ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE MEMBERS PRESENT:

Chairman Dini
Vice-Chairman Schofield
Mr. Craddock
Mr. DuBois
Mr. Jeffrey
Mr. May
Mr. Mello
Mr. Nicholas
Mr. Polish
Mr. Prengaman
Mr. Redelsperger

SENATE GOVERNMENT AFFAIRS COMMITTEE MEMBERS PRESENT:

Chairman Gibson
Senator Jean Ford
Senator Keith Ashworth
Senator Gene Echols
Senator Virgil Getto
Senator James Kosinski
Senator Sue Wagner

MEMBERS ABSENT: None

GUEST PRESENT: Please refer to the guest list attached to the minutes of this meeting.

Senator Gibson called the joint meeting to order at 6:33 P.M.

Senator Gibson stated that the purpose of our joint meeting tonight is to continue our hearing on the various bills having to do with public employees negotiations. One of the bills on our list has been withdrawn, AB 225.

He stated that as we announced at the beginning of our first hearing we will proceed on an issue basis. In our meeting the other day which took five hours, we heard the issue of binding arbitration. I understand that there are some people who wanted to speak and had written statements. We would be pleased to receive written statements. If we have additional time, we could consider verbal statements, but considering how long it took us last time and with nine bills remaining, hopefully the bills we are considering tonight will be disposed of more quickly.

We don't intend to cut anyone off and we don't intend to try to hear all of the factors, but we would ask that those who speak not be repetitive if possible. There is an issue in addition to binding arbitration/last best offer that might be considered a little further because this is mentioned in several of the bills

so at this time we will more or less provide the transition from our discussion last time. We will be open to the other alternatives than binding arbitration/last best offer. We have S.B. 536 which proposes an alternative and we have A.B. 400 which proposes an alternative.

We would like to open the meeting to the discussion of binding arbitration and binding factfinding.

Mr. Bill Wallace, President of the Nevada League of Cities stated that he was here today to speak in support of S.B. 536. As you mentioned, this does offer an alternative to last best offer/binding arbitration. I have a very brief comment to make and would, subsequent to my comments, introduce you to another member, an elected official, who is in the audience today, who will make comments today as well.

The Nevada League of Cities, joined by the Nevada Association of Counties, supports the passage of S.B. 536, which proposes comprehensive changes in the state's collective bargaining act. The most important aspect of the bill we feel is the impasse resolution procedure. With respect to impasse resolution, S.B. 536 proposes the feasible and what we feel is a realistic mechanism to impasse in labor negotiations. It removes the governor from the bargaining process. It discontinues the trial period of binding arbitration for firefighters, it leaves the provision for mediation and advisory factfinding. In essence it allows the employer and employee negotiations to resolve their differences at a level without a third party dictating, and I repeat that, dictating settlements.

The rationale for our position is simple. Who pays the bills for collective bargaining settlements? It's the taxpayers. The public employer currently, local government, is the guardian of those funds and we must spend it in the eyes of the taxpayer as he wants us to spend it. We find that we are having to spend under the existing arrangement more and more dollars for labor settlements. You have heard this before. We feel it is unconscionable for elected officials who are responsible to the public to turn over their authority to a third party an arbitrator who is responsible to no one and that person, that arbitrator has the ability then to determine the budgets, to determine community priorities because in effect he has complete control over some 78% of your budget. That is what your personnel costs are. Now you, better than I, or at least as equal as I, recognize the mood of the people in the State of Nevada today, for tax reform and you are working hard at it and I certainly commend you for that. Tax reform and economy in government are number 1. It is coming about in substantial revenues for local government which are going to be reduced. How can the legislature put caps on spending, caps on revenue and expect local government to manage the people's will and impose binding arbitration on all of our agencies. It just can't be done.

We think that S.B. 536 and S.B. 537, by the way, which provides for public referendum on collective bargaining impasse provides a very and in our eyes, only reasonable solution. The decision on employee wages and benefits must be made by the elected taxpayer representatives or the taxpayers themselves. Now that is not to say that you are representative of the taxpayers, but we at the local level deal with them daily. To amplify our opposition to binding arbitration and to demonstrate the rationality of our proposals, I would like to read a letter to you that I received form Mr. Coleman A. Young. You may know Coleman Young; he is the mayor of Detroit. Coleman Young, like you, was a member of the legislature of the State of Michigan and at the time he was involved as a legislative representative became very involved with the passage of a binding arbitration act in his state, called Act 312. He subsequent to that, for whatever reason, and I know not what, decided to run for the mayor of Detroit and he was elected and he now serves in that capacity as mayor of Detroit. I called Mayor Young on the phone and asked him if it was possible for him to attend this meeting tonight to explain what his feelings were, and unfortunately he could not attend, but he wrote me a letter and if I may take a moment of your time to try to review what he has to say as having been a legislator on the one hand working towards that end of binding arbitration/ last best offer, and now having to live with the law that he helped pass. It is a very short letter. It is addressed to myself.

Mr. Wallace's letter is attached to the minutes of this meeting as EXHIBIT A.

In summary, we urge that you not extend binding arbitration to firefighters and that you not give binding arbitration to any other group of employees. We urge that you consider S.B. 536 as the most feasible and responsible means of impasse resolution in collective bargaining. There are other League of Cities representatives here today and there are other elected officials so at this time, if I may, I would like to yield the floor.

Senator Gibson stated that before the floor was yielded, perhaps the committee members had some questions to ask of Mr. Wallace.

Senator Wagner asked if any of the other members were going to go into the bill in more detail on how it will actually mechanically operate.

Mr. Wallace stated yes and that he was not technically involved in this other than from a philosophical point of view. There are technicians in the audience who will be here to testify and who will answer any questions you might have that will be relative to the intricacies of the bill. With that comment may I ask that you -

Mr. Gibson stated that he thought that Assemblyman Dini had a question.

Mr. Dini stated that he would pass for a while.

Mr. Wallace stated that there were several technicans in the audience representing both the National League of Cities and several other interested political subdivisions.

Senator Echols asked if Mr. Wallace was on the Reno Council.

Mr. Wallace stated that was right.

Senator Echols asked how long Mr. Wallace had been in public office.

Mr. Wallace replied four years.

Senator Echols asked if Mr. Wallace thought that he had voiced the sentiments of his council by any chance.

Mr. Wallace stated that he did and that the next person that he would introduce is also a member of his council.

Mr. Wallace stated that he would like to introduce Mr. Bruno Mennicucci. Bruno is a member of the Reno City Council and has been for eight years, a prior mayor of our city and has had long experience with this.

Mr. Bruno Mennicucci stated that since the committee wished to get to the technicians and professionals, he would only speak for just a few moments. I support S.B. 536. Last offer usually is called last and best garbage offer, which is my particular feeling. Most all of you are very good negotiators. If you chose last and best offer you already know the procedure that you would probably attempt to put on the table. The only reason that I am here is to quickly get away and go to the technicians but I would like to say this. Most all of you display fair play, at least that is what we have all said at one particular time or another. We would like to be on the same basis that you are. What is good for one should be good for all. At least I was taught the rules; when there are rules for one they should be rules for all. We would just love to remove the governor from bargaining arbitration. When you have an individual on the basis of binding arbitration, we immediately go out to an outside arbitrator. Now that we have a large new airport, we can attract larger, new experts with larger briefcases. Most of you represent those of your constituencies that are now looking at the particular tax bill, so we are coming from a couple of different areas; the fact that we are going to be looking for a different type of income and more of an expenditure with cash. We would like to say that by removing the binding arbitration aspect that you will find in S.B. 536 will bring us to a level of local interest, it will go on the basis that an individual coming from the outside doesn't take the midpoint for the median.

What we are asking is that we set some priorities within those particular negotiations, observe them and at that particular point

allow on a local basis each and every one of your communities to return it back in the manner in which you received a negotiated salary for the employes and particular state workers. We represent the lowest form in the checks and balances through the governor. That is also the closest form on a 24 hour basis. I realize that most of you have been sitting here for a number of days and go through this day in and day out. We see it two or four days a month. To go to the professional and technical professionals at this particular point, I will introduce Mr. Ron Creigh of the City of Reno staff. He is one of our assistant managers and at this particular point we will also get into some of the more technical areas.

Senator Gibson asked if there were any questions of Mr. Mennicucci.

Mr. Dini asked Mr. Menicucci how you would solve the impasse if you can't get your employees to agree with you. If you don't have some arbitration in some form - you have to have a way to solve the impasse.

Mr. Menicucci stated that he thought that S.B. 536 and S.B. 537 would provide that. If I had my particular preference, a referendum would have been in S.B. 536. That is not the choice. We are asking in 536 that with the factfinding, the factfinding can be done to the aspect of people within a local area agreeable by the employee and the employer. You can't find possibly three individuals within any of your communities that are qualified to read a financial statement of a municipality.

Mr. Ron Creigh, Assistant City Manager of the City of Reno testified next. He stated that he also served as Chairman of the Nevada League of Cities Legislative Committee as well as the Labor Relations Sub-committee. Insofar as S.B. 536 is concerned, in terms of what we are proposing here as an alternate to binding arbitration, let me say this, what we have done here is that the impasse is resolved by the local agency or by the negotiating parties, the public employee and the public employer. The process would go through the advisory fact-finding procedures and would conclude there. The advisory factfinding report would then go to both parties. They would be advised by the information conctained in that report and would act accordingly. The process takes you no further than that because our point or emphasis is that it should be resolved at the local level. S.B. 536 does suggest, page 9, approximately line 46 and the beginning of page 10, that the parties could bind themselves to binding factfinding. That would be a matter of agreement between the negotiating parties. If they choose not to bind themselves to binding arbitration or binding factfinding then the process would be advisory. You will note also in paragraph 6, line 49, that the governor is removed from the process. The reason the governor is removed from the process is that in other amendments that we propose to this bill we had included state employees. It was our feeling that if we proposed that state employees be included under the collective bargaining law

currently as amended by this bill, then there would be a conflict of interest that would occur. The governor would be in conflict depending on how his decision would be in ordering binding arbitration. That is essentially what we are accomplishing in the impasse procedure we are suggesting and also for the other matter which you might take up as a separate issue, the matter of removing the governor from the impasse resolution process.

There are a number of other provisions in the bill and I would like to indicate very briefly what they are. We have speakers here to address each and every one of those, but one of them supports the advisory factfinding process, the inclusions they impose under NRS 288, redefinition and modification of certain negotiable and non-negotiable items, removal of supervisory employees in the collective bargaining process, expanding the definition of a confidential employee and deletion of the advisory committee. I won't reiterate a lot of what you have heard already, I think the speakers have been effective to indicate what our basic problems are with binding arbitration. We feel that those people who are responsible to the taxpayers must be able to make a final decision. We do not believe as was pointed out by Mr. Coleman Young in his tax report which I think you have a copy of now that binding arbitration is the only way to resolve impasses and to prevent strikes. The parties are not forced into a true negotiating session. Their attitude becomes, well if we can't sit over a table then we will arbitrate, it becomes a club over the employer's head.

Obviously as was pointed out here we are extremely concerned with the kind of revenue caps and the tax shift legislation you people are working very hard on down here that we are going to be put in a situation of managing monies and yet on the other hand managing monies with different lids and tax structures and getting a substantial portion of our local government budgets to an outsider who is responsible to no one and who is not elected. In fact, ability to pay is pretty difficult to argue because you will note from the track record of arbitrators if you have a budget of $13,000,000 and the state has not specifically reserved funds for certain purposes then the game is wide open. Those monies become available to the arbitrator to settle contract negotiations. So it can completely shift, completely change and completely modify the budgets of local government, and I would think that being a public employee myself for fifteen or sixteen years that at a time when the public is expecting much from you and in turn much from us as far as economy in government that we are going to have a difficult time if we on one hand give that responsibility to local governments, and on the other hand say the termination of impasse resolutions and collective bargaining which affects from 70% to 80% plus of your budgets is now going to be subject to someone who probably lives out of town is not a taxpayer in your community and does not consistently use ability to pay as a bona fide consideration in granting awards.

The additional comment I would make tonight is that we would like you to look at it this way. We have been in collective bargaining

in the State of Nevada for some years now. The State of Nevada employees have not used collective bargaining. What you are going to have to do on one of these bills is to not only grant the collective bargaining privileges to certain employees, but also grant to them the right to use binding arbitration, yet at the same time the State Legislature, the governor and all the employees of the state of Nevada are not confronted with that same situation. We think that is a very onerous burden to be placed on one level of government, particularly local government.

Senator Gibson stated that if he analyzed S.B. 536 what it proposes to do is to return to the provisions that we originally started with in 288 when we first adopted collective bargaining this was the language that was there. The reason the governor was brought into the act was that this has not been very successful in resolving the impasses. I am sure Assemblyman Dini will remember. There are not many others on the committee that were here then when it was adopted in 1967 or 1969. The problem was that we had an unsettled situation and I don't know if your experience now would lead you to believe that you could return to that, but apparently it does. This is how the law was originally before the governor was brought into it. Do you feel that was better than what we have had since?

Mr. Creigh stated that obviously what they feel and what they are proposing is the best. Our basic point in removing the governor from the process is the key to another issue in S.B. 536 and if you adopt this it would include state employees.

Senator Gibson stated that he thought he understood. He indicated that he wanted to treat state employees as another issue, because that is another bill.

Mr. Dini indicated that he thought that the state employees are a separate issue because I think the state employees have two shots at bargaining. I think local government should be allowed to create an arbitration committee composed of three people, one appointed by the labor group, one by management group and the third one appointed by the two to be the arbiters under the binding arbitration clause. Would that meet your objection? They would have to be all local people from that local jurisdiction.

Mr. Creigh stated that he thought that had a lot of merit but that he could not commit the league of Nevada Cities right at the podium here but that is much more of a viable alternative than allowing an arbitrator under the true sense of arbitration law to come in and dictate terms of a contract award. I think that kind of alternative would go down much easier with the local communities that are faced with contract negotiations because they can see that those are parties of interest.

Mr. Dini stated that he believed it was in 1969 or 1971 when we put the governor in and at that time the act was not working. The Dodge Act was not working at that time. You get to the impasse and there

was a continuous impasse, there was no solution, there was no way of them resolving the problem. I assure you that that language to include the governor was not done without one heck of a battle. As I remember I was the deciding vote. I think that there is a problem because of the fact that our existing governor has not called the binding arbitration and it has cause many problems on the other side of the fence.

Mr. Creigh stated that he agreed with Mr. Dini.

Senator Wagner stated that Mr. Creigh had touched on the basic ingredients of the bill but I wonder if you wouldn't be able to be more specific in terms of the rationale for the suggestions that you have made and I will begin with the exceptions under Section 7.

Mr. Creigh stated that he would like to have Mr. Jim Berry, our personnel respond to that question.

Senator Wagner stated that that would be fine and there were some other questions she had.

Senator Gibson asked if he could make a statement. He indicated that on some of these other issues the joint committee would be going back on. I would like to confine the questions if I could to the impasse resolution. Otherwise, if we start taking it bill by bill, I think we will be much longer.

Senator Gibson stated that he had been in the session since 1967 and believed that we would make a little better progress if we do look at the issues and we do have another couple of alternatives on binding arbitration that we have to look at. Senator Gibson asked Senator Wilson if she had any questions on binding factfinding.

Senator Wagner stated no that she would reserve her questions for a later time.

Mr. Creigh stated that he would like Mr. Jim Berry to address this bill as well as S.B. 537.

Mr. Jim Berry, Personnel Director of the City of Reno, testified next.

For the past seven years I have had experience under NRS 288 in the negotiation process and during the past two sessions I have served on the League of Cities Labor Relations Committee and this year we spent about 5-1/2 months in meetings going over the state law and this culminated in S.B. 536 and S.B. 537. The question was just raised as to the intent of S.B. 536 and it was to go up through and it was to go up through and allow advisory factfinding. You could make it binding if both parties agreed prior to the fact-finding. The intent which does not show up in the law because it is not drafted exactly the way we had requested it, was that the final impasse solution would be resolved by the elected governing bodies

of the community. This is a very similar process that you have in the state for state employees. In other words the governor's committee meets with the state employees, he then proposes to the legislative body a solution of wages and benefits and the legislature is the one that decides. What we are saying here is we are removing the governor, we will allow an advisory factfinder to make the determination on what he feels is reasonable and if it comes to the final impasse act it will be the city counsel, the county commission, the school board, the elected officials at the local level. That is why the prior speakers have stated they would like the impasse solution at the local level, because they bear the responsibility of the local government, they are supposed to have the authority and we are recommending that you return full authority to the local governing bodies in impasse solutions.

I wanted to say that because that was the intent of S.B. 536.

Mr. Jeffrey stated that when you get into the negotiating process of course the people, the employees that you are negotiating with are the professional staff of the local jurisdiction that is under negotiation. When it comes time when the impasse is reached, who advises the local elected officials?

Mr. Berry stated that they will have a copy of the factfinder's report.

Mr. Jeffrey stated that the advice that they are receiving is from the same people who have been negotiating for that local entity.

Mr. Berry stated that that may be submitted up but they will have to do it at a public session.

Mr. Berry stated that when you put it on our council agenda with sufficient notice, both sides would have their chance to input whatever information they want the elected officials to have prior to the decision.

Mr. Jeffrey stated that he did not want to be argumentative and he did not want to draw this out any longer than it has to be drawn out, but I used to serve on the City Council and when it came time for us to make a decision we had to listen to our legal staff and to our professional administrators. Those are the people we listened to. If there was a difference between that staff and anybody from the general public our administrators were supposed to have the proper information fed to us, and that is what we had to make a decision on and I really don't consider that a proper impasse procedure. Now if everybody is bargaining in good faith, it might be all right, but that hasn't always been the case and that is the problem I have with this bill.

Mr. Berry stated that he could appreciate that.

Senator Wagner asked if this was a new idea that Mr. Berry was proposing or if this is one that has been used in other states throughout the country, and if it has, what has been the success or failure of this approach.

Mr. Berry stated that he could not tell Senator Ford specifically what other states may have returned impasse solution to the local jurisdictions because there is such a myriad of impasse solutions through the country. Ron said that he has experienced it in California. There may be other people that can answer that question better than I.

Senator Wagner stated that her basic question is that this is somewhat of a different approach than some of the other bills have taken and if anybody has knowledge of how it has worked or how it has not worked it would be helpful because this would be difficult at the local level and I was wondering if there was any kind of history on this.

Mr. Ron Creigh stated that if the committee would permit it he would like to give them a brief synopsis of his experience in California. I was in labor negotiations there for approximately ten years prior to coming to the State of Nevada. In California, at least prior to the time that I left, there was no binding arbitration provision in State law. There was a broad bill that gave local governments the authority to within certain guidelines to develop their own impasse procedures or impasse resolutions. Typically what those turned out to be were local option impasse resolutions. You will find that in several cities and several counties in California, the electorate has voted in binding arbitration. I believe in one instance they voted it out, but I can't recall specifically where. You will find typically in California in the cities and counties that the county commissions or city councils determining impasses in labor negotiations. In my experience a number of those impasses, approximately 8 or 9, with different large bargaining units that a hearing would be called and there was no further direction that each party could go and both parties negotiating in good faith; it was just that they wanted more than the employer could give. Both were well intended, but the contract never resulted. The parties would determine that there was an impasse; they would then have the opportunity to approach the City Council in the public hearings and make their pitch before the city council. The city council, without benefit of caucus of either side, would adjourn to their session, and arrive at a decision and attempt to break the impasse.

Senator Ford stated she would like to pursue this and that does describe the procedure to her, but my question really dealt with what kind of success rate this procedure has had.

Mr. Creigh stated that he guessed the success would depend which side of the fence you are on. Obviously I think that is the problem that you've got to deal with here. If the council in determining the

impasse made an award or arrived at a decision that was more favorable to management, then obviously it was successful for management. It if came that the firefighters or the police association walked away with more than they wanted or what they wanted then they won. I can tell you my experience with management.

Senator Wagner stated she would like to put it this way and then she would not pursue this. Your experience has been mainly in meetings that you have addressed in California.

