the first part without knowing what the second part is. If I don't know what the mechanics are

Senator Dodge: All right, let's assure it's what you think it ought to be. Full disclosure and some other things. You've got all the authority to act after you find out that you need to act. Let's assume that we set it up however we legally could that would satisfy you. Now what about the first part of the question?

Mr. Hannafin: You take me by surprise by the question. Right now I see no objection to that. We have the trigger; then we move.

Senator Dodge: Do you consider that alternative, Mr. Ross?

Mr. Ross: No, I was under the impression the state was of the opinion or the board and commission was of the opinion that they did not have the necessary authority to proceed in the area without specific additional statutory authority.

Senator Dodge: I think that's true in either case. What I'm talking about--did you consider as an alternative a authority right into the law--an authority for them to make a move in the case some representative of a labor union if they have reason to believe they need to make a move and not a general licensing statute?

Mr. Ross: No, we did not, Senator. But I would be most happy along with Mr. Dakin to attempt to take that into consideration for you.

Senator Dodge: That may be a viable alternative.

Mr. Ross: I think the most viable alternative would be the legislative one, sir. The draft form under discussion.

Senator Hilbrecht: Mr. Chairman, may I ask Mr. Hannifan a question? I'm trying to relate to your full disclosure concept. I appreciate the difference between making a person come

forth with full disclosure as opposed to sorting out information from the many reluctant sources. Is there any parallel to this for example, in the junketeering situation or in the new situation that we put into S.B. 47 about tenants or co-tenants licensee. Is there any circumstance in the law where persons, although not initially required to be licensed, may under appropriate circumstances be forced or required to come forth to present the same kind of information or allowing about the same kind of investigation calling for full disclosure.

Mr. Hannafin: That's correct--there is. In the current statutory scheme there's reference made to key employees. This is an optional licensing on the part of the state. The state does not have to license every key employee. It may do so with those selected key employees who for some reason feels it must be.

Senator Hilbrecht: Certainly, we could come up with an appropriate trigger. Would this be an alternative? I think that's what Senator Dodge is driving at.

Mr. Hannafin: Yes, and I was about to describe to him that particular parallel.

Mr. Ross: It was my understanding that the key employee statute was not directed with what Senator Dodge had in mind. In other words, what you are saying now is could you use that as a parallel?

Senator Hilbrecht: An appropriate finding--that is the finding would be that he is involved in certain kinds of activity as an individual and that there is reasonable cause to believe that he is a person who ought to be investigated.

Mr. Ross: I think you would have to be very careful of your delegation in that area. Your delegation of legislative authority.

Senator Close: Did you have any other remarks, Mr. Hannifan?

Mr. Hannafin: No, sir. I was exhausted a long time ago.

Senator Close: I think we all are. I have received the committment of the members to return at 1:00 p.m. I don't think we have completed our investigation or hearing in the matter, and therefore, we will adjourn at this point.

The above portion of the minutes of the JOINT HEARING OF THE SENATE AND ASSEMBLY JUDICIARY COMMITTEES on this draft are hereby respectfully submitted by Camille Lee, Assembly Attache. The balance of the hearing minutes will be submitted by the Senate Attache assigned to this Committee.

directly involved. The instant case is substantially like *Laundromatic Co. v. Laundry Workers Union*, 180 Cal. App. 2d — [4 Cal. Rptr. 861] [40 LC ¶ 66,594], recently decided by this Court.

In view of the foregoing, the order granting the preliminary injunction must be reversed.

Order reversed.

DRAPER, J., and SHOEMAKER, J., concurred.

[¶ 50,070] State of Florida, Appellant v. Hugh J. Smith, Appellee.

Florida Supreme Court. No. 30,538. October 19, 1960.—(— Fla. —, 123 So. (2d) 700.)

On Appeal from Criminal Court of Record, Dade County. Reversed.

Florida—Regulation of Labor Unions

Statute Requiring Licensing of Business Agents—Federal v. State Law—Activities Not Relating to Collective Bargaining.—The Florida statute requiring licensing of business agents, when interpreted so as not to apply to bargaining representatives of labor unions but only to the non-bargaining functions performed by business agents of labor unions, does not conflict with the National Labor Relations Act.

Back references.—¶ 5505.11; Fla. ¶ 42,040.

Effect of Federal Reporting and Disclosure Act on State Statute.—The Labor Management Reporting and Disclosure Act modified the National Labor Relations Act so as to indicate a clear intention on the part of Congress not to preempt the field of labor relations with respect to the licensing and qualifications of officers or paid representatives of labor unions.