Mr. Creigh stated that he knows of several places where this was used and is probably more prevalent than binding arbtiration is. Mr. Creigh stated he would like to add one comment too and it bears on what is before the legislature at this time and that is economy in government and creating less of a tax burden to the people of the State of Nevada. I lived under the constraints of Proposition 13. I can tell you from my experience that it was very important to the community that I worked for at that time that there be local option in resolving employer-employee impasses. I will tell you why, because when Proposition 13 hit I happened to be working for a community of about 8,000 population which was the second hardest hit city in the State of California with Proposition 13. It was the hardest hit city of any city over 50,000 population. We were looking at laying off between 100 and 140 people initially out of an employee group of some 400. So it became very important and very relevant that what little money we had left and we had to manage it very very well, not be given away to a third party in a binding arbitration kind of situation.

Senator Echols stated that Mr. Berry and Mr. Creigh have opened up some rather interesting comments and he would like to ask some questions. Senator Echols stated that Mr. Berry made a comment about the intention of having in the bill the provision for the elected local body to be the one to break the impasse.

Mr. Berry stated that that was their intention.

Senator Echols asked if that was in the bill.

Mr. Berry stated that it does not appear in the bill. All it takes us up through is advisory factfinding and the two parties could agree beforehand to make it binding, but it does not carry on like we intended to allow the local government body to determine the final impasses though.

Senator Echols asked then if the committee was to interpret that they wanted that provision in the bill. Is that correct?

Mr. Berry stated yes, specifically.

Senator Echols stated that getting back to Assemblyman Jeffrey's comments and to a certain degree I have to agree with him, because

most local governing bodies do a lot of serving time without compensation, and this issue we are talking about is complex. You can't go in in an hour or two and lisen to debates and I don't think you can make an intelligent decision. I would have to agree with Assemblyman Jeffrey that we almost must rely on the people who are there working with day by day and that is your staff. By the same token we all work for the taxpayer. We elected officials, the public employees and the whole ball of wax and the whole kettle of fish, but I am wondering if there was any thought given to that - how a local elected body is going to take the time necessary to explore all the ramifications of this debate and dispute and come to a logical intelligent decision.

Mr. Berry stated that they had anticipated that if this bill were adopted and with the addition to what we had intended with local elected government bodies who would have the final vote because of the finances and revenues, there would be some machinery and procedures to establish, because I agree, I think that Assemblyman Jeffrey had a very comment. In other words, you don't want it one-sided. I would expect that the public governing body would demand that there be some procedure or form so that both parties could be heard before they could make their decision.

Senator Echols stated that he served a term as mayor way back 10 or 12 years ago when this thing was first beginning to be an issue, this public employee collective bargaining. I remember they presented this to the council and they initially wanted the mayor to be the factfinder and to get into this thing and resolve it and the position paid about $7,500 per year and I am looking at two months' work for no pay. Now who is kidding who, when you talk about a council sitting down and getting the facts, you've got to be looking at hours and hours of deliberation and listening and studying. It is tough.

Mr. Berry stated that he would agree with that but by the same token they are going to have the advantage of a factfinder's report who is trained in this area, who will be reporting the pros and cons with his recommendations. That was the whole intent here was that there would be a professional independent party who would at least hear the unresolved issues and make his findings and recommendations although it would only be advisory. I would also comment that you stated you were a local official and you said locally, twelve years ago. I have been in this seven years and it has accelerated. It is much more complicated. It is much more complex and we have created an industry. The cost of factfinding and the cost of arbitration is exhorbitant and I can give you figures on what it costs right now. We are negotiating with four units. It is time consuming for staff and employees as well as costly.

Senator Echols asked if Mr. Berry was talking about factfinding or binding arbitration.

Mr. Berry stated that he was talking about the entire process of collective bargaining, right up through mediation factfinding and arbitration.

Senator Echols stated that he was not opposing the philosophy of elected officials doing the job. I think that is the way it should be done. They are elected by the people, the people have access to those people and they should be the ones making the decision. I am concerned about the time element. That is the main thing I am concerned about.

Mr. Berry stated that he shared Senator Echols' concern about the procedures to be used so that the elected official would have the knowledge that they might want to make their decision. We feel that it properly belongs there too.

Senator Gibson referred to the alternatives found in S.B. 537.

Mr. Berry stated that what they attempted to do in this bill for impasse resolutions was that if by April 15th the party cannot reach agreement, either party may up until May 1st, submit the dispute to an impartial factfinder for his findings and recommendation. Again, these could be by agreement of the two parties prior to factfinding made binding. If they could not agree it would be advisory. Then the scheduled date for factfinding would be done before June 15th after which you would go to the factfinder and he would upon completion of the hearing have 30 days to render a decision an advisory decision. After that decision came back, within fifteen days after receiving the decision, the employees' organization shall submit to their membership whether this is an agreeable solution to them. And this would be done through secret ballot. By the same token, the employer would have the same option to review this to see if he could accept it. During this fifteen days they would also have a chance to come back and try to work this out, because they are still negotiating. If they couldn't do this, then it would be submitted to the electorate by referendum and in the referendum you would present the unions' position to be voted on. If they accept this, that becomes the contract. If they refuse this, then the management's last best offer would become the basis of a contract. This was the intent. In other words, the public would have the final say on the expenditure of their monies by voting on the union position if they can't through a factfinder, work out a contract. If the public votes for the union position on these issues, then that would become their contract. If the public refused it or voted it down, then the last offer presented by management would become the basis for the contract. We are trying to look at alternatives because we cannot agree with the last best offer and in answer to the question that Senator Wagner proposed, 18 states in the United States have last best offer laws and 32 do not. They resolve it locally. In some states they do not have any collective bargaining law at all. Our intent is to try and explore alternatives that we feel are more responsible and allow the public to have a say.

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Senator Gibson asked Mr. Berry if he was aware of any other city that provides a referendum such as this.

Mr. Berry stated that there are cities because he reads every so often where a referendum has been voted on. I know Englewood, Colorado has it and I also believe Loveland, Colorado has it.

Mr. Dini commented on the concept of good faith bargaining how can you come up with a provision that says you go to referendum and if the referendum fails then the last best offer by local government is the one that decides the issue. You've got two strikes out of three before you ever sit down with it. That is a violation of the principle of good faith bargaining.

Mr. Berry stated that the whole intent is to negotiate in the negotiating room where it is supposed to be done. The minute you inject outside third parties that's a very easy door to walk through. We would like to see the parties negotiate in good faith and conclude their contract negotiations at the negotiating table. That is the whole intent and we would like to see it done that way.

Senator Echols stated that Mr. Berry had mentioned after referendum and if the voters turn it down then the last best offer becomes a basis for a contract. What does that mean.

Mr. Berry stated that as you go through negotiations you get down to a point where the union says this is our bottom line. Management says this is our bottom line. And there is still a difference and we can't resolve this and we have gone to the factfinder so now we go to the public. We will put your final position and let them vote on that. If they do not choose that ours may be less but that would become the basis of a contract which is still an increase over what the last year's wages and salaries were.

Senator Echols asked to rephrase the question. He stated, remove the word basis. What connotation does the word "basis" have in that comment I just made.

Mr. Berry stated that this would be the contract that we are going to write together.

Senator Echols stated that getting back to Assemblyman Dini's comments, about his problems with going to the voters and then the situation we just discussed, you said they would have two strikes on them. Did you mean the public employee would have two strikes on him?

Mr. Dini stated that you go to the election, maybe it is a conservative community and they will reject the offer - the last offer that is being considered. Secondly, you have gone back to the last best offer that was given by the local government so local government would never have to bargain in good faith. They could always come in 5% or 10% below what the factfinder says. Maybe the factfinder says you can afford an 8% raise for your employees. The last offer from the city was 6%. So they went to battle on the 8% issue.

So we reverted back to the last best offer by the local government employer of six percent and the employee is stuck with that six percent offer. So local government can always come in low on the last best offer knowing that the community would support.it and that is a violation of the principle of good faith bargaining.

Mr. Berry stated he would like to respond. He stated that he was sure that they would resolve the contract because the public referendum is an expensive process, so I think it behooves us to do what we are supposed to do.

Mr. Jeffrey stated that he was sorry that he had missed some of the testimony but the thing that concerns me about public referendum is that you are asking the public to make a decision on the basis of even less information than the city council had. The only information they have is that they have to take the advice also of the people that are running the city.

Mr. Berry stated that in the City of Reno every time we get into negotiations, we read in the papers what we thought was confidential in one form or another. I again think there could be some type of procedure set up to do this. Other cities are doing it. It is being done in other cities in America and they must have some procedures. Possibly they know something we don't.

Mr. Jeffrey stated that he was not going to comment on that.

Senator Wagner stated that Mr. Berry had mentioned a number of time a factfinder. She questioned when Mr. Berry about the factfinder's findings to occur.

Mr. Berry stated that would probably occur before you go to the factfinding hearing. In other words if we were to go out today and get a factfinding hearing it would probably be a month in advance.

Senator Wagner asked if Mr. Berry realistically thought that both parties are going to agree with the recommendatins of the factfinder prior to the report.

Mr. Berry stated that it would depend upon how far apart they are. The possibility is there that they would.

Senator Getto referred to Mr. Dini's remarks and asked Mr. Berry if they had any facts at all to back up what the experience factor is in the communities where they have the authority to go to the electorate on an issue. Have they mostly been decided between the two parties. It would seem to me that the philosophy throughout the nation would be adverse to the public employees because I think that the employer would certainly have the advantage knowing that the majority of the public are on a tax rebellion or revolt or whatever you want to call it. It seems like there would be an advantage in going to the electorate. There would be less of a tendency for the employer to negotiate in good faith.

Mr. Berry stated that the experience in Colorado has been that there have been very few referendums. After the factfinder came back in with his recommendations they usually were able to conclude the contract without having to go to the public referendum. Apparently that acted to make the parties do what they should do.

Senator Getto questioned Mr. Berry if the factfinders were local.

Mr. Berry stated they work through the same process that we do. The American Arbitration Association. The only difference would be is that they have an office in Denver whereas we have to go to San Francisco.

Senator Echols stated that he did not want to belabor the point but this situation of going to referendums, there is one point we may be all not thinking about. Everyone in this room works for the taxpayers. They are the boss and let's quit kidding ourselves. If they have an opportunity to vote I am convinced that they will find out what the facts are, generally speaking and I can tell you right now when public employees and things are going to the taxpayers, and we have had experience with it in North Las Vegas, and it wasn't in a referendum, it was in a recall movement, I can guarantee you the public employees effected a change and it was the public employees that did it. After all the taxpayers are the public employees' boss and they are represented locally through the elected officials and then the taxpayers who are the boss have two shots, they can do it with the public employees or the elected officials. I am just kind of leaning that way. It is fraught with problems and the big one is having the time for the elected officials to put in the time to get the facts.

Senator Gibson stated that one of the other alternatives is mentioned in AB 400.

Senator Gibson stated that we would now hear AB 400, which is strictly binding arbitration.

Mr. John Kidwell testified first. A copy of Mr. Kidwell's testimony is attached to the minutes of this meeting as EXHIBIT B.

Senator Gibson stated that Mr. Kidwell's position then was to get the governor out of the picture and go to binding arbitration.

Mr. Kidwell stated yes.

Senator Wagner stated that at our last meeting on the subject I believe there was some question about the vote of the board in terms of your support of this bill if I remember, and would you tell us now what the vote on this measure was.

Mr. Kidwell stated that five members of the board were present and participating in the review of the final package, they voted

unanimously to approve that package. There were no dissenting votes. There was one member that was absent and that member was a representative of the management group.

Senator Keith Ashworth asked if he understood Mr. Kidwell correctly that the mediator in this bill could or would be an outside of the state arbitrator?

Mr. Kidwell stated that the suggestion here was that an arbitrator would be chosen from the major arbitration service, which is the American Arbitration Association.

Senator Keith Ashworth stated then that it could be an out of state arbitrator.

Mr. Kidwell stated that he could come from out of state.

Senator Gibson stated that he thought that in this bill the mediator is not the arbitrator. They have a mediation step and if they don't accept it.

Mr. Craddock stated that for the information of the audience would you state the name of the board.

Mr. Kidwell stated he would try. Representing the employee interests, myself, James Jimerson, attorney at law who resides in Las Vegas, James Hartsharn, who is a with the Reno Police Department. Representing the employer interests was Mr. John T. Etcheverry who is the Executive Director I believe of the Nevada League of Cities, Kevin Eframson, attorney at law, residing in Las Vegas and Clifford Lawrence who is the Superintendent of Schools in Carson City.

Mr. Kidwell stated if he may, he would like to make a comment on this. From the position that was taken the Carson City School District did last year when the reached an impasse in their negotiations, request that the parties go to binding arbitration on the salary issue to get it settled. The purpose, as I understand it, of that suggestion was to get clarification from an independent third party that in fact the position the employer was taking at the bargaining table was accurate. That they were, in effect, unable to meet the demands of the Teachers' Association and I find that significant for several reasons but we were told by the Superintendent of Schools of Carson City that that is the reason why he was interested in supporting the concept of binding arbitration. It can be utilized by both parties to an advantage.

Senator Gibson asked if Mr. Petroni wished to testify.

Mr. Robert Petroni testified next. He stated that he would like to respond generally on several items having been involved in this Act since 1969.

In response to the last speaker, I have a letter from Dr. Lawrence

who is the Superintendent of the Carson City School District who incidentally was appointed to that advisory commission when he was a deputy superintendent of Clark County and he did give up his position when he became superintendent in Carson City. Last week when the issue came up about his vote, I called and discussed it with him and asked him to present a letter to Senator Gibson and in the second paragraph of his letter of which I have a copy, it states: "It should be pointed out, however, that at no time did I indicate that I would speak in behalf of all the other school districts with regard to changes recommended in the bill, A.B. 400. I support the changes in the resolution of impasse because of my personal feeling that there was need for a more definitive procedure to resolve impasse. I took this position, however, being well aware that this stance might not be supported by many of the other school districts throughout the state."

Mr. Petroni stated that that was a very true statement. The superintendents just met last week and they do not support A.B. 400. The State School Board met in November, they do not support the binding arbitration of A.B. 400. Dr. Warren made a decision without informing the State School Boards Association of the change in the bill, in the act, nor did he inform the superintendents. We did not receive a proposed copy of the amendments so that we could talk about them or make comments to this advisory committee. The superintendents did not receive it, Clark County School District did not receive and neither did Washoe County. So he really did not represent us when he made that vote on A.B. 400.

Dr. Warren was going through a very trying time here in Carson City in negotiating as the people from Carson City know in regard to the teachers' negotiations. Last week I sat here and listened to these people talk about negotiations in Reno, Sparks, Carson City and various other areas - Truckee Meadows. I came to one conclusion and that is one of the problems seems to be that there are too many negotiations going on in some of these other areas. We have always managed and requested at least a two year agreement. You cannot continuously negotiate. You cannot wind up one agreement and start on another agreement within a month or so, or within 30 days. Nothing in this bill puts a minimum time on the amount of the grievance One year you are always at each other's throat at the bargaining table. There is no peace. You can't live with the agreement for a couple or three years. People should not sit and negotiate constantly year after year. It doesn't happen. In our school district we have managed to have two year agreements at a minumum. I have also negotiated an agreement with the operating engineers in Clark County which was a three year agreement. Every agreement has been a three year agreement. In School Districts the legislature sets our budgets on a bienniel basis and sometimes as a trigger device we were not sure what the second year was going to bring. That might be one thing that would bring some peace to these organizations is if you have some sort of leeway between negotiations.

I would like to comment on the history of arbitration and the history of 288.

In 1969 this was first enacted under Governor O'Callaghan. At that time there was no binding arbtiration. At that time the law provided that there would be a three member advisory board which there has been some discussion about tonight. The three member advisory board provided that one member was appointed by the local government agencies - the school board, the city, the county clerk, when you reached an impasse. The second member was appointed by the organization whether it be the union, the association or whatever they wanted to call themselves. The third member, who was to be the chairman, who was going to have the hearings on the facts, was to be appointed by the two, however the legislature recognized that it would be seldom that the two could agree as to who the third member was going to be. So they provided that if they could I think within ten days it was, then the third member would come from a list of factfinders submitted by the American Arbitration Association. The third member became the chairman - he would be the professional - the expert - and at the same time he would have input from the other two sides. One year we had a CPA who was our representative, Mr. Wayne Bunker from Las Vegas. Another year we had a gentlemen named Maxwell Kelch. We went through that procedure twice. We also had a professional arbitrator, Howard Block. Mr. Archie Kleinbunker was our arbitrator for the second year.

The first year we had that procedure, this was advisory only by the way, Mr. Block clubbed us into an agreement. We finally agreed without a decision from the advisory group. We met til two or three in the mornings on Saturday and Sundays until we got a decision. The parties came to an agreement through the efforts of this three member committee. The second year the same thing happened. I might point out that the Clark County School District is the second largest public employer in the State of Nevada. We have over six thousand employees. We had at time only the teachers negotiating. We now have three groups negotiating. The Clark County School District has never turned down an acceptance of an advisory factfinding report. The reason for that is quite simple. When you go through negotiations over a period of time the public knows what is going on. The press hears, there are statements in the press, the teachers get out reports. The School Board gets out reports, the public knows what is going. We have a lot of public employees involved and their families know, everybody knows. So when the advisory report comes out the parties are almost forced to accept that report otherwise they have to explain to the public why they did not accept it. One year the teachers did not accept the report from the Clark County School District and one of the reasons I think that the teachers want binding factfinding or arbitration is because they don't want to go back to the membership and sell what they agreed to at the table. They could do it that one year. They came back and said we are not going to accept advisory and there we were. We accepted it and they didn't. They want to organize and be a group to negotiate but they don't want the responsibility to go back and sell to their membership. But I think they should have that responsibility just like anybody else who negotiates. Just like Mr. Jeffrey, when they negotiate for his group, he has to go back and sell it to the members.

It is by negotiations and that is the way it should be with Public Employee Groups as well as private. In 1971 the governor was brought into the picture. The reason that he was brought into the picture is that there were several entities that did not accept the advisory factfinding. It did not apply to the Clark County School District but there are entities that did not do that. I might note that in those two years, 1969 and 1970 it was mostly school districts that were negotiating at that time. I can remember the day that representatives of management and labor, the employees, got together in the governor's office, Governor O'Callaghan, and said what can we do to resolve impasses. We all agreed, let's get somebody who is responsible to the voters to make that decision. That person was the governor. We are a small enough state and the governor can do that. Thereafter, whenever there was an impasse, the employee group would submit a request to the governor for arbitration. The governor would then have hearings through a representative of his to listen to both sides and make a decision in so many days as to what would be binding. One year the teachers presented 52 items to Governor O'Callaghan. He agreed to six to actually go to binding arbitration. We never went to binding because we went to negotiated agreement then. We reached agreement at the table. We have always reached that agreement.

I personally, and also as a representative of the school district, cannot support any type of binding arbitration in public interest disputes. As you know there are problems now with taxes, there are problems with revenues and we all have a responsibility to the public. We sit down there with the public and the people and meet on a weekly basis and we have to make those decisions at a local level. To do that you have to get the people who are elected by the people to make that decision. Therefore, S.B. 536 is a much better approach than S.B. 350. It provides for advisory factfinding, it puts pressure on both parties, public pressure, that there is binding factfinding, and if they don't accept it to tell the people why because as you know if the people don't like what you did last time around you may not be here next time. That's what it is all about in public negotiations. For that reason I feel that the best approach is one of two - that is S.B. 536 or leave the law like it is. Our school board has voted to leave the law like it is - that is let the governor of this state make those decisions. We have had two governors now work under this Act, and I don't believe either governor has come forth publicly in any position and said I don't want that responsibility any more. I believe that this is where this responsibility belongs and that is with the elected public official.

Senator Gibson asked the committee if there were any questions to ask of Mr. Petroni.

Mr. Bob Maples, Chief Negotiator for Washoe County School District testified next.