Back references.—¶ 5505.11, 7309; Fla. ¶ 42,040.

Constitutionality of State Statute Requiring Licensing of Business Agents.—The provisions of a Florida statute requiring union business agents to register and satisfy certain eligibility requirements do not constitute an undue restraint on freedom of speech or assembly under the United States Constitution.

Back reference.—¶ 42,040.

Richard W. Ervin, Attorney General, B. Clarke Nichols, Assistant Attorney General and Richard E. Gerstein, Attorney, State of Florida, for Appellant.

Herbert S. Thatcher, Cowart & Douglas, Washington, D. C., for Appellee.

[*Statement of Case*]

PER CURIAM: On February 8, 1960, appellee was informed against in the Criminal Court of Record, Dade County, for acting as a business agent of a labor union between January 19, 1960, and February 5, 1960, without a license to do so, as required by Chapter 447, Florida Statutes. A motion to quash said information was granted March 17, 1960.

On March 25, 1960, appellee was again informed against in the Criminal Court of Record, Dade County, for the same offense committed at the same time as the first offense detailed in the preceding paragra[ph]. On May 12, 1960, motion to quash the latter information was granted on the ground that § 447.04, Florida Statutes, was unconstitutional in that it is repugnant to the National Labor Relations Act. We are confronted with an appeal from the latter order.

[*Extent of Federal Preemption—Residual State Power*]

The first question with which we are confronted is whether § 447.04, Florida Statutes, infringes upon the National Labor Relations Act, and is, therefore, unconstitutional under the supremacy clause of the Federal Constitution.

In *Hill v. State*, 155 Fla. 245, 19 So. 2d 857 [9 LC ¶ 62,438], the constitutional validity of § 447.04, Florida Statutes, was examined and we upheld its validity after deleting therefrom a provision which was held to vest arbitrary power in the board created

thereby. The statute considered in *Hill v. State, supra,* is identical to the statute involved in the instant case, except that a few minor changes, such as changing "United States of America" to "United States" and "State of Florida" to "State," have been made and the section deleted by this Court in *Hill v. State, supra,* no longer appears in the act.

On appeal to the Supreme Court of the United States, the decision of this Court was reversed on the ground that the Florida Statute conflicted with the National Labor Relations Act, 325 U. S. 538, 89 L. Ed. 1782, 1784 (1945), 326 U. S. 804, 90 L. Ed. 4[illegible] [9 LC ¶ 51,208] (1945). In holding § 447.04, Florida Statutes, unconstitutional, the Supreme Court said:

"It is apparent that the Florida statute has been so construed and applied that the union and its selected representative are prohibited from functioning as collective bargaining agents, or in any other capacity, except upon conditions fixed by Florida. The declared purpose of the Wagner Act, as shown in its first section, is to encourage collective bargaining, and to protect the 'full freedom' of workers in the selection of bargaining representatives of their own choice. * * *

"Section 4 of the Florida act circumscribes the 'full freedom' of choice which Congress said employees should possess. It does this by requiring a 'business agent' to prove to the satisfaction of a Florida Board that he measures up to standards set by the State of Florida as one who, among other things, performs the exact function of a collective bargaining representative. To the extent that § 4 limits a union's choice of such an 'agent' or bargaining representative, it substitutes Florida's judgment for the workers' judgment.

* * *

"Our holding is that the National Labor Relations Act and §§ 4 and 6 of the Florida Act as here applied cannot 'move freely within the orbit of their respective purposes without infringing upon one another.' * * *"

Examination of this decision discloses that the Supreme Court reversed this Court only to the extent that the Florida Statute would be applied as to restrict the freedom of workers in the selection of their collective bargaining representatives. To that extent only the United States Supreme Court held that the act in question conflicted with the National Labor Relations Act. It follow that if the Florida Act be so interpreted to remove the conflict so condemned by th National Labor Relations Act, the Flori Statute (§ 447.04, F. S.) would be constitu tional as modified by the United Stat Supreme Court in *Hill v. State, supra.*

Following the remand of *Hill v. State* b the Supreme Court of the United States this Court, we entered an order of revers on November 29, 1945, wherein we said:

"* * * (b) that in so far as said jud ment sustained the injunction entered the trial court as applied to the appella Leo H. Hill with respect to any activi he might engage in as the collective ba gaining representative of the appella labor union as authorized under and co templated by the National Labor Rel tions Act, such judgment of this Court reversed, and said injunction issued agai such appellant by the trial court shou be dissolved only to the extent that t same embraced possible activities of sa appellant in collective bargaining for t appellant union's members as provided and contemplated by said federal act; a (c) that in all other respects such jud ment of this Court of November 28, 19 shall stand as the amended and modifi judgment of this Court in this cau * * *"

It follows that § 447.04, Florida Statut has been so interpreted as not to apply bargaining representatives of labor unio but applies only to functions perform ed business agents of labor unions which ha no relation to collective bargaining. It therefore, our view that § 447.04, Flori Statutes, as interpreted by this Court is n subject to the attack made on it in *Hill State.*

[Effect of Landrum-Griffin Act]

It further appears that since the foregoi decisions interpreting § 447.04, Florida St utes, the National Labor Relations Act h been modified in certain respects by t Labor Management Reporting and Disclos Act so as to indicate a clear intention on t part of Congress not to preempt the fie of labor relations in the area with whi we are involved in this case, that is to s the licensing and qualification of officers paid representatives of labor unions. other words, the rationale of *Hill v. St* no longer has application to § 447.04, Flori Statutes. See purpose of the Labor-Manag ment Reporting and Disclosure Act,

Statutes 519, 20 U. S. C. A., §§ 401 and 504; *DeVeau v. Braisted*, 28 U. S. L. Week 4390 [40 LC ¶ 66,583] (U. S. June 6, 1960).

[*Constitutional Validity of State Statute*]

The second question presented is whether the provisions of § 447.04, Florida Statutes, constitute an undue restraint upon freedom of speech or freedom of assemblage.

This Court answered that question in the negative in *Hill v. State, supra*, and the Supreme Court of the United States did not disturb that holding when the case reached them. These decisions would appear to conclude the question. See also *Thomas v. Collins*, 323 U. S. 516, 89 L. Ed. 430 [9 LC ¶ 51,192] (1944).

[*Propriety of Trial Court's Procedure*]

Question three has to do with whether or not granting the motion to quash the information without permission of the state to file an amended information barred it from doing so thereafter.

This question is without merit and is concluded by *Hayden v. State*, 150 Fla. 789, 9 So. 2d 180 (1942).

[*Sufficiency of Allegations*]

The concluding question is whether or not the information charges an offense under the laws of the State of Florida. We hold such allegations are sufficient. *Collier v. State*, 116 Fla. 703, 156 So. 703 (1934); *Overstreet v. Whiddon*, 130 Fla. 231, 177 So. 701 (1937); *Jarrell v. State*, 135 Fla. 736, 185 So. 873 (1939).

[*Conclusion and Ruling*]

It follows that the judgment appealed from must be, and is hereby, reversed.

Reversed.

THOMAS, Ch. J., TERRELL, HOBSON, ROBERTS, DREW, THORNAL and O'CONNELL, JJ., concur.

[¶ 50,071] John F. English, et al., Appellants v. Edward McFarland, et al., Appellees.

United States Court of Appeals, District of Columbia Circuit. No. 16004. October , 1960.—(285 F. (2d) 269.)

On Appeal from United States District Court, District of Columbia.

District of Columbia—Regulation of Labor Unions

Supervision by Board of Monitors—Appointment Under Terms of Consent Decree—Joint-Nomination Requirement.—The appointment by the court, over the objection of one of the parties, of a new chairman of the board of monitors supervising the affairs of an international union violated the terms of a consent decree which established the board of monitors and provided that the chairman should be jointly nominated by both parties to the decree.

Back reference.—D. of C. ¶ 42,030.20.

Supervision by Board of Monitors—Appointment of New Chairman—Equity Powers of Court—Reasonable Objection by a Party.—The inherent equity power of a court does not extend to the appointment, in disregard of a consent decree, of a chairman of a board of monitors to whom one of the parties objects on reasonable grounds. The objections were based on the appointee's prior activities in connection with the case.

Back reference.—D. of C. ¶ 42,030.20.

Reversing *Cunningham v. English* (DC, D. of C. 1960) 41 LC ¶ 50,057.

David Previant, Edward Bennett Williams and Raymond W. Bergan, for Appellants.

Godfrey P. Schmidt, for Appellees.

Before MILLER, Chief Judge, and EDGERTON and FAHY, Circuit Judges.

STATEMENT OF W. N. CAMPBELL

before the

JOINT SENATE AND ASSEMBLY JUDICIARY COMMITTEES

IN SUPPORT OF SENATE BILL NO. 399, AS AMENDED

Mr. Chairman and Members of the Committee:

My name is William N. Campbell and I am Director of Labor Relations of the Nevada Resort Association. I appreciate the opportunity of appearing before you to supplement the remarks I made on April 8, 1975, when the Committee held its original hearings on this bill.