He stated that A.B. 400 has two serious flaws, one flaw we believe is the compulsory automatic binding arbitration provision. In reviewing the bills that are before you tonight, I suggest that a lot of them are going to create more problems than what we have right now under NRS 288. I really did not realize that Bob Petroni was going to say that his school district favored one position or to leave 288 as it is. Our school board would take the same position. 288 is not perfect, obviously it has lots of flaws, but I think a lot of legislation that you are going to be hearing about has greater flaws than what 288 has. I have been representing our school district for ten years under 288. At the present time we have four different bargaining units. I deal with some very professional people on the other side of the table. We have reached agreement stricly through negotiations back and forth. We have reached agreement as a result of a tripartite factfinding panel in the old days; we have reached agreement as a result of mediation; we have reached agreement as a result of arbitration, both advisory and binding. We have binding factfinding arbitration imposed upon us in the past. We haven't been wild about the idea, but that is the way the law works and we took our chances. In all the years I have been negotiating, since 1970 and all of the issues that have gone to advisory arbitration there are only four times in our school district that it has not followed an advisory award on certain issues. Once back in 1969 on a salary matter. The second time I believe it was in 1973 when an aribrator recommended that we grant half pay for teachers on sabbatical leave and the school board voted for one-quarter pay and the following year to half pay and in 1975 we had an advisory factfinding award. The District's position in factfinding or arbitration was a 6% increase. From the time of the hearing before the arbitrator until he issued his award it was over two months. The arbitrator's advisory board came back and took the position that the 6% in that two and one half period of time the district's revenue picture had improved and the district was able to unilaterally increase that award to 4-3/4%. Advisory aribtration works both ways. In 1978 I believe we had an increase under medical insurance premium in mid-year. It was not anticipated. We were not bound. We were going to go beyond what the award had been. We are willing to take our chances. We would prefer not to have any compulsory binding arbitration at all but I realize it is difficult to back up to where we were in 1969, but I would suggest that any other way has great hazards as you have heard already. I know there have been problems the last few years and Governor List has not found that he should award binding arbitration. That situation can change. We had the reverse situation with Governor O'Callaghan. We feel that if somebody is going to make that decision to bind local government agencies it probably should be an elected individual and we feel we can deal with 288 as it is.

Senator Gibson asked the committee if they had any questions.

Mr. Maples asked if the committee would be hearing other parts of A.B. 400?

Senator Gibson stated not right now.

Mr. Maples asked if he could quickly touch on one other feature of that bill.

Senator Gibson stated that we were going to be here for a while and that he would rather not. He stated he wanted to get through this.

Mr. Ed Greer, Clark County School District Manager, testified next. He stated that he wanted to speak in a little different framework regarding this. He stated that he has been involved in all of the contract negotiations of the school district since 1969 and we were a bunch of greenhorns, both sides, at the time. We played the old game of hiding money and they were trying to find it. Now we have both become very expert. They take a five year history of our line item accounts and compare it to the arbitrator what we have budgeted and what we actually spent which is an auditing function and there is no way you can hide that. We have come to the point now that we have determined that it is impossible to play that kind of game and we simply lay out what we have built into the budget for all of the items - we project the revenue - and I want to remind you that we are not able to generate one cent if we have a decision go against us and we have 86% of our budget that is presently earmarked for salaries and salary-related fringes and it is a very disturbing thing to think that an arbitrator can take that out and act as a governing board and the fiscal people who are responsible to keep that budget in balance. I have observed that there is a lot of uneasiness in situations throughout the country where school districts have had to shut down a month or two early to avoid going into a deficit condition and I urge this body to seriously consider, I think if you would reflect that we have in this state in the last ten years been in a learning stage, for the last 20 almost, of negotiation in the public sector and I want you to realize that everybody, all of the administrators and the board that are responsible for the negotiation process representing the district, are under intense pressure under the present setup and that advisory factfinding decisions are not taken lightly, but I do urge you to leave that one last outlet where a governing board if they must make that decision that they cannot afford what an arbitrator says and I can tell you that if they do that they are under intense public pressure and by no means should you put that on them where they do not have the final ability to save the district from fiscal problems and that has happened throughout the country and it will happen here if you take it out of our hands. Either that or you've got to give us some way to generate additional revenue.

Mr. Greg Rovey, Director of Personnel from the City of Sparks, testified next.

Mr. Rovey stated that he would not reiterate some of the testimony that has been given by some of my collegues, but I am here to speak on behalf of S.B. 536 and also in opposition of S.B. 400 as to the

impasse resolution. We are opposed to any form of binding arbitration. I think when this legislature met four years ago they did enact binding arbitration, but it was just on a trial basis to see how it would work within the state. I think the record is clear that it has not worked in this state and it has not worked in other jurisdictions. It is not the ultimate impasse resolution that fosters good faith collective bargaining, that fosters good employee morale, it is a process which is intended to bring the parties close together. In essence, what happens is management moves closer to the employee and the employee is further away in an attempt to get management to make concessions at the table. That position of management before an arbitrator then becomes the floor. There is no incentive within that process to settle it at the table. What happens is you have introduced a collective bargaining process that substitutes for collective bargaining. You don't have negotiations. What happens is, and this typically happened in the City of Sparks, is we have had three or four sessions with the bargaining group when they had this avenue. The intent of the parties is when you get to that impasse resolution as quickly as possible. I think that one of the steps that has not been brought up this evening is what S.B. 536 proposes which is a very important step as far as resolving impasses and that is the mediation process. I know to the City of Sparks that that process seems futile. However, mediation, if you are well aware of the collective bargaining process, is a process that can bring the parties together. When you have some kind of impasse resolution the intent is that you never get to that impasse resolution because whatever you have had at the end of the road both parties want to resolve it at the table so the idea is to interview some kind of process that will allow the parties to negotiate in good faith at the table. Any form of binding arbitration will shut down the throne of one or the other party and it is not the solution to the collective bargaining problems. The whole intent of collective bargaining is to mutually agree upon the contract and I think by using some of the mechanisms such as going through and making it meaningful to go through a mediation process that you have some kind of factfinding report should you not be able to agree with the mediator's recommendation and finally I think by leaving your decision in the hands of a local elected official that is where the ultimate decision should be made.

The question was brought up by Senator Wagner how many other states or how many other jurisdictions have this type of impasse resolution procedure. There are only eighteen states in the nation that have some form of collective bargaining that provides for compulsory binding interest arbitration. Most of those states such as Wisconsin, Michigan, New York - if you look at the provisions in those states, they exclude certain employees from binding interest arbitration. It is primarily provided for public safety employees. It certainly does not encompass all public employees. In those states that have it, I think it is important to look at the record as far as the financial impact that those awards have had on those particular jurisdictions. In the city of Detroit alone, you implement the last binding interest arbitration award they had to lay off 400

firefighters and 750 police officers. If that is the type of services that we are going to expect to provide our jurisdiction that we have to lay off employees to implement an award, I think we have lost the war as far as the battle is concerned. I think we have to return to the bargaining table where collective bargaining in contracts should be consummated and I think provide some kind of mechanism that is fair to both sides. The only thing in binding interest arbitration is the mechanism for employee groups to get more and I think will be defeating the purpose of collective bargaining.

Mr. Ross Culbertson, a contract lobbyist testified next. Mr. Culbertson stated that he was here representing the Public Employees Action Coalition which represents the employees of many of the gentlemen that you have heard tonight. It is very interesting when we talk about negotiations and how well it is getting along, the guy with the club in his hand thinks everything is just fine. I think I ought to point out to you however, as these people talk about the various groups that they negotiate with every one of those groups that they negotiate with has come to the Nevada Legislature which is where one of the places where they can come to seek regress with the top most item on your agenda, final best offer resolution in negotiations, so perhaps if you have the club and you can knock the guy out and while he is laying on the floor you can say see it all works and it works for somebody.

I did want to comment on Coleman Young who left the Michigan Legislature to become Mayor of Detroit. If any of you have been to Detroit lately he might be a brilliant man but his sanity is in question. I can't understand anybody wanting to do that. However, let's remember one thing. The State of Michigan has an elected legislature just exactly the way Nevada has an elected legislature and they have the same privilege that you have of rescinding any law that they have on the books and I think if it were so one-sided that the Michigan Legislature would have put this law to sleep long ago. What we have heard tonight is a very interesting thing. What they have talked about doing is taking from negotiations process is one that I am not that familiar with other than being familiar with the law as it has been in the process over the years of writing the law. I have never negotiated at the table and taking it into a realm that I am rather familiar with and that is the political realm. The bill that would save everybody by putting the state employees and I am sure that Mr. Gagnier is here and he will say that he doesn't want to be run on to this ship along with the other employees in the state. It is a process here that if you will look on page 10 of S.B. 536 they don't quite tell you the whole story many times. These are the processes in which they would limit the arbitrator or the one who is going to do this mediation process. Mr. Culbertson then read a portion of the bill to the committee.

Mr. Culbertson stated that it was sort of like negotiating with your kid.

You tell your kid that he has fifty cents a week and how he wants to spend it is up to him but that I have the final say so. I don't want you to take a quarter and go down and buy an ice cream cone just before dinner and ruin your dinner. So I will give you the fifty cents but I will tell you how you can spend it, after you get it. This I will submit to you gentlemen is not a true access to negotiations. As far as S.B. 537 is concerned, I thought it was quite interesting. They were talking about going to the people in a referendum. It talks about $180,000 to run a referendum. They are perfectly willing to on a statewide basis if the state employees took the referendum route they would have to obligate the State of Nevada $90,000 or so just to have this election process. I submit to you that when as in Washoe County for instance you have three or four bargaining groups, the smallest being 50 people. How often do you think that 50 people and the same thing holds true with Washoe School District. It is a small unit of 30 people. How often do you think they can pay for a city-wide or county-wide referendum, those 50 people or those 30 people. A short submission to our responses to so many of these that are presented to you on paper. It is frustrating to sit here. The other day the employee in presenting what we had agreed to and thought was the best process took us a little less than an hour. The opposition went on for four and a half hours. We have been going almost two hours now of which I have probably taken about six minutes and I think that these processes that we go through are clear and succinct in the papers that we have taken the trouble to present to you signed by us. I would want to defend Dr. Lawrence. He was not appointed to the State Board that dealt with the MRB Advisory Committee to represent the superintendents of the school districts of the State of Nevada but as an employer representative and as such he took information that wasn't available to everyone and I am sure knowing Cliff Lawrence as many of us in this room do that he voted his conscience and to the best of his ability and I applaud him for the fact that he may have had a chance to look up and see the horizen rather than stumbling along, watching his feet.

Mr. Culbertson's position paper is attached to the minutes of this meeting as EXHIBIT C.

Mr. Bill Bunker of the Federated Firefighters of Nevada testified next. I have sat through two sessions now and listened to both sides. I think that the basic problem is that we have three issues before us that I can understand. We have a referendum. We can leave the decisions to our local elected officials or we can go to a third party. I have not heard any other proposals. Other than that the thing that I am concerned about is when somebody says that the firefighters have really abused this process. In the past four years the only firefighters that have gone to the final best offer have been Sparks, twice, Truckee Meadows once and North Las Vegas, once. Now I submit to you if binding arbitration is such a good deal for everybody in this State where in the heck was Clark County, where is the City of Las Vegas, where was Henderson, where was Incline Village, Tahoe-Douglas, Carson City, Reno. We don't to go to the arbitrator any more than they want to go to the arbitrator

I don't think we have abused the process and I think arbitration works. I think if you feel there is an abuse of the process two years from now let's come back and we can more than correct it. I don't have any problem with your ability to come up with what you think is the best solution. We have heard impasse to local government in California works and if you will look at the paper that I gave you last week strikes and unrests are in California. We have not had that problem in the State of Nevada. We hear about the exhorbitant costs of arbitration from the local government side but we hear no cost factor on a referendum. We hear about a 21% pay increase for Truckee Meadow Firefighters, but we don't ask how much those firefighters were making at the time. I think if arbitration was so bad that there would be entities from other areas in the state to testify against this. We have heard about a one year contract and that when we just get through with the contract then we start over again. Clark County Fire Department under the auspices of the last best offer will enjoy a three year contract. We are very happy with it. Management is very happy with it but we did have the final solution in case both sides came to an impasse. I feel that between a referendum and leaving the decision to the local officials for arbitration, I feel there is only one choice.

Mr. Nick Wagner, representing the Stationary Engineers, Local 39, testified next. He stated that some of the committee know of us, of myself, and about the fact that I have been here before and that I addressed a letter to your recently. Mr. Wagner's letter addressed to the committee is attached hereto as EXHIBIT D.

The intent of that letter fits in very well with what we have been discussing and what you have been considering. The alternatives placed before you may or may not resolve the issue. I am relatively new to this state. I have spent a year here representing public employees. I came from California. I spent close to ten years doing this thing there and close to fifteen years in and around public employees because I started as a teacher in that state. I have also represented teachers. Basically from what I understand in NRS 288 public employees decided to trade off their right to strike for a method that would resolve problems and the testimony that I heard this evening and previously, public employees are still in that same position. They are willing to trade. They are willing to accept something that will help to resolve problems that ensue, that come up during negotiations. Unfortunately the present method as you know is not solvent. The interpretation of emergency powers, etc. doesn't seem to be what the intent was that some of you had a hand in many years ago. There may be another alternative. It is one that has been in use numerous times with success for both sides and at times without that success. It is something that I personally have not witnessed directly. Mr. Wagner referred to the teachers strike in Hawaii and how they had resolved the problem through mediation arbitration. Some of you may be familiar with this. Basically the individual who is asked to come in to mediate and help bring both sides back to the table. Trying to resolve the

issue for both sides, trying to make both sides say yes I will accept or reject that. In other words, agreeing to a compromise. If it gets to the point where both sides can do that then in essence, that individual is empowered to make a decision that would be binding on both sides. I submit to you that there is another alternative. Whether or not that would be practical here in the State of Nevada is another thing. The interest arbitration the firefighters have had at their disposal for the last four years may or may not - I lost my thought. Basically what I was trying to say was that this was another alternative. Unfortunately something I have seen over the last fifteen years have been considered the scapegoats for all the problems in society. I don't think that is true. No one can be the scapegoat for all of the problems. I am going to end my remarks and leave you with a thought that there is another alternative that I know works. It leaves it in the hands of one person. The person may or may not be a local resident, yet an individual cannot only mediate but can also arbitrate. He or she should have some understanding of the negotiating process and some understanding of human nature and the process of communications. I think it is a good alternative.

Senator Gibson asked if there were any questions of Mr. Wagner.

Senator Gibson stated that one of the issues that is proposed in several of the bills is to remove supervisory employees from the bargaining unit. I think the primary bill with this suggestion is A.B. 55 and we would like to discuss this issue at the present time and if there are any proponents we would like to hear from them first.

Senator Gibson stated that incidentally the committee would lose its quorum at 9:00 P.M., so we would have to end this session at 9:00 P.M. and we will schedule another session later.

Mr. Donald Berger, Assistant Principal in the Clark County School District testified first.

Mr. Berger stated that tonight however he was representing NASA - the Nevada Association of School Administrators and CASA - The Clark County Association of School Administrators. I am here representing those groups in opposition to S.B. 367 and A.B. 55. We are in opposition to these bills because if passed, either one would not allow administrators to formally negotiate with their employees. Presently, Chapter 288 does allow for recognition and formal negotiations for bargaining units if the employees demonstrate a "community of interest". It was under this definition as supplied by NRS 288.170 that CASA - the Clark County Association of School Administrators - applied for, was recognized by and did formally negotiate with Clark County School District. These negotiations resulted in a formal two year written agreement ratified in June, 1979. I have copies of that agreement for each of you that I will distribute at a later date. The Agreement between

the Clerk County School District and The Clark County Association of School Administrators is attached to the minutes of this meeting as EXHIBIT E.

Mr. Berger stated that it was their choice and I stress choice of those individuals that lead that administrative group to formally negotiate.

If either bill, 367 or AB 55 were to pass, it would thereby remove the opportunity of any local administrative bargaining unit to make such a choice. As NRS 288 is presently written, it allows local entities to chose their role in assisting to formulate work conditions. It seems unlikely that this legislative body would want to change a statute which was wisely written allowing for local entities to chose their own path. It seems unlikely that this legislative body would pass a statute that would dictate less local decision making. The present law is working. The administrative groups around the state who do not wish to negotiate formally aren't negotiating. The 156 CASA members representing 75% of all eligible members in the Clark County School District have chosen to exercise their rights and are formally negotiating. That is their choice and they have that choice because of the present law. Again my question would be why change something that is presently working. Philosophically, one could argue that (1) any employee at any level would like and/or expect to have some say in his or her working conditions. Middle management and more specifically administrators should have that same right. (2) You might ask what about the management team concept. The majority of administrators in the Clark County School District feel that formalized negotiations and the management team concepts can go hand in hand. (3) School boards are elected units. Boards often times change personnel and personalities. Superintendent are a highly mobile population. Therefore a formal employer/employee agreement allows for more stability within the school district. (4) Without an agreement we have only regulations to protect the individual employee. The School District regulations can now be changed in a very short period of time. If I may I would like to ask you would you prefer working under conditions that can be changed in a matter of weeks or would you prefer being hired and working under conditions that are a more reasonable length in time or existence.

In summary, neither of these bills are acceptable. They extreme in their action and they would drastically change a bill already tested by time and active involvement. If I may reiterate, NASA - the Nevada Association of School Administrators and CASA - the Clark County Association of School Administrators are in opposition to both SB 367 and A.B. 55.

I would hope that through the wisdom of these two committees and their individual members to defeat this proposed legislation.

Mr. Berger stated that he had brought contracts of the Clark County School District if for no other reason for you to review and see that in fact the conscience of that contract are simple items such as travel pay, sick leave, bereavement leave, so that you can see that those contracts do not in essence ursurp any control or authority of the school district yet outline staff and welfare matters for the individual.

Mr. Dini asked if it is statewide that the school administrators received a higher increase than teachers in most school districts.

Mr. Berger stated that he really could not answer that question. I am not really familiar with the statewide selection. At this point in time, the Clark County School District in the past at least two years received the same salary raise increase by percentage. Both teachers, administrators and classified.

Mr. Dini asked if Mr. Berger had any statewide figures.

Mr. Berger stated no.

Mr. Dini stated that the accusation in the Lyon County School District has been that the administrators have received a higher percentage increase than the teachers. They don't have a bargaining unit for the employees but I just wanted to know if that was a statewide problem or not. Mr. Dini asked if anyone else in the room knew.

Mr. Bob Maples stated that in Washoe County we have the same settlement we have been negotiating with one exception a number of years back where the classified employees received two percent more.

Mr. Berger stated that as a matter of fact in the Clark County School District if you go back past two years, maybe four or six, as you may know we negotiate two years at a time, the administrators actually see less than the teachers. I guess my point is that if we adopt either one of these laws then we take the option of the local unit to even elect to bargain. At the present time to my knowledge Clark County Administrators are the only organization that has elected to do that.

Mr. Jack Berry of the Nevada League of Cities testified next. He stated that they support the supervisory provisions contained in A.B. 55 and also those contained in S.B. 536 and S.B. 537. As we prepared for this legislative session, we reviewed the committee minutes of the State Legislature in 1969 that brought the Dodge Act or collective bargaining bill into existence. We found out that the intent of the originator was to exclude supervisory and higher personnel from the bargaining process. We could not find in the minutes how it came to pass that when the bill was passed everybody was available, except for Department Heads. We then made contact with the National Labor Relations Board in Washington D.C. and had a series of discussions with them and the N.R.L.A. was passed in 1947 by Congress and that excludes supervisory and higher up personnel.

They also cited numerous Supreme Court decisions both at the State level and at the United States Supreme Court level upholding the exclusion of supervisory personnel from any collective bargaining process. They based this briefly on two positions. One was conflict situations. The courts very clearly have articulated that the desires of the union may be incompatible with the policies of management and the practices. This can because of the community of interest which is the second one where they consider supervisory employees to have a community of interest that is very similar to management because they have the right to influence the hiring, the termination, the pay increases, this disciplinary actions of subordinate employees. They consider this to be a community of interest with management. It is very interesting to note that N.R.S. 288 defines supervisory personnel exactly and identically as the NLRA Act did as it was proposed and enacted in 1947.

At the present time the City of Reno has eleven negotiating units and if you were to remove the supervisory people from collective bargaining you would produce the same net effect but we would reduce the number of units to four and the reason why I say this is because any public employer the way they are structured we try to retain relationships between groups of classifications. In other words for this illustration we will have non-supervisory classifications that are grouped together. We will have supervisory classifications that are grouped together. Professional and administrative and all of us attempt to maintain these relationships through the system, and it has always been this way. Therefore if you were to negotiate with any one of these groups at any level you will impact the whole system because the employer will still try to retain those relationships because that is the way government is structured. By the same token if this were to occur we would reduce the cost of collective bargaining at the local level.

Right now we are negotiating with four units. We have cost developed that it is costing us approximately $120.00 an hour to negotiate. Last week we negotiated in one session for six and a half hours. That is $780.00. Now that is just the actual collective bargaining in the negotiating room. This was sone on city time. By the same token this does not give you the cost of what the preparations were before we walked into the room from either side. This is a cost situation - it is a time consuming situation because we have started negotiations this year and we have had seven or eight sessions with our union and we are not into the tough bargaining yet. We've got a long way to go. Again if we end up with the impasse resolutions it could be even higher. We do feel and we recommend that you give serious consideration to removing supervisory and higher personnel from the collective bargaining process. We feel that it would be a step in the right direction and you would still be able to accept the net effect which would be very basically what it is now.

Mr. Jeffrey stated that he had listened to several misstatements when we were talking about our commission. There was a statement made early in this gentlemen's testimony that supervisory employees

were ecluded by law from the private sector. That is not true. In the construction industry the apprentices and journeymen, working foreman and general foreman are all covered under the collective bargaining agreement. The only people excluded are the owners of the shops and the general superintendents. I would just like to clear that up.

Senator Gibson stated that he could clear it up on the industrial side too. The industry foreman or superintendent or supervisory person is in the bargaining unit so there is an apparent discrepancy. I can relate to the beginning of this bill. At the time it was developed it was not intended that supervisory people be involved in the bargaining units.

Senator Gibson asked if there were any other questions of the witness.

Senator Getto stated that Mr. Berry had referred to the cost more than once. He asked Mr. Berry if he could give the committee some percentage figures or some direct figures on what the impact is, say on the budget of Washoe County.

Mr. Berry stated that they would have to work that out because they just costed it out on the hourly basis that they are paying right today to negotiate. It would depend on how many sections you have and I can try to project it for you based on prior years' experience and I would be happy to do that but I don't have those figures with me. I would also leave with you a guide to the procedures under the National Labor Relations Act and I would direct you to page 48 on supervisory personnel. Attached to the minutes of this meeting is a copy of A guide to basic law and procedures under the National Labor Relations Act as EXHIBIT F.

Mr. Bob Petroni stated that in keeping with not being repetitive and in the spirit of the open meeting law, I can only echo that our Board of Trustees supports the previous speaker's position and that we have S.B. 367 remove administrators and supervisors from the bargaining unit.

Mr. Nick Wagner testified next. He stated that he thought that perhaps one of the problems that we are looking at here is that we have had a conflict in terms of the definition of supervisory under the National Labor Relations Act. The NRS statute for supervisory personnel was not clear. That may be one of the intents of this. The law does not speak to working supervisors as such. My employees who have been given incidental responsibilities that could be, based upon advisory type of duties to hiring, to firing, to transfer. The law is not clear. I think rather than A.B. 55 being looked at in the manner in which it was addressed, perhaps the best way to look at it is to clarify that section of the NRS statute regarding the definition of supervisory employee and state as succinctly as possible that as per the National Labor Relations Act the correct interpretation and I won't get into which one is correct at this point. Really, what is a supervisor? If

it is a working foreman that's fine. If not then perhaps there should be a statement that excludes that type of individual from being a supervisory. Another point within A.B. 55, I believe that supervisors should also have the same bargaining rights as anybody else. Why exclude those people from it? They work just as well. They have additional responsibilities. They too are concerned with their terms and conditions of employment.

Senator Gibson asked if there were any questions of the witness.

Mr. William Bunker of the Federated Firefighters testified next. Mr. Bunker stated that he just had one little point and the reason that he would comment on it is because it touches close to home. The reason for taking the supervisory employees out of the bargaining unit, at least in our instance, is the old term divide and conquer. Years ago we had an exhorbitant offer made to our batallion chiefs who at that time were considered supervisory personnel in a wage package if they would relinquish the rights to the bargaining and they did and they came out. Two years later they found out that they were led down the primrose path. They rejoined and the employers took us to the N.L.R.B. in which we won the decision of the right to negotiate for the batallion chiefs. What has happened in my instance is they take the batallion chiefs out of the supervisory personnel, then they pass a little rule that gives the captain what they consider supervisory power and then out he comes and so on down the road until all we have left are firefighters and that is my understanding of requiring supervisory personnel. They want these people out of the bargaining.

Senator Gibson asked if there were any other comments on this issue.

Senator Gibson stated that another issue involved in several of the bills is definition of confidential employee that are not to be found in bargaining units. The committee will now hear anyone who wishes to speak on this issue, A.B. 226, S.B. 536 and S.B. 537.

Mr. Ross Culbertson testified next. He stated that this was the request for a piece of legislation for Nevada Public Employees Action Coalition. We would be glad to withdraw that. As we said before, we would like to leave as much of Chapter 288 in tact as is possible. We feel that 350 is by far the superior instrument just as it is. We feel that this type of approach to this might get us out of this constant hassle if we could just go with a piece of legislation that was written, I think, in all fairness and we tried to make the last best offer the most equal piece of legislation that we could giving no one side an advantage over the other side. We have had four years of case law under this and it seems that it would be fair. The other employee groups have watched this in action and felt that it was much more fair to them than the other and in order to keep the issue clear, we would be glad to withdraw this. There is just one piece of information in this. A confidential employer means anybody who works in personnel. In the Clark County School District which I am most familiar with having worked for them for a number of years, the girl that

I used to call for a number of years to get a substitute who has one of the lowest paying clerk jobs in the school district and is a confidential employee. In their classification, she belongs in the personnel department and she had about as much to do with confidential matters as far as negotiation is concerned as I did, or less, because she had no one representing her and she was not allowed to belong to any group and that's where the legislation came from. The organization in going back to those people decided that rather than muddy the waters that we would withdraw this piece of legislation.

Senator Gibson stated that the joint committee was not going to be able to conclude the other issues that he had listed. There are still several issues - narrowing the scope of mandatory items of bargaining - there is a matter of inclusion of state employees - there is a matter concerning the structure and in fact the existence of the employee management relation board - a matter of the treatment of the open meeting law and a side issue of whether or not the membership should be required as an outside organization by bargaining units within the state.

Testimony of I. Howard Reynolds, the Personnel Director of Washoe County was submitted to the committee and is attached to the minutes of this meeting as EXHIBIT G.

Senator Gibson further stated that the joint committee would meet again next Tuesday at the same time hopefully to conlude all of these issues and then determine what we are going to do.

There being no further business to come before the meeting, the meeting adjourned at 8:56 P.M.

Respectfully submitted,

Barbara Gomez

Barbara Gomez
Assembly Attache

ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

GUEST LIST

Date April 28, 1981

PLEASE PRINT

PLEASE PRINT YOUR NAME	PLEASE PRINT REPRESENTING:	I WISH TO SPEAK FOR	AGAINST	BILL NO.
Joyce Woodhouse	Nev St. Educ Assoc		✓	SB 367, SB537
Joe Fisher	Nev St. Educ. Assoc.			
JOHN KIDWELL	EMRB Adv. Bd.	✓		AB400
Shirley Hunt	Clark County School Bd			
Pat Gothberg	Nevada Nurses' Assn.			
Bill Wallace	City of Reno	✓		SB536
Bruno Menicucci	" " "	✓		SB536
Ron Creagh	" " "	✓		SB536
Jim Berry	" "	✓		SB536
GREG RIVET	CITY OF SPARKS	✓		SB 536 & 537
Howard Reynolds	Washoe County	✓		SB536
Bill Bunker	Fire Fighters		✓	AB 55
Florina Sheehan	DMV			
Donald D. Burger	Nevada Association of School Dist		✓	SB 367, AB55, AB 400, AB. 452
Bob Maples	Washoe Co. School Dist.	✓	✓	
Richard T. Kreps	Clark County PEA		✓	

[illegible]

895

ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

GUEST LIST

Date _____

PLEASE PRINT YOUR NAME	PLEASE PRINT REPRESENTING:	I WISH TO SPEAK		
		FOR	AGAINST	BILL NO.
BOB GAGNIER	SNEA		✓	536-537
DAVE BOLES	District Health Dept			
Chris Knoll	New Assoc of Employers	I	✓	AB400
Ron Anderson	NPEAC		✓	AB452-SB536
Karen McOmber				
Kathy Tindall	IBEW L.U. 1245			

Ex. A.

Exhibit A

City of Detroit Executive Office — *Coleman A. Young, Mayor*

April 16, 1981

Mr. Bill Wallace, President
Nevada National League of Cities
P.O. Box 1900
Reno, Nevada 89505

Re: Compulsory Arbitration of Labor Disputes

Dear Mr. Wallace:

As someone once said, "The road to good intentions is paved with hell." Here in the City of Detroit we now have hell to pay in the form of employee layoffs and service reductions to finance a series of budget-breaking arbitration awards issued under Michigan's compulsory arbitration statute known as Act 312.

The repercussions from those awards are still being felt as we prepare to try to reopen labor agreements to seek wage reductions and wage freezes in an effort to balance our books for the coming fiscal year.

The good intentions of the State Legislature and its quest for the magic formula which would allow resolution of labor disputes with unions representing police and fire employees has been met with failure. Instead of a temporary loss of service and public protection due to a strike we have had what may be a permanent reduction in manpower because of the excessive costs of the arbitration process.

I have enclosed a presentation I made recently to the Detroit Chapter of the Industrial Relations Research Association on this subject and it goes into much more detail on our experience here in Detroit.

In summary, I would say that my strong recommendation is this — Don't Do It!!!

Very truly yours,

Coleman A. Young

COLEMAN A. YOUNG
Mayor

Attachment

Remarks of Mayor Coleman A. Young to the Detroit Chapter,
Industrial Relations Research Association
February 5, 1981

My topic this evening is public sector labor law in Michigan. I'm going to present to you a brief outline of the laws that we have and how they are working and what I think we should do to improve them.

There are several laws that affect public sector employment relationships in Michigan. I will focus my remarks on two of them: The Public Employment Relations Act which is Public Act 379 of 1965, as amended, and the Police-Fire Arbitration Act which is Public Act 312 of 1969, as amended. I have a direct personal connection with both of these laws, because I sponsored both of them in the legislature as a State Senator and I have lived with both of them as a public sector manager as Mayor of the City of Detroit.

The basic purpose of the Public Employment Relations Act is to provide public employees the right to organize and bargain collectively and, although it retains the prohibition against strikes that was in the Hutchinson Act of 1947, PERA removed the harsh strike penalties from the law. PERA defined unfair labor practices, established enforcement machinery, and created machinery for orderly representation elections to be conducted by a State agency now known as the Michigan Employment Relations Commission or MERC. Although we in the legislature did not

intend that the law would cover supervisory employees, and its chief draftsman did not think it covered supervisors, administrative decisions by MERC extended coverage of the law to supervisors. The rationale for this MERC decision apparently was that it really didn't matter since no public employees were permitted to strike and therefore the employer held all the cards and could simply refuse any unwarranted demands whether from rank and file or from supervisory employees. The courts deferred to the special "expertise" of the Employment Relations Commission and sustained their decision. This same premise of a lack of a right to strike has also been used by MERC and the courts to greatly expand the scope of bargaining in Michigan's public sector.

In 1965, when we passed PERA, we thought we were providing public employees with a major step toward the kind of collective bargaining practiced in the private sector under the federal labor laws. What we have today in Michigan under PERA is very different from the private sector model. Strikes are technically prohibited, supervisors are covered by the law, and the kinds of issues that are mandatory subjects of bargaining are much broader in the public sector.

After years of direct labor relations experience with the Public Employment Relations Act, it is my conclusion that, to the extent it is like the private sector model, it works; to the extent it is different, it does not work.

When I was in the legislature, we accepted as a working premise that collective bargaining is the best system yet developed for resolving labor disputes. But we couldn't let go of our feelings that strikes by public employees were intolerable. So the labor laws we wrote were different from those of the private sector.

Last year the legislature passed a bill that would give public employees (except State employees) the right to strike. We were pleased when the governor vetoed the bill because it contained access to the compulsory interest arbitration process we find so damaging to the democratic process. We objected strenuously to the bill as passed because it was lopsided and unfair. A bill that grants a right to strike should also strip away the special legal provisions that were created because there was no right to strike. The scope of bargaining should be reduced to that of the private sector and supervisors should be excluded from collective bargaining. Such a bill would put our public sector labor laws much closer to the private sector model that we believe works well.

I think, however, we should re-examine the concept of public employee collective bargaining before we rush off to amend PERA to grant a right to strike. We must think through carefully the answers to several basic questions and we should open our eyes to our own experience and that of the Federal and State governments around us.

Is collective bargaining really appropriate in the public sector? Can there be real collective bargaining without the strike weapon? Can there be real collective bargaining when supervisors are in the unions too? Can we live with strikes by public employees? Can we live with such strikes while the supervisors are in the union too? What kinds of strikes can we tolerate? Over what kinds of issues?

I believe the experts in this room tonight should assume some of the responsibility for providing answers to these kinds of questions. After all, you are the collective bargaining professionals. You know what collective bargaining is and what it can and cannot do. You know how to make it work. The laws of this state should not be based solely on what is best for public employees, they should be based on what is best for the public generally, including public employees. Right now the Union lobbyists in Lansing exercise great influence. As an old union man I kind of like that, but as a public official I must insist that what is best for all the people is what we must do. There are those in Lansing today who believe all unions are locked in struggles with their employers. Today that is a quaint and naive concept and it certainly isn't at all appropriate in the public sector. You are the people; management, union and neutrals alike, who are the employer in the public sector, and who have a responsibility to speak out when the legislature considers major changes in the State's labor laws.

Probably the most important change in our laws that I advocate is the repeal of the Police/Fire Arbitration Act; Act 312. When we passed Act 312 in 1969 we did so as an experiment. Governor Romney had appointed a blue-ribbon committee to study the effects of PERA and one of their minor recommendations was that compulsory interest arbitration for police and fire employees should be tried. I should have been suspicious of a group of arbitrators recommending arbitration. It's like surgeons recommending surgery. Unfortunately for us there is no such thing as compulsory arbitration insurance.

We passed Act 312 on an experimental basis. The law rested firmly on the premise that nothing could be worse for society than a police or fire strike. Although there are no penalties in the law for striking, there is no doubt that the purpose of the law was to prevent police or fire strikes. During the two years immediately following the passage of Act 312 there were more police and fire strikes in Michigan than there had been in the two years immediately preceding its passage and the law should have been allowed to die a natural death for that reason alone. Instead, the legislature removed the sunset provision and made the law permanent. We still have occasional strikes by police and fire employees. Last year the legislature got a close look when Lansing police employees struck. I know that Police and Fire unions argue that we would have had even more police and fire strikes without the law. Maybe they're right. They would know.

But the fact that the law fails in its intended purpose is only one objection to Act 312. I have two other major objections.

First, we are convinced that Act 312 prevents collective bargaining from taking place. I think this problem is greater when the the union involved is larger. I know there are statistics which show that most police and fire contracts are settled without resort to arbitration, but, then, most are in small jurisdictions where the union can't afford the expense of arbitration and they know they must follow in a labor market led by the large jurisdictions. Detroit, of course, is at the other end of the spectrum. The largest union entitled to Act 312 is the Detroit Police Officers Association and they have used Act 312 every chance they have had.

We are convinced that compulsory arbitration, by its very nature, simply cannot resolve differences in the same way voluntary agreements resolve differences. Compulsory arbitration differs sharply from voluntary binding arbitration in this respect also. If a party to a dispute does not voluntarily agree to its solution, either by direct agreement or agreeing to be bound by a third party's decision, then that party can, and probably will, repudiate that solution if he disagrees with it in any way. The non-voluntary "solution", then, really is no solution at all. The issue lives and will be raised again at the next opportunity.

At the bargaining table, Act 312 unions find it difficult, if not impossible, to bargain in good faith. How can they agree to drop, or compromise on, any issue? Each issue is the favorite demand of some member or group of members. How can responsible union leadership, which must stand for election to keep their jobs, tell any part of the membership that their pet demand will not be pursued when Act 312 is readily available? The answer is: they usually can't; and they wind up going to arbitration with dozens of issues. The only way a union can avoid arbitration is to get the employer to grant its demands. As each issue is discussed at the bargaining table, the underlying position of the union is: "either give in or we'll arbitrate".

My other major objection to Act 312 is that, while it is possible for an arbitrator to issue a brilliant and enlightened award, it is also possible to issue a mistaken and destructive award. One problem is that the arbitrator in no way is required to account for his actions. He can't be voted out of office. In fact, he probably won't even be heard from again until he surfaces in another town on another Act 312 case. I have referred on other occasions to this as hit-and-run arbitration, but I am not here tonight to criticize professional arbitrators. I want to criticize the compulsory interest arbitration process. To do that I must rely on the experiences we have had in Detroit. To relate those experiences I must put them in their historical context.

Taking office in 1974, I believed that City employees, as their counter parts in the private sector, deserved a fair day's pay for a fair day's work, and therefore I used as a measure those improvements granted to members of the UAW, including the cost of living allowance, although our COLA was not quite as generous as the UAW formula since ours at least had a cap during the year.

This wage and COLA program was also applied to our police and fire fighter employees. However, before the ink was dry, the oil embargo began and, with the auto industry, the City's economy went in to a tail spin. "Stag-flation" became the word of the day meaning little economic growth but with growing inflationary pressures. For the City this triggered increased labor costs under the COLA formula but greatly reduced the revenues from traditional tax sources. Being at our statutory limit in taxing authority, large scale layoffs for the first time in the City's history were required. This included layoffs of police officers which culminated in what has become known as the Cobo Hall incident, perhaps the lowest point of morale and esteem that I hope this City will ever face. An infusion of federal money permitted a quick recall of many laid off employees and, with an improvement in the auto industry, an equilibrium had been reached as we entered into bargaining in 1977. I had resolved at that time to never allow the City's costs to be driven beyond our ability to meet them. I would not and will not go

the way of New York and other municipalities and roll over massive deficits and use other cosmetic treatments for the City's budget. Therefore, after a series of strikes in the summer of 1977 we reached agreement with the majority of our labor organizations to replace the cost of living allowance formula with a flat percentage increase amounting to about 13% spread over the 3-year period. The Police and Fire unions, of course, did not agree, although they were offered the same economic improvements. While filing for arbitration under Act 312 they also pursued other means to achieve something more agreeable to them. They succeeded in persuading the Circuit Court to order the City to continue making new COLA adjustments under Section 13 of Act 312 which section was orginally designed to maintain the status quo during the pendency of the arbitration process. The City was therefore, by court order, paying to those employees during this new contract term a new COLA adjustment over and above what their previous contract provided, and COLA was the principal issue in negotiations and before the 312 arbitrators. The unions were thus able to inform the arbitrators that the courts had ordered it paid, that the City was in fact paying under the order, and obviously the City had therefore an ability to pay.

The first award issued was in favor of the Police Lieutenants and Sergeants Association. The City had proposed as our last best offer that the salary differentials as then existing simply be maintained at

122% of police officer maximum for sergeants and 137% for Lieutenants. The City's offer on a wage and COLA proposal, which was a separate union demand, was to continue COLA only if it was continued for the DPOA. In other words, the City simply requested that the arbitrator maintain the supervisory pay differentials which our surveys indicated were already somewhat generous and, therefore, proportionate increases would apply to these supervisors as the salary and COLA adjustments, if any, were applied to police officers. Testimony was presented regarding the City's budgetary problems and projected revenues. It happened that for the 1977-78 fiscal period we were optimisticly expecting a modest budget surplus. That surplus was contingent upon an expected economic adjustment for police and fire fighters equivalent to that negotiated with our other unions. It also anticipated the most favorable results from our revenue sources. The City pointed out that its current differentials for these supervisors, as well as their pay rates, were at the top when compared to the differentials and pay rates of other large Cities. The arbitrator, unfortunately, agreed with the union that they should receive the pay differentials as proposed by the City or the wage and COLA proposals of the union, <u>whichever was greater</u>. In regard to the COLA issue, the arbitrator's opinion explained that he was granting the union's COLA demand because they were "entitled to it". No weight was given to the 50 other city union contracts that did not include COLA, no

weight was given to the fact that of the 10 highest paying Cities, no equivalent employees received COLA; only that these employees were "entitled to it". That was the tail that wagged the dog.