You will recall that on that occasion I testified regarding the attempts that have been made by persons of unsuitable backgrounds to gain a foothold in the industry through organization and control of labor organizations which sought to become the exclusive bargaining representatives for dealers, keno writers and other casino personnel. In support of that testimony, I submitted a compilation of newspaper articles extending over the past ten years.

At that time, members of this Committee raised certain questions with respect to Section 2, subsections 1 and 2, of the bill which deal with the findings and declarations of the Legislature insofar as this particular piece of legislation is concerned. Specifically, members of the Committee solicited industry representatives to offer additional testimony with respect to the proposed findings and declarations. Accordingly, my remarks today will be confined to these two sections.

Subsection 1 of Section 2 provides as follows, and I quote:

> "The special relationship which exists between a labor organization and the employees whom it represents in collective bargaining invests such organizations and their policy making and supervisory personnel with a significant control over the day to day working lives of the employees so represented."

To those familiar with the realities of the collective bargaining process, the validity of this statement would seem to be self-evident. But to make the record clear on this point, I invite the Committee to consider the control actually exercised

by legitimate unions over applicants and employees and, then, to ask themselves what would happen if criminal and other unsuitable elements infiltrated the industry as the sole and exclusive bargaining representatives for all dealers, keno writers, keno runners, card dealers, shills and bacarrat personnel in a casino or in the industry at large, and thus obtained the opportunity to abuse the powers conferred upon them by their status?

From the inception of an organizing drive, key union personnel begin to acquire knowledge of who its supporters and opponents are. These key personnel know, for instance, which employees sign authorization cards and which employees refuse to do so. Certainly, the union is not legally free to use coercion and threats to force employees to support the union drive. The National Labor Relations Act, as amended, prohibits such conduct, but the National Labor Relations Board may not act until an unfair labor practice charge is filed. Legitimate unions rarely pose a problem in this regard because the employee is generally prepared to come forward and testify. But would he be equally willing to do so if he knew a particular union were run by mob elements?

Once the union wins an election and is certified by the National Labor Relatons Board, the process of negotiations and collective bargaining begins. In this process, it has been our experience that virtually every union that deals with the resort industry in Southern Nevada insists upon some form of exclusive hiring hall. The only exception that immediately comes to mind is the Musicians Union. Under these hiring hall arrangements, a union exercises control of the registration and dispatchment of applicants for employment. It is true that these hiring hall provisions do allow the employer to accept or reject applicants referred by the union, provided that the employer first complies with certain time limits and, in some cases, meeting requirements for interviewing a certain number of union referrals before utilizing any other source. Even then, the union may challenge management's rejection of an experienced applicant. Here again, the National Labor Relations Act prescribes certain standards for the unions to adhere to in the administration of the hiring hall function. But how many applicants would complain to the N.L.R.B. if the union officers or job dispatchers had a reputation for violence or were known associates of strong-arm or criminal elements?

It should also be noted that a union which is certified by the National Labor Relations Board becomes the bargaining agent of all employees in the appropriate bargaining unit (members and non-members alike). This is the way the unions wanted it and that's the way it is. As such, many union contracts provide that if an employer hires an employee from a source other than the union hiring hall, that employee must be referred to the union for verification that he was hired in accordance with the hiring provisions of the labor agreement. This requirement gives the union personnel an opportunity to converse with the non-union hire. If the union were run by undesirables, however, conversation would degenerate into coercion because here, again, the individual employee would naturally be reluctant to seek enforcement of his rights through the mechanism established under the National Labor Relations Act.

It is common knowledge that a labor organization, like any other institution, needs money to operate. Unions get the necessary funds by imposing initiation fees, dues, fines and assessments on their members. In a Right-to-Work State, such as Nevada, unions run by legitimate law-abiding citizens

depend upon persuasion to gain members and retain them. If run by hoodlums or those with hoodlum connections, persuasion would give way to threats and force.

It can also be established beyond any reasonable doubt that unions, through their constitution and by-laws, do, in fact, exercise significant control over the actions of their members. For example, the Constitution of a union now active in Southern Nevada provides that members may be required to stand trial when charged with any of the following offenses:

1. Gross disloyalty or conduct unbecoming a member.
2. Publicizing the internal affairs of a local or of the International Union.
3. Secession or fostering secession.
4. Abuse of fellow members or officers.
5. Disobedience to the regulations, rules, mandates and decrees of the local or of the officers of the International.
6. Such other acts and conduct which shall be considered inconsistent with the duties, obligations and ~~realty~~ loyalty of a member of a union or violation of sound trade union principles.