Following closely behind the Police Lieutenants and Sergeants decision came the decision of the arbitrator in the DPOA matter. This arbitrator decided that he could not in good conscience destroy the morale of these police officers by giving them less than had been awarded the Lieutenants and Sergeants. Considering all other factors he indicated that it was the main reason for his decision. This particular arbitrator commented about the City's claim of a limited ability to pay rather than an absolute inability to pay and that the City had not introduced its budget document. As this award was issued in December 1978 we are not sure of which budget document he was referring to. However, never during the course of the arbitration did the union, its panel member or the chairman of the arbitration panel, ever request that a budget document be submitted in evidence. In fact, my budget director and I testified at length on the City's current and expected financial condition. Although, acknowledging the City's wage and salary surveys, the agreements reached with our other unions, and the precarious nature of the City's economic situation, the Detroit Police Officers Association arbitrator finally rested his decision on the previous award in Lieutenants and Sergeants case.

The award in the Fire Fighters case was not issued until the succeeding year, but since the City had not contested the traditional parity relationship for these employees, the economic die was cast. The principle issue in the fire case was seniority promotions. No other major City promotes by strict seniority and we were able to present testimony from some of the most prominent leaders in business, industry and labor in Detroit to indicate the broad base support for the City's position. The union had also requested an improvement in their vacation or furlough allotment, among other things. The reason I mention that is to give you an idea of how the reasoning works under this process. The arbitrator found on behalf of the union on both issues. He awarded a continuation of the seniority promotion system because it was a system that had not been changed for 100 years. He awarded the union's demand for an improvement in their furlough allotment because it had not been changed for 60 years (must be a moral there somewhere).

Our appeal to the Michigan Courts on these cases was taken not because of a need for revenge or because of bitterness or vindictiveness, but because of a felt need for fairness and justice to all the people of the City of Detroit. These awards have a continuing effect. In addition to the $50 million in excess of the City's offers over that 3-year period, the high wage and benefit levels that carry over from that period must be born annually and we estimate that this year two-thirds of our projected deficit can be traced directly to those arbitration decisions. Fortunately there is one bright spot, at least as of today, and that is

that when the unions went back again late last year to have the courts continue COLA, looking for a replay of their success in 1977, this time the court did not agree. The Police and Fire unions have appealed that decision and in addition have filed an unfair labor practice charge; but we hope that now with some inkling of sanity thereby expressed by the court, it may mean that this period of fiscal madness imposed through the 312 process may be coming to a close. Only until 312 has been repealed however, can we be certain of it.

Having made that statement I should probably respond at this point to the typical reaction, which is how can we possibly contend with police or fire strikes? The folk wisdom being that such strikes must be avoided at all costs. The City of Detroit, in fact, has endured police strikes. Some have dismissed these as being unrelated to collective bargaining. The obvious point, however, is that if they can strike because of a perceived inequity during a contract term why not following a bargaining impasse? Other strikes involving police and fire fighters in Michigan have recently occurred which for those who embrace 312, no matter what the costs, gives evidence of the false security and false hope embodied in that statute.

What Act 312 has done, in an effort to avoid the short-run risks of a public safety strike, is to require in Detroit a permanent reduction in public safety and other needed services. The results of Act 312, therefore, have been worse than what the law was designed to prevent.

In summary, what we in the City of Detroit would like to see happen is perhaps that which should have happened in 1965, that is, the inclusion of public employees within the statutory collective bargaining framework covering private sector employees. We are convinced that if collective bargaining for public employees is appropriate then true collective bargaining should be the process as in the private sector.

Thank you very much.

GLB
Exhibit B

April 28, 1981

TESTIMONY

OF

JOHN KIDWELL

TO

THE JOINT COMMITTEE ON GOVERNMENT AFFAIRS

Mr. Chairman and Members of the Committee:

The purpose of this testimony is to support the proposed changes to N.R.S. 288.200 as proposed within Senate Bill 350 and the principle of "binding interest arbitration" as proposed in Assembly Bill 400.

The last time this committee met, I addressed you from my position as chairman of the Employee-Management Relations Advisory Committee. From that position, I believed it necessary to avoid personal opinion and experience and only relate the final positions taken by the Advisory Committee.

Today I come before you as a practitioner. In doing so, I would first like to offer my credentials. My career, which has been devoted exclusively to employee relations, has spanned a period of twelve years. For four years, I

served as the Director of Negotiations for the third largest non-teaching independent public employee organization in the United States. In that capacity and through my dozen years, I have negotiated nearly two hundred (200) labor contracts and supervised the negotiation of approximately five hundred (500) more. Since arriving in Nevada a little more than three (3) years ago, I have served as Chief Negotiator through ten (10) completed and one (1) incompleted negotiation(s) and am presently involved in four others. Through my consulting firm of J. R. Kidwell & Associates, I presently represent the employee relation interests of six Nevada unions and associations.

Ladies and Gentlemen, on behalf of my clients and in the interests of good employee-employer relations, I have a lot to say. I would like to address three areas of concern. First, the existing statute and its failings. Second, how the proposed changes will improve and provide greater equality to the process and, third, responses to some of the statements made by opponents of SB 350 in testimony offered you last week.

From our perspective, the existing statute fails in several respects, both in theory and in practice. For example, where the governor may intervene for the purpose of awarding binding authority to a factfinder. In our experiences, this process has proven to be both frustrating and fruitless. Sometimes, it causes greater disharmony between the parties than it cures.

To illustrate the point, in 1979, the Reno Municipal Employees Association was negotiating with the City of Reno wherein the City was proposing to "buy out" the dependent health insurance premium from the existing contract by placing a sum of money on the pay schedule in exchange for the Association's agreement to release the City from its 75% payment of the dependent premium. The Association had taken the position that they were satisfied with the insurance benefits and wanted no change. However, the parties continued to negotiate all issues until the day of the hearing before the governor's representative.

The Association had previously petitioned the Governor in order to protect their right to a binding factfinding hearing in the event it was necessary.

It must be noted here that on the day of the hearing the Association decided that they were very close to a final agreement and since they were not the moving party on the insurance issue, that if the City still wanted a change from the existing contract provision, they (the City) would have to either request binding authority from the Governor or ask the Association to take the issue forward for a binding decision. As it turned out, the City did neither. Instead, they simply held out any pay increase until the Association "gave in" on its buy out proposal. When the Association approached the City requesting the issues go to a factfinder, the City said okay but if the decision went against them they would not abide by it.

Finally, when the Association appealed to the EMRB alleging "bad faith", the Board could only rule that the law does not require that either party take issues before

the Governor or to Binding Factfinding when attempting to change existing contract language.

The points we're trying to make here are:

1.) For the past two years (and it could continue forever), the Governor has not awarded binding authority to any organization on any issue, causing employee groups to either pass on a contractual understanding completely (as was the case in Reno) or tuck their collective tail between their legs and just accept what's given them, and;

2.) In the alternative, an affected employee organization moves on to <u>voluntary</u> (non-binding) factfinding, spends all the money they have (in some instances, borrows it), only to receive a favorable decision that is rejected by the employer.

I think it is important to note here that I have only negotiated one contract under the binding provisions of N.R.S. 288.205 and .215. In that instance, the parties recognized at the beginning of negotiations where the process could ultimately lead and that they therefore must

be responsible in their positions throughout, understanding that they may ultimately have to justify their actions. The result was a very productive, intelligent and responsible process ending in agreement satisfactory to both parties. By-the-way, this negotiation was with the City of Reno and its firefighters.

To make the point, without binding opportunity, CHAOS!! With binding opportunity, ACCORD!

The second point we would like to address is how the provisions of S.B. 350 and/or AB 400 would guarantee greater equality in the process of negotiation. Let's all remember, the purpose of negotiation is to deal with problems and concerns and in doing so, agree to solutions or compromise. Both parties have a right to propose negotiation concerns and, if the moving party can justify their need with substantial and overriding proof, then that party should win the right to change. However, when the parties do butt heads on who presents the more convincing agreement, it then becomes necessary for an experienced, non-interested party to decide the issue(s).

When the use of this independent person occurs, each party can feel satisfied that they had their "day in court". The party against which a decision goes at least knows that the final understanding was awarded the other party because they presented the more convincing evidence.

The authority of the arbitrator should be limited and is by the existing and proposed statute. Practice, both in Nevada and surrounding states prove to us that when the process is followed to the letter, it is fair and just and does not abuse the rights of either party.

To sum up this point, allow me to pose these questions: (1) If the Governor continues to deny binding authority, as he has done for the last two years, where is the incentive for the employer to reach agreement? (2) If an employer is insisting on a change to a contract that would alter or reduce benefits, but will not agree to binding factfinding to win their point, how is the contract settled?

In our opinion, the only way the parties can be assured

of equality in the negotiations process is to have the right to third party, final determination, if necessary!

Our final concerns relate to some of the statements made by opponents of SB 350 in their testimony of April 20. I'll first remind you of their comments, with some paraphrasing, and then respond.

1.) "The employee organizations are the only ones that make proposals at the bargaining table" . . . . . I've never opposed the gentleman that made that comment, but I'd like to. If employers aren't making demands for necessary changes (and I've never known any that don't), they had better reevaluate their negotiation techniques.

2.) "With binding arbitration, employee groups will continue on to arbitration even if they got what they were after, just in case there is a little more available" . . . . . I have negotiated with most forms of arbitration conceived, and I have never proceeded to arbitration on an issue after successfully negotiating to receive our target figures. I'm not saying that this hasn't or couldn't happen,

but I have never seen nor heard of it occurring.

3.) "The opportunity for binding arbitration only benefits the employee organizations" and "in the face of impending reductions in the revenue, we can't allow a third party to decide money issues" . . . . . Last year, when the Carson City School District was unable to convince the Teachers' Association that it couldn't pay for the demands for salary increases made by the teachers, the School District requested that the parties go to binding arbitration so that they (the District) could prove before a disinterested party that they were telling the truth.

What this points out, and what my experience reflects, is that both parties can utilize the binding process to settle issues where a point is not being understood or accepted at the bargaining table. Additionally, how many employers have been criticized by their constituents for granting increases or benefits that were justified through table presentation, but were unpopular politically when published by the media? Sometimes, it's much more palatable if the final decision was made for you.

4.) "Even though we've had a number of Governor's hearings, we almost always settle without going to arbitration" . . . . . .

One of the major points that escapes the observer of the public sector negotiation process is the economic position into which most employee organizations are placed when considering the worth of taking issues to an arbitrator. Most employee groups negotiating with public employers are independent of statewide or national affiliation and are usually very small in bargaining unit capacity. When you already tax your membership with a dues that must support day-to-day concerns, the amount remaining doesn't constitute much of a bank with which to pursue a five to ten thousand dollar arbitration bill. What must be recognized here is that most employee organizations <u>can't</u>, by virtue of size and corresponding bank accounts, afford to pursue an arbitration award that can simply be dismissed through the unilateral judgment of the employer. And please don't think that the employers don't know this situation exists. It is

simply another tool that potentially gives the employer total control in the existing process.

Mr. Chairman and members of this joint committee, the six organizations and four thousand members I represent urge the passage of an impasse process that will give them an equal opportunity at the bargaining table. That process is included in the text of the new language proposed by Senate Bill 350 and supported by the principle espaused in Assembly Bill 400.

THANK YOU

Ex. C
Exhibit C

POSITION PAPERS ON:

A.B. 55
A.B. 400
A.B. 452
S.B. 367
S.B. 536
S.B. 537
S.B. 550

April 28, 1981

ASCRIBED TO BY THE FOLLOWING:

William A Bunker
FEDERATED FIREFIGHTERS

Larry Lawrence
POLICE PROTECTIVE ASSOCIATION

Ross Eggleston
NEVADA PUBLIC EMPLOYEE ACTION COALITION

James L. Woodhouse
NEVADA STATE EDUCATION ASSOCIATION

A.B. 55

Assembly Bill 55 is a highly restrictive bill and offers no positive changes to the collective bargaining statute governing public employees. We strongly oppose its passage for several reasons.

We believe that any employee group must have the right to collectively pursue economic and professional goals that are deemed important to that group of people. A.B. 55 denies the right of bargaining to school administrators. We support the right of administrators to negotiate their work contracts.

We are additionally disturbed by the exclusions listed in this measure of the monies available to be considered in the bargaining and arbitration procedure. The statute presently reads that the arbitrator must determine the financial ability of the public employer to pay based upon the employer's information. The arbitrator then must use this information in making his/her award. We believe the suggested language on page 5 of the bill is completely unnessary.

We adamantly oppose the directive that supervisory employees shall provide the normal public services should employees go on strike or violate the law. We ask you:

Do you really want management fighting a fire at a high rise hotel?

Do you really want management quelling a riot in downtown Las Vegas?

Do you really want management teaching your children, serving hot lunches, or driving school buses?

Do you really want management running the computers and data processors or sweeping the streets of your city or county?

We do not believe you do since these circumstances are clearly an inefficient use of time and skills. Certainly the services would not be appropriately rendered.

We urge you to consider A.B. 55 no further. Thank you.

Signed by:

William A Bunker
FEDERATED FIREFIGHTERS

POLICE PROTECTIVE ASSOCIATION

NEVADA PUBLIC EMPLOYEES ACTION COALITION

Joyce L. Woodhouse
NEVADA STATE EDUCATION ASSOCIATION

4/28/81

A.B. 400

Since A.B. 400 levies such a heavy load against the employee organizations, we oppose the measure.

A.B. 400 requires membership authorization cards to be signed by the majority of the members stating the assertion of the employee that that organization represent him/her and stating that he/she is a member or will be a member. Many of our organizations have continuing membership forms and are on payroll deduction for membership dues. We do not employ large staffs of professional and support personnel. Instead, all of us have limited staff support which is stretched to cover the load by volunteers from our ranks. Others are too small to afford to employ any staff. We then support these organizations through all volunteer work. A.B. 400 proposes language that will place and undue and unnecessary burden upon us.

We do salute the recognition by the writers of this bill in that the present advisory/binding arbitration procedure used is replaced by automatic binding arbitration. The political influence of the executive branch of government is thus removed. However, we do believe a better procedure for resolution of impasse is the last best offer arbitration procedure as framed in Senate Bill 350.

For these reasons, we urge you to defeat this measure. Thank you.

Signed by:

William A Bunker
FEDERATED FIREFIGHTERS

POLICE PROTECTIVE
ASSOCIATION

NEVADA PUBLIC EMPLOYEES
ACTION COALITION

Joyce L. Woodhouse
NEVADA STATE EDUCATION
ASSOCIATION

4/28/81

A.B. 452

Assembly Bill 452 makes a mockery of the Local Government Employee-Management Relations Act and the hours of work done by the Nevada Legislature for six sessions. It lashes out to destroy the compromises in the scope of bargaining made during the 1975 legislative session.

In a time of budget cuts a management bill to make reduction in force provisions a non-negotiable item is reprehensible. Public employees must have the right to a voice in determining direction on those items which affect their professions and their futures.

A.B. 452 further seeks to strike from the statute the provision for contract articles that existed in signed and ratified agreements as of May 15, 1975, at 12 p.m. to remain negotiable. On this date the public employee organizations were before like committees as today--some of you were there. At that time we had just lost a devastating battle on a management bill which sought to reduce the broad scope of bargaining to the one you see before you now in NRS 288.150. This item, along with procedures for reduction in force and teacher preparation time, were the only items we were able to add to this list. We urge you to not destroy the little that we were able to salvage from that confrontation.

The contract provisions that existed in signed and ratified agreements as of May 15, 1975, are extremely important to us. In addition to this item being a part of a very important compromise, every public employee in this state

stands to lose items from their contracts should this bill be accepted. We plead with you to not allow this to happen.

A.B. 452 would also delete teacher preparation time from the scope of bargaining in NRS 288. This is certainly a legitimate item for negotiations between teachers and their school board. We iterate, public employees must have a voice in their profession and their future.

We urge your support for harmony in the public sector. We urge you to not dismantle the collective bargaining process. We urge you to not consider this blatant attack on public employees.

Thank you.

Signed by:

William A Bunker
FEDERATED FIREFIGHTERS

POLICE PROTECTIVE ASSOCIATION

NEVADA ~~PUBLIC~~ EMPLOYEE ACTION COALITION

Joyce L. Woodhouse
NEVADA STATE EDUCATION ASSOCIATION

4/28/81

S.B. 367

Senate Bill 367 will deal a devastating blow to the morale of all public employees in this state. It will deprive present employees of the very few gains we have made over the past ten years. It will deprive others from ever pursuing the goals of their members.

S.B. 367 denies to teachers of this state the right to negotiate teacher preparation time. Although this is an item that related specifically to one employee group, we <u>all</u> support their right to bargain it at the negotiations table. Most certainly preparation time is a definite and direct condition of work for teachers.

S.B. 367 is ill-conceived as it necessitates the complete restructure of boards and commissions throughout Nevada. It is certainly unclear as to whether anyone could serve on any board that is not directly related to employment. This measure seeks to provide to management in law the right to determine just how many days a public employee can serve on a state board or commission. We find this idea particularly abhorrent.

Public employees are <u>not</u> second class citizens, and we do serve this state ably and well. At present, a teacher and a policeman serve on the Public Employee Retirement Board. Three teachers and two administrators serve on the Commission on Professional Standards in Education. PERB meets monthly for two to three days each month. The Professional Standards Commission meets monthly for one day. The people serving prepare for these meetings on their

own time. The Police and Fire Retirement Advisory Committee includes five firefighters and policemen. All three of the committees are in place in Nevada law. All of you are aware of many other boards and commissions. We believe the restriction in S.B. 367 is an attack on our integrity to those commissions and boards and to our professions. We are proud of our involvement, and we salute those public employees who have answered the call to serve.

Once again, as in A.B. 55, we oppose the move to deny school administrators the opportunity to bargain collectively if that is their desire.

We ask you to destroy this bill as it seeks to further "take away" from the public employees of this state. It seeks to negate the professional and community services we provide. Thank you.

Signed by:

William A Bunker
FEDERATED FIREFIGHTERS

POLICE PROTECTIVE ASSOCIATION

NEVADA PUBLIC EMPLOYEES ACTION COALITION

Joyce L. Woodhouse
NEVADA STATE EDUCATION ASSOCIATION

4/28/81

S.B. 536

Senate Bill 536 provides for collective bargaining for state employees, which we support. However, we must oppose this bill because it does not address any of the problem areas in NRS 288. In fact, it worsens them.

Although S.B. 536 removes the Governor from deliberations of advisory versus binding arbitration, the bill does not add to the statute provision for <u>any</u> form of binding arbitration other than "The parties to the dispute may agree to factfinding, to make the findings and recommendations on all or any specified issue final and binding on the parties."

In addition, we have serious concerns in the new language on page 10 which sets forth the parameters for the arbitrator in determining the financial ability of the public employer to pay. Of particular concern is the addition of the priorities set by the elected officials for use of the money of the public employer. We do question the advisability of this provision.

We urge you to defeat S.B. 536. It provides nothing but problems to the collective bargaining process. Thank you.

Signed by:

William A Bunker
FEDERATED FIREFIGHTERS

POLICE PROTECTIVE ASSOCIATION

NEVADA PUBLIC EMPLOYEES ACTION COALITION

Joyce L. Woodhouse
NEVADA STATE EDUCATION ASSOCIATION

Senate Bill 537 provides for the most absurd form of binding arbitration ever proposed. If passed, this bill would destroy every public employee organization involved and cost the taxpayer many tax dollars.

S.B. 537 requires that if one party or the other rejects the report of the factfinder, the issue goes to the general public in a referendum vote. The cost would be borne by the two parties, each paying one-half of the expense of the election. We do not believe this is proper use of tax money to local government entities. We also do not wish to spend our dues money in such a manner. It could certainly bankrupt employee organizations in a short time.

As in S.B. 536, we oppose the language proposed in the section dealing with the determination of the financial ability of the public employer to pay. We support, again, the right of state employees to bargain collectively.

However, we urge you to obliterate this bill. S.B. 537 is fiscally irresponsible to all concerned: employers, employees, and the general public.

Thank you.

Signed by:

William A Bunker
FEDERATED FIREFIGHTERS

POLICE PROTECTIVE ASSOCIATION

NEVADA PUBLIC EMPLOYEES ACTION COALITION

Joyce L. Woodhouse
NEVADA STATE EDUCATION ASSOCIATION

S.B. 550

Senate Bill 550 is another attack upon employee organizations. We are adamantly opposed to any and all attempts by government to infringe upon our rights to organize on local, state, and national levels.

Very simply, many of us do affiliate on all three levels because it provides more resources, information, and experience. It is our right to do so.

We urge you to not consider this invasion of privacy and intrusion on our rights any further. S.B. 550 deserves a very early death.

Thank you.

Signed by:

William A Bunker
FEDERATED FIREFIGHTERS

POLICE PROTECTIVE ASSOCIATION

NEVADA PUBLIC EMPLOYEES ACTION COALITION

Joyce L. Woodhouse
NEVADA STATE EDUCATION ASSOCIATION

Exhibit D 2.9.

Stationary Engineers, Local 39

INTERNATIONAL UNION OF OPERATING ENGINEERS AFL-CIO

ART VIAT
BUSINESS MANAGER-SECRETARY
LOCAL 16

April 21, 1981

Assemblyman Joe Dini
Chairman
Assembly Government Affairs Committee
Legislative Building
Carson City, NV 89701

Subject: Senate Bill 350

Dear Assemblyman Dini:

Since I didn't have the opportunity to address the Joint Government Affairs Committee on April 20, 1981, regarding SB 350, I felt a letter with our viewpoints would be appropriate.

The following are my reflections regarding NRS 288 and SB350:

1. The intent of NRS 288 was and still is to provide for public sector employees a means to address their "terms and conditions of employment."

2. Specially, NRS 288 provides the means to effect a mutually agreed to set of procedures for resolution of differences.

3. The provisions of NRS 288 provide a trade: interest factfinding and/or compulsory interest arbitration for basic right of every worker to withhold services or strike. The wisdom of all Nevada legislators is reflected in those provisions.

4. Unfortunately, NRS 288 is not effective.

   A. Many terms are not defined appropriately, specifically, "Emergency power", and "Ability to pay."

   B. The time lines for presentation of negotiations proposals, and a request for factfinding are too short and perhaps totally unrealistic. Why should negotiations have to start at the beginning of a calendar year?

C. The ability of the Labor Management Relations Board to deal with the numerous requests that are rightfully within their perview is severely hampered by the time lines, shortage of staff, and funding.

5. Public Employees in Nevada want an effective means to deal with labor problems that are increasing daily.

6. The Nevada legislature probably would prefer to rid itself of the albatross - and it should. It is my strong opinion that the only way is to put the responsibility for handing labor management issues onto the shoulders of those directly involved - the employer and the employee organization.

   A. Make the issue of the "right to strike" a mandatory subject of negotiations.

   B. Remove the statutory requirement of relinquishing this right (288.230, 288.240, 288.250, 288.260)

   C. Make a subject of negotiations under 288.160 compulsory interest arbitration.

7. Provide the EMRB with more funding to handle certification and/or elections, unfair labor practice changes, and interest arbitration.

I believe that due to the recent increase in Nevada Public Employee affiliation with labor unions and the fact that this will continue the legislature should deal as succinctly as possible with the issues within SB 350; as well as all of NRS 288 in order to provide for the most efficient means of dealing with labor management relations.

Sincerely,

Nick J. Wagner

Nick J. Wagner
Business Representative

NJW/rmb

cc: Assemblyman James Schofield
Assemblyman Robert Craddock
Assemblyman John Jeffrey
Assemblyman Paul May
Assemblyman Don Mello
Assemblyman John Polish
Assemblyman John DuBois
Assemblyman David Nicholas
Assemblyman Paul Prengaman
Assemblyman Kenneth Redelsperger

E/E
Exhibit E

AGREEMENT

BETWEEN

THE CLARK COUNTY SCHOOL DISTRICT

AND

THE CLARK COUNTY ASSOCIATION OF SCHOOL ADMINISTRATORS

1979 - 1981

PREAMBLE

WHEREAS, pursuant to the provisions of Chapter 288 of the laws of the State of Nevada, known as the Local Government Employee-Management Relations Act, the Clark County Association of School Administrators (hereinafter referred to as CCASA) has been recognized as the exclusive bargaining representative, for the unit hereinafter described by the Clark County Board of School Trustees (hereinafter referred to as the Trustees), and

WHEREAS, the Trustees and CCASA recognize a common responsibility to work together in cooperation in order to achieve high quality education and to cooperate in their common aims and their employer-employee relationships,

NOW THEREFORE, the said parties have as a result of joint discussions agreed upon the following terms concerning the conditions of employment for all members of the bargaining unit represented by CCASA.

TABLE OF CONTENTS

1-9 The term "Board" means the Local Government Employee-Management Relations Board, as provided in NRS 288.030.

1-10 The term "Agreement" refers to the name of this document, being the Professional Negotiation Agreement between the Clark County School District and the CCASA.

1-11 The term "immediate family" pertaining to the use of sick leave shall mean mother, father, husband, wife, son, daughter, brother, sister, mother-in-law, father-in-law, foster child or any relative living in the immediate household of the administrative employee.

The term "immediate family" pertaining to the use of bereavement leave shall include those persons named above and also grandmother, grandfather, and foster parent.

Article II
RECOGNITION

2-1 The Trustees recognize CCASA as the exclusive representative of all administrators employed by the Clark County Board of School Trustees with the exception of such employees as are excluded by NRS 288.

2-2 Any references to individual administrators in this Agreement in masculine terms such as "he," "his," or "him" shall in every case be applicable to female employees as if they were written as "she" or "hers" or "her."

Article III
FAIR PRACTICES

3-1 CCASA shall represent equally all administrative personnel within the bargaining unit without regard to membership or participation in CCASA or membership or participation in any other administrative employee organization. CCASA shall continue to admit administrative persons to membership and participation in its affairs without discrimination on the basis of race, creed, color, national origin, sex, age or handicap. The Trustees shall continue their policy of not discriminating against any employee on the basis of race, creed, color, national origin, sex, age and handicap.

Article IV
GRIEVANCE AND ARBITRATION PROCEDURE

4-1 A grievance shall be defined as a dispute regarding the interpretation, application or alleged violation of any of the provisions of this Agreement or any of the policies or regulations which directly relate to those mandatory subjects of bargaining as outlined in NRS 288.150 (2). A grievance may be filed by an administrator of the School District covered by this Agreement, or by the Association. A grievance shall not include any matter or action taken by the School Trustees, or any of its agents for which relief is granted by the statutes of Nevada.

4-2 Grievances will be brought by individuals or groups of individuals who are directly affected by the nature of their dispute. Grievances may be initiated or pursued at any step and to any higher step by CCASA. A grievance filed by the Association involving more than one (1) administrator in more than one (1) location, may be commenced at Step Two of the Grievance and Arbitration Procedure by filing a written grievance.

4-3 A grievance as defined above, must be filed in writing alleging which terms or provisions under which the dispute arises, and must be filed not later than thirty (30) school days after the affected employee or Association first knew or should have known of the act or condition upon which the grievance is based. A school day shall be defined as a day in which a covered employee is required to be present on the job.

4-4 During all procedural steps each of the parties to the grievance shall have access at reasonable time to all written statements and records of the grievance. All proceedings in any grievance shall be conducted in private and full confidentiality shall be maintained.

4-5 In the event the grievance is between two (2) members of CCASA, the grievant will be represented by CCASA during the entire Grievance and Arbitration Procedure.

Article I
DEFINITIONS

1-1 The term "NRS 288" as used in this Agreement, shall refer to the Statutes of Nevada enacted by the 1969 session of the Nevada Legislature and revised by subsequent sessions of the Nevada Legislature, also known as the Local Government Employee-Management Relations Act.

1-2 The term "administrators" as used in this Agreement, shall refer to all administrators who are eligible for membership in the Clark County Association of School Administrators (hereinafter referred to as CCASA) with the exception of such administrators who are excluded by NRS 288.

1-3 The term "Trustees" as used in this Agreement, shall mean the Board of School Trustees of the Clark County School District and is the entity known as the Local Government Employer in NRS 288.060.

1-4 The term "Association" as used in this Agreement, shall mean the CCASA, and is the entity known as the Employee Organization in NRS 288.040.

1-5 The term "School District" as used in this Agreement, shall mean the Clark County School District.

1-6 The term "Superintendent" as used in this Agreement, shall mean the Superintendent of Schools of the Clark County School District or the designated representative.

1-7 The term "Trustees" and "Association" shall include authorized officers and representatives. Despite references herein to "Trustees" and "Association" as such, each reserves the right to act hereunder by committee or designated representative.

1-8 The term "School Year" shall be defined in NRS 388.080 which states: "The public school year shall commence on the first day of July and shall end on the last day of June." The term "Contracted School Year" as used in this Agreement, shall mean the period of time of the first contracted day until the beginning of the next contracted school year.

4-7 The arbitrator shall not have the authority to modify, amend, alter, add to, or subtract from any provision of this Agreement. An arbitrator in the absence of the express written Agreement of the parties shall have no authority to rule on any dispute between the parties other than the one which qualifies as a grievance as defined in 4-1.

4-8 The arbitrator's decision shall be submitted in writing to all parties and shall be final and binding, including payment of damages, on all parties to this Agreement unless he/she exceeds the powers specified herein, or is guilty of procedural error prejudicing the rights of either party as defined by Federal Labor Law decisions.

4-9 The expenses of arbitration, including the arbitrator's fee/costs and expenses, and the cost of the arbitrator's transcript, shall be borne equally by the School District and the Association. However, all other expenses incurred by either party in the preparation or presentation of its cases are to be borne solely by the party incurring such expenses. It is understood and agreed only the Association has the right to request arbitration.

4-10 This provision shall not be construed as an agreement by the School District to pay the grievant or the Association representative, or any person present on their behalf, for the time spent in processing a grievance in accordance with the provisions of this Article.

4-11 All costs to the parties for conducting grievance proceedings shall be paid for by the party incurring the cost.

4-12 The time for a grievance meeting must be approved by the Associate Superintendent, Personnel Services, or the Superintendent's designee and by the Association and/or the grievant. It may occur during or outside the work day. In the event a grievance meeting is scheduled and held during the work day, administrators covered by this Agreement, who participate in such a meeting shall do so without loss of pay.

4-13 A grievance shall be considered null and void if not filed and processed by the aggrieved employee or the Association in accordance with the time limitations set forth above, unless the parties involved agree to extend said limitations.

4-14 A grievance shall be decided in favor of the aggrieved administrator if the time limitations are not observed by the School District.

4-15 Time limitations may be extended by mutual agreement of both parties.

Article V
MILEAGE

5-1 Mileage payments shall be granted administrative employees covered by this Agreement in accordance with Regulation 3545.23 of the Clark County School District.

Article VI
IMPASSE PROCEEDINGS

6-1 It is understood that if the parties fail to reach agreement as a result of direct negotiations, impasse proceedings may be invoked by either party in accordance with the provisions of NRS 288.

Article VII
USE OF FACILITIES

Subject to the provision of Section 7-3:

7-1 The Association shall have the right to use school mailboxes and the interschool mail service for the distribution of responsible material initiated by the Association. Copies of all materials shall be given to the Associate Superintendent, Personnel Services. The material will be clearly identified and the Association accepts the responsibility for such material. If the privilege extended herein is misused by the Association or any of its designated representatives, it may be immediately revoked by the Superintendent.

Individual administrators will not be prohibited from the responsible use of the school mail service.

7-2 From the effective date of this Agreement to its termination, the Association shall be allowed the use of school buildings and premises for Association meetings and activities on regular school days as long as arrangements have been made with the principal of the building and so long as the use does not conflict with use by other employee organizations previously authorized as provided by District

4-6 All grievances shall be handled in the following manner:

Step One—Informal

4-6-1 An administrator having a grievance will first attempt to resolve it informally by meeting with his immediate supervisor within five (5) school days. At this step there is no reason to put the grievance in writing, no written report shall be made by the supervisor. The supervisor shall render a decision no later than five (5) school days from the date of the meeting.

If the administrator is not satisfied with the response from the immediate supervisor, the administrator may proceed to Step Two.

Step Two

4-6-2 If the grievance has not been resolved as a result of the informal proceedings, it may be resubmitted to the administrator's appropriate associate superintendent in signed written form within the thirty (30) school day period specified in 4-3. Copies of the written grievance shall be submitted to the Associate Superintendent, Personnel Services and to CCASA.

4-6-3 Within five (5) school days after the receipt of a grievance, the appropriate associate superintendent or designee shall meet with the affected administrator for the purpose of discussing the merits of the grievance. Designated Association representatives may be in attendance.

4-6-4 No later than five (5) school days after the meeting referred to in subparagraph 4-6-3, the appropriate associate superintendent or designee shall submit a written response to the grievance to the aggrieved. It is understood that any settlement of the grievance on behalf of the grievant shall be reduced to writing.

4-6-5 If the grievance is either denied or not settled at Step Two of the Grievance Procedure, the grievance shall be deemed withdrawn unless timely submitted to Step Three of the Grievance Procedure.

4-6-6 If the grievance is not resolved at Step Two, the affected administrator or the Association may submit the unresolved written grievance to the Superintendent or designee not later than ten (10) school days after the receipt of the response from the appropriate associate superintendent or designee as set forth in 4-6-4 above.

Step Three

4-6-7 In the event a grievance is submitted to Step Three in a timely manner, the Superintendent or designee and the supervisor being grieved, shall meet with the affected administrator and the designated Association representative within seven (7) school days after receiving the grievance.

4-6-8 Within fifteen (15) school days after the meeting, the Superintendent or designee shall submit a written response to the grievance Association. Any resolution of the grievance in favor of the grievant shall be reduced to writing.

4-6-9 If the grievance is either denied or not settled at Step Three of the Grievance Procedure, the grievance shall be deemed withdrawn unless timely submitted to Step Four, Arbitration, in accordance with the provisions set forth below.

Step Four

4-6-10 In the event a grievance is not settled at Step Three of the Grievance Procedure, the Association, not later than ten (10) school days after the receipt of the response from the Superintendent or designee as set forth in subparagraph 4-6-8, may request arbitration of the unresolved grievance in accordance with the provisions set forth below. A request for arbitration shall be made by delivering to the Superintendent or designee written notice of the intent to arbitrate.

4-6-11 In the event a timely written request for arbitration of an unresolved grievance is made by the Association, the parties, shall, within ten (10) school days jointly request the Federal Mediation and Conciliation Service (FMCS) to furnish a list of seven (7) arbitrators from which the arbitrator shall be selected. Such selection shall be accomplished by the Association and the School District, each striking one (1) name from the list in turn until one (1) name remains. The Association shall strike first. The final selection of the arbitrator shall be made within ten (10) school days following receipt of the list of arbitrators.

The selected arbitrator shall be asked to conduct the arbitration hearings as soon as possible after his or her selection, but no later than thirty (30) calendar days.

9-2 Any written response by the employee to any written report, either critical or supportive, shall also become part of the administrator's personnel file and shall remain a part of said file as long as the report remains a part of the file. In order to ensure that the response is not inadvertently overlooked, the administrative employee shall note under his or her signature on the report, comment or reprimand, at the time of response, that a response has been made. When an administrative employee makes a written response to any written report, by the supervisor, the employee's response shall be made within fifteen (15) school days and shall be attached to the supervisor's document. Upon written request of the administrator, a waiver of the time limits by the Supervisor, not to exceed ten (10) school days, shall not be unreasonably withheld. When a copy of the supervisor's written document is moved or forwarded to any other location, a copy of the administrator's written response shall be attached.

9-3 Access to administrative employee personnel files shall be on a need to know basis only.

Article X
MEDICAL SERVICES

10-1 The School District shall pay for the cost of periodic x-rays or other medically accepted TB tests required of members of the bargaining unit for School District employment when administered by the Clark County Health Department.

10-2 The School District shall provide free of charge routine immunizations and booster vaccinations for smallpox, influenza and diphtheria to members of the bargaining unit.

Article XI
ASSOCIATION LEAVE

11-1 For each separate fiscal year covered by the term of this Agreement, the Association will be allocated a total of thirty (30) days leave without loss of pay for Association members to attend Association meetings, conferences, legislative sessions and conventions. No individual shall be granted approval for more than five (5) days of the thirty (30) days allocated to Association representatives. Per diem and/or travel shall not be provided by the School District.

11-2 Association leave shall not be granted to Association members to participate in any meetings, conferences or workshops that pertain to grievances and/or the negotiation process.

Article XII
EXTENDED LEAVES OF ABSENCE

12-1 An administrator may be granted a leave of absence without pay for up to two (2) years to teach in an accredited college or university. To be eligible for leave the administrator must have completed two (2) full years under contract with the School District.

12-2 Administrators who are members of any Reserve Unit of the Armed Forces of the United States or the National Guard who are ordered to active duty shall be granted military leave of absence without pay. Employees who voluntarily request active duty, enlist, or reenlist are not eligible for a military leave of absence. Administrators must have reported and must have begun service with the School District in fulfillment of their contract to be eligible for a military leave of absence. (Administrative Regulation 4953)

12-3 Employee convenience leaves of absence without pay may be granted to eligible administrators by the School Trustees, for a period not to exceed one (1) year, where administrators have identified a personal or family situation which will require the release of the administrator from his or her contractual responsibilities. (Administrative Regulation 4956.1)

12-4 Administrators adopting a minor child may receive sick leave with pay, or an employee convenience leave without pay which shall commence upon receiving de facto custody of said child, or earlier, if necessary to fulfill the requirements of adoption.

12-5 A leave of absence without pay for one (1) year may be granted for the purpose of caring for a sick member of the administrator's immediate family (Administrative Regulation 4956.1). Additional leave without pay may be granted at the discretion of the School Trustees.

regulations. Further, such activities shall not conflict with any regular or special educational activities and may not involve additional or extra custodial services and/or other unusual expenses to the School District. Use of buildings on other than school days requires approval by the Associate Superintendent, Personnel Services. Any added expense resulting from Association use shall be paid for by the Association. If the privilege extended herein is misused by the Association or any of its designated representatives, it may be immediately revoked by the Superintendent. Individual administrators will not be prohibited from the responsible use of the school facilities.

7-3 The use of school facilities permitted above shall not include any use to campaign in any manner, either directly or indirectly, against School District representatives or the Board of School Trustees, or any use to campaign on behalf of any activity by the Association or any of its representatives relating to the collective bargaining process except for the ratification of this Agreement.

7-4 CCASA shall have the right to commence general membership meetings, committee meetings or other related association meetings at 4:00 p.m. A maximum of four (4) such meetings shall be held during the work year.

7-5 Administrators whose duty hours extend beyond 5:00 p.m. may attend Association meetings held after that hour.

Article VIII
DUES DEDUCTION

8-1 The Trustees agree to deduct dues from the salaries of administrative employees covered by this Agreement exclusively for CCASA, the Clark County Elementary Principals Association, the Clark County Association of Secondary School Principals, the Nevada Association of School Administrators, the National Association of Elementary School Principals, the National Association of Secondary School Principals and the Nevada State Education Association. These monies shall be transmitted promptly to CCASA. All requests for such deductions must be in accordance with the laws of Nevada (NRS 608.110).

8-2 CCASA will certify to the Trustees in writing the current rate of membership dues. The Trustees will be notified of any change in the rate of membership dues thirty (30) days prior to the effective date of such change.

8-3 Deductions referred to in 8-1 will be made in equal installments once each month during the calendar year. The Trustees will not be required to honor any authorizations for any month's deduction that are delivered to it later than the fifteenth of the month prior to the distribution of the payroll from which the deductions are made.