Other union Constitutions provide for fines, suspension and expulsion of any officer or member who becomes an habitual drunkard; who wrongs a fellow member or defrauds him; who commits an offense discreditable to the International Union or to subdividions; who creates dissension among the members; who destroys the interest and harmony of the local union; who seeks to dissolve any local union or separate it from the general organization; who wilfully slanders or liables an officer or member of the organization; who divulges the password to anyone except the officer authorized to receive the same; who is guilty of insubordination or who refuses to acknowledge or perform the lawful command of those authorized within the International Union to issue the same. Further, any member working contrary to a declared strike or the rules established by the local union by reason of a lockout may be subject to trial and, upon conviction, fined or expelled or both.

Likewise, members may be fined for patronizing a business or buying products or services from employers who have been placed on the union's unfair list. Some unions also provide for fines and discipline for members failing to attend union meetings or for failing to picket establishments with whom the

union has a labor dispute.

In the administration of the union's internal affairs, officers and supervisory personnel of the union have the opportunity to identify dissident members as well as union political opponents. Frequently, votes on union policy and decisions are subjected to approval by voice vote rather than by secret ballot. In this area, just as in most others, union officials are required by law to observed certain standards. By and large, the vast majority of legitimate labor organizations comply with the law. It should be emphasized, however, that in case of a violation, enforcement only comes after a complaint is filed. At this point it seems pertinent to ask whether an employee who knew that the entrenched leadership of his local was mob connected would be rash enough to buck the machine.

Collective bargaining agreements today impose detailed restrictions on employers in virtually every area of the operation of their business from hiring to scheduling work assignments, seniority and termination. It is also a fact that the leadership of certain unions take a dim view of employees who testify against fellow union employees.

From the standpoint of the legitimate trade union, the leaders of these organizations view the controls exercised over hiring, job conditions and discharge as a protection for the employee. Similarly, they understandably view the controls and power with which they are endowed by the constitution and by-laws as necessary to protect and preserve the union itself.

It is not my function nor intent to criticize these controls but simply to point out that they do, in fact, exist and to further remark that such pervasive and persistent controls in the hands of unscrupulous union leaders could prove disastrous to this industry.

Section 2, subsection 2, of the bill provides as follows:

"This control may also be exercised to influence significantly the conduct of his gaming operation by an employee, and such influence may be exerted by an officer or other person who controls a labor organization without any direct contact between that officer or other person and the employees represented."

The power conferred upon a union official puts him in a position to do any one or all of the following without consulting the employees represented:

1. He can bypass employees on the out-of-work list.
2. He can decide to drop, compromise or pursue a grievance.
3. He can threaten labor trouble with an object of
   a. Forcing the employer to hire or fire a particular employee

   or

   b. Forcing an employer to cease doing business with a particular firm and to patronize a competing firm instead.

Obviously, this type of activity is unlawful but, once again, if the union is controlled by unprincipled hoodlums how much regard are they going to have for the National Labor Relations Board, knowing as they do that the employee and the employer will be reluctant to cross them?

It takes little imagination to foresee how criminal elements in control of a casino union could exercise their power to the

detriment of the employees, the industry and the State of Nevada.

In the November 8, 1969 issue, Time Magazine explained the format as follows, and I quote:

"Late last summer, mobsters from Cleveland and Los Angeles set in motion an ingenious scheme to slip the hand or organized crime back into the casino tills. The plan was simple: organize the city's 7,000 plus gambling dealers into a mob-run union. Using the threat of a strike that could cripple the gambling hotels, the gangsters could persuade the owners to sign lucrative contracts for food, liquor and vending machines from firms owned by Cosa Nostra. An equally distasteful prospect for casino owners would be that the dealers could become free agents responsible only to the mobsters. If they cheated the players, or skimmed small amounts for themselves, the dealers could rely on protection from the Union with its power to call a walkout. Naturally, the mob would take a healthy cut from any of the dealers' larcenous sidelines."

The same power could be exercised to force an employer to hire a dishonest dealer, boxman, floorman or pit boss, or even to extend credit in unwarranted amounts to unsatisfactory credit risks. Sweetheart contracts, lack of enforcement of contractual commitments and payoffs, all to the detriment of the employees and the health of the gaming industry, are additional examples of the corroding influence that we can expect if the casino employees are organized by mob oriented elements.