8-4 No later than October 15 of each year, CCASA will provide the Trustees with a list of those employees who have voluntarily authorized the Trustees to deduct dues for the organizations named in 8-1 above. Copies of the executed dues authorization for all such employees shall be submitted to the School District. CCASA will notify the Trustees monthly of any changes in said list. Any administrator desiring to have the School District discontinue deductions previously authorized must notify CCASA in writing by September 15 of each year for that school year's dues and then CCASA shall notify the District in writing to discontinue the administrative employee's dues deduction.

8-5 It is recognized that the School District in agreeing to deduct dues is performing a solely administrative function on behalf of CCASA for its convenience and is not a party to any agreement between the Association and its members regarding the deduction of dues. CCASA, therefore, agrees to hold the School District harmless and to reimburse the School District for any and all costs, including legal fees it may incur in relation to any deductions made at the direction of CCASA and contrary to the instructions received from the individual administrator.

Article IX
PERSONNEL FILES

9-1 A copy of each written report, either critical or supportive, concerning an administrator which the School District places in the administrator's personnel file shall be provided that administrator.

physical examination or to submit a written certificate from a physician of the employee's choice, confirming the necessity of an absence due to illness. Cost of the physical examination or the report from the physician is to be paid for by the District.

13-6 Any administrative employee who misuses sick leave shall be subject to disciplinary action in accordance with NRS 391.

Article XIV
BEREAVEMENT LEAVE

14-1 Leave with full pay shall be allowed for three (3) days for each period of bereavement or absence due to death in the immediate family of the administrative employee. Two (2) additional days with full pay may be approved by the employee's supervisor. Time may be allowed for travel, with maximum bereavement leave not to exceed seven (7) days. Bereavement leave shall be deducted from sick leave.

Article XV
WORK DAY

15-1 All administrative employees covered by this Agreement shall be required to work at the work location a minimum work day of eight (8) hours, excluding a lunch period of no less than 30 minutes and no more than 60 minutes. The daily starting and departure time shall be determined by each appropriate associate superintendent.

15-2 It is recognized that certain meetings may be scheduled to exceed the eight (8) hour work day without additional compensation for the purposes listed below:

15-2-1 Attendance at general administrative meetings.

15-2-2 Regular or special meetings for training or normal administrative functions called by the Superintendent or the appropriate associate superintendent.

15-3 Individual parent conferences which exceed the eight (8) hour work day may be scheduled at the mutual convenience of both parent and principal. When this is not successful, the principal shall schedule the conference at an appropriate time.

15-4 It is further recognized by the parties that all administrative employees covered by this Agreement will find it necessary to work additional time either at such premises or away from such premises to fulfill the full scope of their professional responsibility. As a result, the employees covered by this Agreement agree to perform that additional work necessary to adequately fulfill their professional responsibility without additional compensation.

15-5 Travel time of an administrative employee required to travel during the normal school day shall be considered as a part of such administrator's work day.

15-6 Administrators covered by this Agreement may leave the work location during the work day to conduct personal business or for doctor and/or dental appointments. The time away from the building will be charged appropriately either to earned vacation leave or to earned sick leave. In the event earned vacation leave or sick leave is not available, time away from the work location will be taken without pay.

Article XVI
WORK YEAR

16-1 Administrators covered by this Agreement will be on an annual contract year. The normal work year shall be twelve (12) months, with the exception of the following categories of administrators for whom the normal work year will be eleven (11) months:

16-1-1 Elementary—Secondary principals
16-1-2 Junior high school principals
16-1-3 Junior-senior high school principals
16-1-4 Director, Sunset High School
16-1-5 Elementary school principals
16-1-6 Principal, Opportunity School
16-1-7 Assistant Director, Vocational-Technical Center
16-1-8 Coordinator, Clark County Evening High School
16-1-9 All assistant principals
16-1-10 Principal, Spring Mountain Youth Camp

12-6 Leaves of absence without pay, for study or other professional improvement, may be granted to eligible administrators by the School Trustees for a period not to exceed one (1) year. To be eligible for such leave the administrator must have completed two (2) years of satisfactory service with the School District. (Administrative Regulation 4954)

12-7 Other leaves of absence without pay may be granted by the School Trustees.

12-8 Upon return from leave granted pursuant to 12-1 and 12-6 of the Article or administrators who are ordered to active duty, shall be considered as if he or she were actively employed by the School Trustees during the leave and shall be placed on the salary schedule at the level he or she would have achieved if the administrator had not been absent. Administrators while on one of the above mentioned leaves may continue to participate in the Group Hospital/Medical/Life Insurance program at the administrator's expense. Administrators while on any of the above mentioned leaves are not eligible to receive sick leave or retirement credit. Administrators shall not receive increment credit for time spent in a leave granted pursuant to 12-3, 12-4 and 12-5 of this Article.

12-9 Benefits to which administrators were entitled at the time their leave of absence commenced including unused accumulated sick leave, shall be restored to these administrators granted leave pursuant to this Article upon their return. An administrator shall be assigned to the same position which he or she held at the time said leave commenced, if available. If the same position is not available, the administrator shall be assigned to as near an equivalent position as is available at the time of return. Administrators returning from such leave shall notify the School District prior to April 1 of the prior school year of their intent to return.

12-10 An administrator granted adoption leave, or leave to care for a sick member of the administrator's immediately family, may request reassignment to active status in writing to the Personnel Division. The Personnel Division will return the administrator to active status when a vacancy occurs for which the administrator is qualified.

12-11 All leaves and extensions or renewals of leaves shall be applied for and granted or denied in writing.

12-12 All of the above leaves of absence are subject to the administrative requirements regarding requests for and/or approval of such leaves which are set forth in the Policies or Administrative Regulations of the School District.

Article XIII
SICK LEAVE

13-1 Sick leave is leave that is granted an administrative employee under the terms of this Agreement who is unavoidably absent because of personal illness or injury, or because of serious illness or injury in his or her immediate family. The determination of whether sick leave is to be compensated or not shall be made on the basis of the provisions set forth below.

13-2 Administrative employees covered by this Agreement shall be credited with fifteen (15) days of sick leave at the beginning of the contract year. In the event an employee does not complete the number of days required by the contract, the number of sick leave days used in excess of the number of prorated days earned will be deducted when the final pay of the terminating employee is computed. Employees who begin service later in the contract year shall be credited with the number of days of sick leave that may be prorated for each month of service that may be completed by the end of the contracted year.

13-3 Employees on the unified salary schedule have unlimited accumulation of sick leave.

13-4 Absence due to sick leave will be compensated leave to the extent the employee has earned or accrued sick leave in accordance with the above provisions.

13-5 The immediate administrative supervisor shall periodically review the sick leave usage of all administrative employees working under their supervision. If the review indicates that an employee's use of sick leave is excessive, questionable or not in accordance with the provisions of this Article, the supervisor shall submit to the Director of Certificated Personnel, a report of the review and shall furnish a copy to the administrative employee. The Director of Certificated Personnel may require an administrative employee to undergo a

19.5 The agenda of each meeting shall be determined in advance. Both the Superintendent and the Association may place on the agenda any item dealing with the conduct, policies or welfare of the public schools of Clark County. Notices of meetings of the Council shall contain a listing of agenda items, and shall be made available to the Council members a minimum of three (3) days prior to the meeting date.

19.6 The Administrators Advisory Council shall adopt its own operational procedures.

Article XX
PROFESSIONAL COMPENSATION

20.1 Effective for the administrator's contract of employment for the 1979-80 school year, the compensation for employees covered by this Agreement for the term of this Agreement shall be in accordance with the following schedules for the contracted school years of 1979-80 and 1980-81:

20.2 If the trigger clause should allow additional revenue to the Clark County School District in fiscal year 1980-81, the administrative employees shall receive an additional salary or fringe benefit at their option for 1980-81 in the amount equal to 3.4 percent of the total additional revenue generated by the increase in the basic support guarantee per pupil above $1,309.

CLARK COUNTY SCHOOL DISTRICT

1979-80 UNIFIED ADMINISTRATIVE SALARY SCHEDULE

MONTHLY SALARIES

Range No.	A	B	C	D	E	F	G*
48	2,955	3,104	3,258	3,420	3,591	3,770	3,960
47	2,814	2,955	3,104	3,258	3,420	3,591	3,770
46	2,681	2,814	2,955	3,104	3,258	3,420	3,591
45	2,556	2,681	2,814	2,955	3,104	3,258	3,420
44	2,433	2,556	2,681	2,814	2,955	3,104	3,258
HSP 43	2,318	2,433	2,556	2,681	2,814	2,955	3,104
JHSP 42	2,206	2,318	2,433	2,556	2,681	2,814	2,955
ESP 41	2,101	2,206	2,318	2,433	2,556	2,681	2,814
SHS 40	2,000	2,101	2,206	2,318	2,433	2,556	2,681
HS 39	1,905	2,000	2,101	2,206	2,318	2,433	2,556
38	1,817	1,905	2,000	2,101	2,206	2,318	2,433
37	1,728	1,817	1,905	2,000	2,101	2,206	2,318
36	1,647	1,728	1,817	1,905	2,000	2,101	2,206
35	1,566	1,647	1,728	1,817	1,905	2,000	2,101
34	1,491	1,566	1,647	1,728	1,817	1,905	2,000
33	1,421	1,491	1,566	1,647	1,728	1,817	1,905
32	1,352	1,421	1,491	1,566	1,647	1,728	1,817
31	1,287	1,352	1,421	1,491	1,566	1,647	1,728
30	1,225	1,287	1,352	1,421	1,491	1,566	1,647
29	1,166	1,225	1,287	1,352	1,421	1,491	1,566

*Eligibility for this step requires 22 years of service in the CCSD and the completion of four years on the F step.

16-2 Contracts for twelve (12) month administrators ... all begin July 1 and end on June 30.

16-3 Contracts for eleven (11) month administrators shall begin August 1 and end on June 30.

16-4 Salaries for both eleven (11) and twelve (12) month administrators shall be distributed over twelve (12) months and paid in twelve (12) equal payments. It is agreed that the contract year as stipulated in 16-1 shall include earned vacation as defined in Article XVIII of this contract.

Article XVII
HOLIDAYS

17-1 Administrative employees covered by this Agreement shall earn holidays as listed below:

Independence Day—12 month employees only
Labor Day
Columbus Day (if declared a holiday)
Admissions Day (if declared a holiday)
Veteran's Day (if declared a holiday)
Thanksgiving Day (two [2] day holiday)
Christmas Vacation (two [2] day holiday)
New Year's Day
Washington's Birthday
Spring Vacation (one [1] day)
Memorial Day

17-2 Administrative employees covered by this Agreement shall be granted holidays in addition to the above, as determined by the Trustees.

Article XVIII
VACATION

18-1 Vacation for administrative employees covered by this Agreement shall be accumulated at the rate of 1.875 days per month of employment.

18-2 Administrative employees may accumulate up to and including a maximum of 85 days of annual leave.

18-3 At termination of service administrative employees shall be compensated for all accrued annual leave which is available for use on the date of separation at the administrator's daily rate of pay.

18-4 Annual leave may be taken only at times approved by the administrator's supervisor. The use of earned leave when school is in session by administrators who work in schools is discouraged, but a limited number of days may be approved.

Article XIX
ADMINISTRATORS ADVISORY COUNCIL

19-1 An Administrative Advisory Council shall be established by the Association.

19-2 The purpose of the Advisory Council is:

a) Advisory to the Superintendent and the Cabinet regarding procedures, practices and programs which will result in a better educational atmosphere in the Clark County School District.

b) Improve the morale of all employees.

c) Apprise the Superintendent and staff of actual or potential problems involving the School District.

d) Improve communications between the Association and the Superintendent and staff.

e) Secure maximum productive and constructive involvement of all employees in their primary goal, which is the educational process of the Clark County School District.

19-3 The Council shall consist of the Superintendent of Schools who shall act as chairperson, members of the Superintendent's immediate staff, the President of the Association, three (3) members of CCASA and others who may be called upon by the Superintendent or the Association to attend some of the meetings.

19-4 The Superintendent shall convene the meetings of the Advisory Council at least four (4) times a year. The Council may by mutual consent meet as many times more as it may deem desirable.

Article XXIV
NO STRIKES/WORK STOPPAGES

24-1 It is hereby agreed by the Association that there will be no strikes, stoppages of work or slowdown of the operations of the School District during the term of this Agreement.

Article XXV
GENERAL SAVINGS CLAUSE

25-1 If any provision of this Agreement or any application thereof to any administrator or group of administrators is found contrary to law, then such provision or application will be invalid and subsisting only to the extent permitted by law; however, all other provisions or applications will continue in full force and effect.

Article XXVI
ADMINISTRATORS CONTRACT OF EMPLOYMENT

26-1 This Agreement when ratified by both parties shall be incorporated by reference and become a part of the administrators' contract of employment for each of the 1979-80 and 1980-81 contracted school years.

Article XXVII
TERM OF AGREEMENT

27-1 This Agreement, when ratified by both parties, shall become effective at the beginning of the 1979-80 contracted school year and shall remain in effect until the beginning of the 1981-82 contracted school year, and shall continue from year to year thereafter, unless either of the parties shall give written notice to the other for school year 1981-82 in accordance with the provisions of NRS 288 of a desire to change, amend or modify the Agreement.

27-2 This Agreement shall immediately terminate in the event recognition is withdrawn and sustained after all avenues of appeal have been exhausted in accordance with NRS 288.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 28th day of June, 1979.

BOARD OF SCHOOL TRUSTEES
FOR CLARK COUNTY

President

Clerk

Superintendent of Schools

Chairman, Negotiations Committee

CLARK COUNTY
ASSOCIATION OF
SCHOOL ADMINISTRATORS

President

President Elect

Secretary

Chairman, Negotiations Committee

CLARK COUNTY SCHOOL DISTRICT

1980-81 UNIFIED ADMINISTRATIVE SALARY SCHEDULE

MONTHLY SALARIES

Range No.	A	B	C	D	E	F	G*
48	3,132	3,290	3,453	3,625	3,806	3,996	4,198
47	2,983	3,132	3,290	3,453	3,625	3,806	3,996
46	2,842	2,983	3,132	3,290	3,453	3,625	3,806
45	2,709	2,842	2,983	3,132	3,290	3,453	3,625
44	2,579	2,709	2,842	2,983	3,132	3,290	3,453
43	2,457	2,579	2,709	2,842	2,983	3,132	3,290
42	2,338	2,457	2,579	2,709	2,842	2,983	3,132
41	2,227	2,338	2,457	2,579	2,709	2,842	2,983
40	2,120	2,227	2,338	2,457	2,579	2,709	2,842
39	2,019	2,120	2,227	2,338	2,457	2,579	2,709
38	1,926	2,019	2,120	2,227	2,338	2,457	2,579
37	1,832	1,926	2,019	2,120	2,227	2,338	2,457
36	1,746	1,832	1,926	2,019	2,120	2,227	2,338
35	1,660	1,746	1,832	1,926	2,019	2,120	2,227
34	1,580	1,660	1,746	1,832	1,926	2,019	2,120
33	1,506	1,580	1,660	1,746	1,832	1,926	2,019
32	1,433	1,506	1,580	1,660	1,746	1,832	1,926
31	1,364	1,433	1,506	1,580	1,660	1,746	1,832
30	1,299	1,364	1,433	1,506	1,580	1,660	1,746
29	1,236	1,299	1,364	1,433	1,506	1,580	1,660

*Eligibility for this step requires 22 years of service in the CCSD and the completion of four years on the F step.

Article XXI
GROUP HOSPITAL/ MEDICAL/LIFE INSURANCE PLAN

21-1 Effective on the beginning date of the administrative employee's contracted school year for 1979-80, the School District shall contribute $59.14 per month per administrative employee participant in the Group Hospital/Medical/Life Insurance Plan, to include dental, vision, $15,000 Life insurance and $15,000 AD&D.

21-2 The School District further agrees to continue to provide payroll deduction for additional premiums, if any are required. The School District also agrees to continue to provide reasonable recordkeeping and/or verification of employment which may be required by the insurance carrier.

Article XXII
PUBLIC EMPLOYEES RETIREMENT FUND

22-1 Effective as of the start of the administrators' contract of employment for 1979-1980, the School District shall pay the standard fifteen (15) percent contribution to the Public Employees Retirement Fund for each administrative employee covered by this Agreement.

Article XXIII
PROHIBITIVE PRACTICES

23-1 Administrative personnel covered by this Agreement and the Association, agree not to utilize the services of any District employee during their normal work day or use any District equipment that will in any way benefit the administrator or the Association personally during the normal work day.

23-2 No services performed for eligible administrative members and the Association shall be paid for by the School District.

23-3 No Association business or activities shall be conducted during the administrator's working hours except as provided in Article IV and Article VII of this Agreement.

23-4 Abuses by administrators of these prohibitive practices for personal gain and benefit may be grounds for disciplinary action.

This is a revised edition of a pamphlet originally issued in 1962. It provides a basic framework for a better understanding of the National Labor Relations Act and its administration.

A special chart that arranges systematically the types of cases in which an employer or a labor organization may be involved under the Act, including both unfair labor practice cases and representation election proceedings, appears in the center fold of this booklet.

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See beginning on page 48

34 F
Exhibit F

A guide to basic law and procedures

under the

NATIONAL LABOR RELATIONS ACT

A guide to basic law and procedures

under the

NATIONAL LABOR RELATIONS ACT

Prepared in the Office of the General Counsel
NATIONAL LABOR RELATIONS BOARD

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Foreword

The Regional Offices of the National Labor Relations Board have found that, after more than four decades, there is still a lack of basic information about the National Labor Relations Act. Staff members have expressed a need for a simply stated explanation of the Act to which anyone could be referred for guidance. To meet this demand, the basic law under the Act has been set forth in this pamphlet in a nontechnical way so that those who may be affected by it can better understand what their rights and obligations are.

Any effort to state basic principles of law in a simple way is a challenging and unenviable task. This is especially true about labor law, a relatively complex field of law. Anyone reading this booklet must bear in mind several cautions.

First, it must be emphasized that the Office of the General Counsel does not issue advisory opinions and this material cannot be considered as an official statement of law. It represents the view of the Office of the General Counsel as of the date of publication only. ***It is important to note that the law changes and advances.*** In fact, it is the duty of the Agency to keep its decisions abreast of changing conditions, yet within the basic statute. Accordingly, with the passage of time no one can rely on these statements as absolute until and unless he has checked to see whether the law may have been changed substantially or specifically.

Furthermore, these are broad general principles only and countless subprinciples and detailed rules are not included. Only by evaluation of specific fact situations in the light of current principles and with the aid of expert advice would a person be in a position to know definitely where his proposed conduct may take him under the statute. No basic primer or text can constitute legal advice in particular fact situations. This effort to improve basic education about the statute should not be considered as such. Many areas of the statute remain untested. Legal advisers and other experts can find the total body of "Board law" reported in other Agency publications.

One other caution: This material does not deal with questions arising under other labor laws, but only with the National Labor Relations Act, as amended. Laws administered by other Government

agencies such as the Labor-Management Reporting and Disclosure Act of 1959, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, the Railway Labor Act, the Fair Labor Standards, Walsh-Healey, and Davis-Bacon Acts, Title VII of the Civil Rights Act of 1964, and the Veterans' Preference Act, are not treated herein.

Lastly, this material does not reflect the view of the National Labor Relations Board as the adjudicating agency which in the end will decide each case as it comes before it.

It is hoped that with this cautionary note this booklet may be helpful to those in need of a better basic understanding of the National Labor Relations Act.

Revised October 1978

A Guide to Basic Law and Procedures Under the National Labor Relations Act

Summary of the Act

Purpose of the Act

It is in the national interest of the United States to maintain full production in its economy. Industrial strife among employees, employers, and labor organizations interferes with full production and is contrary to our national interest. Experience has shown that labor disputes can be lessened if the parties involved recognize the legitimate rights of each in their relations with one another. To establish these rights under law, Congress enacted the National Labor Relations Act. Its purpose is to define and protect the rights of employees and employers, to encourage collective bargaining, and to eliminate certain practices on the part of labor and management that are harmful to the general welfare.

What the Act provides

The National Labor Relations Act states and defines the rights of employees to organize and to bargain collectively with their employers through representatives of their own choosing. To ensure that employees can freely choose their own representatives for the purpose of collective bargaining, the Act establishes a procedure by which they can exercise their choice at a secret ballot election conducted by the National Labor Relations Board. Further, to protect the rights of employees and employers, and to prevent labor disputes that would adversely affect the rights of the public, Congress has defined certain practices of employers and unions as unfair labor practices.

How the Act is enforced

The law is administered and enforced principally by the National Labor Relations Board and the General Counsel acting through more than 45 regional and other field offices located in major cities in various sections of the country. The General Counsel and his staff in the Regional Offices investigate and prosecute unfair labor practice cases and conduct elections to determine employee representatives. The five-member Board decides cases involving charges of unfair labor practices and determines representation election questions that come to it from the Regional Offices.

How this material is organized

The rights of employees, including the rights to self-organization and collective bargaining that are protected by Section 7 of the Act, are presented first in this material. The Act's provisions concerning the union shop and the requirements for union-security agreements are covered in the same section which also includes a discussion of the right to strike and the right to picket. The

obligations of collective bargaining and the Act's provisions for the selection of employee representatives are treated in the following section. Unfair labor practices of employers and of labor organizations are then presented in separate sections. The final section, entitled "How the Act Is Enforced," sets forth the organization of the NLRB; its authority and limitations; its procedures and powers in representation matters, in unfair labor practice cases, and in certain special proceedings under the Act; and the Act's provisions concerning enforcement of the Board's orders.

The Rights of Employees

The Section 7 Rights

The rights of employees are set forth principally in Section 7 of the Act, which provides as follows:

> Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Examples of Section 7 rights

Examples of the rights protected by this section are the following:

- Forming or attempting to form a union among the employees of a company.
- Joining a union whether the union is recognized by the employer or not.
- Assisting a union to organize the employees of an employer.
- Going out on strike to secure better working conditions.
- Refraining from activity in behalf of a union.

The Union Shop

The Act permits, under certain conditions, a union and an employer to make an agreement (called a union-security agreement) requiring all employees to join the union in order to retain their jobs (Section 8(a)(3)). However, the Act does not authorize such agreements in States where they are forbidden by state law (Section 14(b)).

Under certain circumstances an employee of a health care institution may not be required to pay dues or fees to a union where the employee has religious objections to the payment of such dues and fees.

A union-security agreement cannot require that applicants for employment be members of the union in order to be hired. The most that can be required is that all employees in the group covered by the agreement become members of the union within a certain period of time after the contract takes effect. This "grace period" cannot be less than 30 days except in the building and construction industry. New employees may be required to join the union at the end of a 30-day grace period after they are hired. The Act allows a shorter grace period of 7 full days in the building and construction industry (Section 8(f)). A union-security agreement that provides a shorter grace period than the law allows is invalid, and any employee discharged because of nonmembership in the union is entitled to reinstatement.

Union-security agreements

For a union-security agreement to be valid, it must meet all of the following requirements:

1. The union must not have been assisted or controlled by the employer (see Section 8(a)(2) under "Unfair Labor Practices of Employers" on pages 19–24).
2. The union must be the majority representative of the employees in the appropriate collective-bargaining unit covered by such agreement when made.
3. The union's authority to make such an agreement must not have been revoked within the previous 12 months by the employees in a Board election.
4. The agreement must provide for the appropriate grace period.

Requirements for union-security agreements

Section 8(f) of the Act allows an employer engaged primarily in the building and construction industry to sign a union-security agreement with a union without the union's having been designated as the representative of its employees as otherwise required by the Act. The agreement can be made before the employer has hired any employees for a project and will apply to them when they are hired. As noted above, new employees may be required to join the union *after* 7 full days. If the agreement is made while employees are on the job, it must allow nonunion employees the same 7-day grace period. As with any other union-security agreement, the union involved must be free from employer assistance or control.

Prehire agreements in the construction industry

Agreements in the building and construction industry can include, as stated in Section 8(f), the following additional provisions:

1. A requirement that the employer notify the union concerning job openings.

2. A provision that gives the union an opportunity to refer qualified applicants for such jobs.
3. Job qualification standards based on training or experience.
4. A provision for priority in hiring based on length of service with the employer, in the industry, or in the particular geographic area. Such hiring provisions may lawfully be included in collective-bargaining agreements which cover employees in other industries as well.

The Right To Strike

Section 7 of the Act states in part, "Employees shall have the right . . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Strikes are included among the concerted activities protected for employees by this section. Section 13 also concerns the right to strike. It reads as follows:

> Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

It is clear from a reading of these two provisions that the law not only guarantees the right of employees to strike, but also places limitations and qualifications on the exercise of that right. See, for example, restrictions on strikes in health care institutions, page 44.

Lawful and unlawful strikes

The lawfulness of a strike may depend on the object, or purpose, of the strike, on its timing, or on the conduct of the strikers. The object, or objects, of a strike and whether the objects are lawful are matters that are not always easy to determine. Such issues often have to be decided by the National Labor Relations Board. The consequences can be severe to striking employees and struck employers, involving as they do questions of reinstatement and backpay.

It must be emphasized that the following is only a brief outline. A detailed analysis of the law concerning strikes, and application of the law to all of the factual situations that can arise in connection with strikes, is beyond the scope of this material. Employees and employers who anticipate being involved in strike action should proceed cautiously and on the basis of competent advice.

Strikes for a lawful object

Employees who strike for a lawful object fall into two classes—"economic strikers" and "unfair labor practice strikers." Both classes continue as employees, but unfair labor practice strikers have greater rights of reinstatement to their jobs.

If the object of a strike is to obtain from the employer some economic concession such as higher wages, shorter hours, or better working conditions, the striking employees are called economic strikers. They retain their status as employees and cannot be discharged, but they can be replaced by their employer. If the employer has hired bona fide permanent replacements who are filling the jobs of the economic strikers when the strikers apply unconditionally to go back to work, the strikers are *not* entitled to reinstatement at that time. However, if the strikers do not obtain regular and substantially equivalent employment, they are entitled to be recalled to jobs for which they are qualified when openings in such jobs occur if they, or their bargaining representative, have made an unconditional request for their reinstatement.

Economic strikers defined

Employees who strike to protest an unfair labor practice committed by their employer are called unfair labor practice strikers. Such strikers can be neither discharged nor permanently replaced. When the strike ends, unfair labor practice strikers, absent serious misconduct on their part, are entitled to have their jobs back even if employees hired to do their work have to be discharged.

Unfair labor practice strikers defined

If the Board finds that economic strikers or unfair labor practice strikers who have made an unconditional request for reinstatement have been unlawfully denied reinstatement by their employer, the Board may award such strikers backpay starting at the time they should have been reinstated.

A strike may be unlawful because an object, or purpose, of the strike is unlawful. A strike in support of a union unfair labor practice, or one that would cause an employer to commit an unfair labor practice, may be a strike for an unlawful object. For example, it is an unfair labor practice for an employer to discharge an employee for lack of union membership where there is no union-security agreement in effect (Section 8(a)(3)). A strike to compel an employer to do this would be a strike for an unlawful object and, therefore, an unlawful strike. Strikes of this nature will be discussed in connection with the various unfair labor practices in a later section of this guide.

Strikes unlawful because of purpose

Furthermore, Section 8(b)(4) of the Act prohibits strikes for certain objects even though the objects are not necessarily unlawful if achieved by other means. An example of this would be a strike to compel Employer A to cease doing business with Employer B. It is not unlawful for Employer A

voluntarily to stop doing business with Employer B, nor is it unlawful for a union merely to request that it do so. It is, however, unlawful for the union to strike with an object of forcing the employer to do so. These points will be covered in more detail in the explanation of Section 8(b)(4).

In any event, employees who participate in an unlawful strike may be discharged and are not entitled to reinstatement.

Strikes unlawful because of timing —Effect of no-strike contract

A strike that violates a no-strike provision of a contract is not protected by the Act, and the striking employees can be discharged or otherwise disciplined unless the strike is called to protest certain kinds of unfair labor practices committed by the employer. Also, an employee who is subject to a no-strike contract clause can be replaced for refusing to cross a picket line at the plant of another employer unless the contract specifically gives the employee the right not to cross a picket line. It should be noted that not all refusals to work are considered strikes and thus violations of no-strike provisions. A walkout because of conditions abnormally dangerous to health, such as a defective ventilation system in a spray-painting shop, has been held not to violate a no-strike provision.

Same—Strikes at end of contract period

Section 8(d) provides that where either party desires to terminate or change an existing contract, it must comply with certain conditions. (See page 7.) If these requirements are not met, a strike to terminate or change a contract is unlawful and participating strikers lose their status as employees of the employer engaged in the labor dispute. If the strike was caused by the unfair labor practice of the employer, however, the strikers are classed as unfair labor practice strikers and their status is not affected by failure to follow the required procedure.

Strikes unlawful because of misconduct of strikers

Strikers who engage in serious misconduct in the course of a strike may be refused reinstatement to their former jobs. This applies to both economic strikers and unfair labor practice strikers. Serious misconduct has been held to include, among other things, violence and threats of violence. The U.S. Supreme Court has ruled that a "sitdown" strike, where employees simply stay in the plant and refuse to work, thus depriving the owner of property, is not protected by the law. Where an unfair labor practice by the employer involved provokes an unfair labor practice strike, this fact may be considered in the determination of whether misconduct by strikers will bar their reinstatement. Examples of serious misconduct that could cause the employees involved to lose their right to reinstatement are:

- Strikers physically blocking persons from entering or leaving a struck plant.
- Strikers threatening violence against nonstriking employees entering a plant.
- Strikers attacking management representatives.

The Right To Picket

Likewise the right to picket is subject to limitations and qualifications. As with the right to strike, picketing can be prohibited because of its object or its timing, or misconduct on the picket line. In addition, Section 8(b)(7) declares it to be an unfair labor practice for a union to picket for certain objects whether the picketing accompanies a strike or not. This will be covered in more detail in the section on union unfair labor practices.

Collective Bargaining and Representation of Employees

Collective bargaining is one of the keystones of the Act. Section 1 of the Act declares that the policy of the United States is to be carried out "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

Collective Bargaining

Collective bargaining is defined in the Act. Section 8(d) requires an employer and the representative of its employees to meet at reasonable times, to confer in good faith about certain matters, and to put into writing any agreement reached if requested by either party. The parties must confer in good faith with respect to wages, hours, and other terms or conditions of employment, the negotiation of an agreement, or any question arising under an agreement.

Duty to bargain imposed on both employer and union

These obligations are imposed equally on the employer and the representative of its employees. It is an unfair labor practice for either party to refuse to bargain collectively with the other. The obligation does not, however, compel either party to agree to a proposal by the other, nor does it require either party to make a concession to the other.

Section 8(d) provides further that where a collective-bargaining agreement is in effect no party to the contract shall end or change the contract unless the party wishing to end or change it takes the following steps:

Bargaining steps to end or change a contract

1. The party must notify the other party to the contract in writing about the proposed termination or modification 60 days before the date on which the contract is scheduled to expire. If the contract is not scheduled to expire on any particular date, the notice in writing must be served 60 days before the time when it is proposed that the termination or modification take effect.
2. The party must offer to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed changes.
3. The party must, within 30 days after the notice to the other party, notify the Federal Mediation and Conciliation Service of the existence of a dispute if no agreement has been reached by that time. Said party must also notify at the same time any State or Territorial mediation or conciliation agency in the State or Territory where the dispute occurred.
4. The party must continue in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract until 60 days after the notice to the other party was given or until the date the contract is scheduled to expire, whichever is later.

(In the case of a health care institution, the requirement in paragraphs 1 and 4 is 90 days, and in paragraph 3 is 60 days. In addition, there is a 30-day notice requirement to the agencies in paragraph 3 when a dispute arises in bargaining for an initial contract.)

When the bargaining steps are not required

The requirements of paragraphs 2, 3, and 4, above, cease to apply if the NLRB issues a certificate showing that the employees' representative who is a party to the contract has been replaced by a different representative or has been voted out by the employees. Neither party is required to discuss or agree to any change of the provisions of the contract if the other party proposes that the change become effective before the provision could be reopened according to the terms of the contract.

As has been pointed out, any employee who engages in a strike within the notice period loses status as an employee of the struck employer. This loss of status ends, however, if and when that individual is reemployed by the same employer.

Section 9(a) provides that the employee representatives that have been "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for

such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining."

What is an appropriate bargaining unit

A unit of employees is a group of two or more employees who share common employment interests and conditions and may reasonably be grouped together for purposes of collective bargaining. The determination of what is an appropriate unit for such purposes is, under the Act, left to the discretion of the NLRB. Section 9(b) states that the Board shall decide in each representation case whether, "in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

This broad discretion is, however, limited by several other provisions of the Act. Section 9(b)(1) provides that the Board shall not approve as appropriate a unit that includes both professional and nonprofessional employees, unless a majority of the professional employees involved vote to be included in the mixed unit.

Section 9(b)(2) provides that the Board shall not hold a proposed craft unit to be inappropriate simply because a different unit was previously approved by the Board, unless a majority of the employees in the proposed craft unit vote against being represented separately.

Section 9(b)(3) prohibits the Board from including plant guards in the same unit with other employees. It also prohibits the Board from certifying a labor organization as the representative of a plant guard unit if the labor organization has members who are nonguard employees or if it is "affiliated directly or indirectly" with an organization that has members who are nonguard employees.

How the appropriateness of a unit is determined

Generally, the appropriateness of a bargaining unit is determined on the basis of the common employment interests of the employees involved. Those who have the same or substantially similar interests concerning wages, hours, and working conditions are grouped together in a bargaining unit. In determining whether a proposed unit is appropriate, the following factors are also considered:

1. Any history of collective bargaining.
2. The desires of the employees concerned.
3. The extent to which the employees are organized. Section 9(c)(5) forbids the Board from giving this factor controlling weight.

Who can or cannot be included in a unit

A unit may cover the employees in one plant of an employer, or it may cover employees in two or more plants of the same employer. In some industries where employers are grouped together in voluntary associations, a unit may include employees of two or more employers in any number of locations. It should be noted that a bargaining unit can include only persons who are "employees" within the meaning of the Act. The Act excludes certain individuals, such as agricultural laborers, independent contractors, supervisors, and persons in managerial positions, from the meaning of "employees." None of these individuals can be included in a bargaining unit established by the Board. In addition, the Board, as a matter of policy, excludes from bargaining units employees who act in a confidential capacity to an employer's labor relations officials.

Duties of bargaining representative and employer

Once an employee representative has been designated by a majority of the employees in an appropriate unit, the Act makes that representative the exclusive bargaining agent for all employees in the unit. As exclusive bargaining agent it has a duty to represent equally and fairly all employees in the unit without regard to their union membership or activities. Once a collective-bargaining representative has been designated or selected by its employees, it is illegal for an employer to bargain with individual employees, with a group of employees, or with another employee representative.

Section 9(a) provides that any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted without the intervention of the bargaining representative provided:

1. The adjustment is not inconsistent with the terms of any collective-bargaining agreement then in effect.
2. The bargaining representative has been given the opportunity to be present at such adjustment.

How a Bargaining Representative Is Selected

Although the Act requires that an employer bargain with the representative selected by its employees, it does not require that the representative be selected by any particular procedure so long as the representative is clearly the choice of a majority of the employees. As one of the methods by

which employees can select a bargaining representative the Act provides for the NLRB to conduct representation elections by secret ballot.

Petition for certification of representatives

The NLRB can conduct such an election only when a petition has been filed requesting one. A petition for certification of representatives can be filed by an employee or a group of employees or any individual or labor organization acting on their behalf, or it can be filed by an employer. If filed by or on behalf of employees, the petition must be supported by a substantial number of employees who wish to be represented for collective bargaining and must state that their employer declines to recognize their representative. If filed by an employer, the petition must allege that one or more individuals or organizations have made a claim for recognition as the exclusive representative of the same group of employees.

Petition for decertification election

The Act also contains a provision whereby employees or someone acting on their behalf can file a petition seeking an election to determine if the employees wish to retain the individual or labor organization currently acting as their bargaining representative, whether the representative has been certified or voluntarily recognized by the employer. This is called a decertification election.

Union-shop deauthorization

Provision is also made for the Board to determine by secret ballot whether the employees covered by a union-shop agreement desire to withdraw the authority of their representative to continue the agreement. This is called a union-shop deauthorization election and can be brought about by the filing of a petition signed by 30 percent or more of the employees covered by the agreement.

If you will refer to the "Types of Cases" chart on pages 24 and 25 of this booklet you may find it easier to understand the differences between the six types of petitions that can be filed under the Act.

Purpose of investigation and hearing

The same petition form is used for any kind of Board election. When the petition is filed, the NLRB must investigate the petition, hold a hearing if necessary, and direct an election if it finds that a question of representation exists. The purpose of the investigation is to determine, among other things, the following:

1. Whether the Board has jurisdiction to conduct an election.

2. Whether there is a sufficient showing of employee interest to justify an election.
3. Whether a question of representation exists.
4. Whether the election is sought in an appropriate unit of employees.
5. Whether the representative named in the petition is qualified.
6. Whether there are any barriers to an election in the form of existing contracts or prior elections.

Jurisdiction to conduct an election

The jurisdiction of the NLRB to direct and conduct an election is limited to those enterprises that affect commerce. (This is discussed in greater detail at pages 45–49.) The other matters listed above will be discussed in turn.

Expedited elections under Section 8(b)(7)(C)

First, however, it should be noted that Section 8(b)(7)(C) provides, among other things, that when a petition is filed within a reasonable period, not to exceed 30 days, after the commencement of recognitional or organizational picketing, the NLRB shall "forthwith" order an election and certify the results. This is so if the picketing is not within the protection of the second proviso to Section 8(b)(7)(C). Where an election under Section 8(b)(7)(C) is appropriate, neither a hearing nor a showing of interest is required, and the election is scheduled sooner than under the ordinary procedure.

Showing of interest required

Regarding the showing of interest, it is the policy to require that a petitioner requesting an election for either certification of representatives or decertification show that at least 30 percent of the employees favor an election. The Act also requires that a petition for a union-shop deauthorization election be filed by 30 percent or more of the employees in the unit covered by the agreement for the NLRB to conduct an election for that purpose. The showing of interest must be exclusively by employees who are in the appropriate bargaining unit in which an election is sought.

Existence of question of representation

Section 9(c)(1) authorizes the NLRB to direct an election and certify the results thereof, provided the record shows that a question of representation exists. Petitions for certification of representatives present a question of representation if, among other things, they are based on a demand for recognition by the employee representative and a denial of recognition by the employer. The demand for recognition need not be made in any particular form; in fact, the filing of a petition by the representative itself is considered to be a demand for recognition. The NLRB has held that even a representative that is

currently recognized by the employer can file a petition for certification and that such petition presents a question of representation provided the representative has not previously been certified.

A question of representation is also raised by a decertification petition which challenges the representative status of a bargaining agent previously certified or currently recognized by the employer. However, a decertification petition filed by a supervisor does not raise a valid question of representation and must be dismissed.

Section 2(4) of the Act provides that the employee representative for collective bargaining can be "any individual or labor organization." A supervisor or any other management representative may not be an employee representative. It is NLRB policy to direct an election and to issue a certification unless the proposed bargaining agent fails to qualify as a bona fide representative of the employees. In determining a union's qualifications as bargaining agent, it is the union's willingness to represent the employees rather than its constitution and bylaws that is the controlling factor. The NLRB's power to certify a labor organization as bargaining representative is limited by Section 9(b)(3) which prohibits certification of a union as the representative of a unit of plant guards if the union "admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

Who can qualify as bargaining representative

The NLRB has established the policy of not directing an election among employees presently covered by a valid collective-bargaining agreement except in accordance with certain rules. These rules, followed in determining whether or not an existing collective-bargaining contract will bar an election, are called the NLRB contract-bar rules. Not every contract will bar an election. Examples of contracts that would *not* bar an election are:

Bars to Election

Existing collective-bargaining contract

- The contract is not in writing, or is not signed.
- The contract has not been ratified by the members of the union, if such is expressly required.
- The contract does not contain substantial terms or conditions of employment sufficient to stabilize the bargaining relationship.

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- The contract can be terminated by either party at any time for any reason.
- The contract contains a clearly illegal union-security clause.
- The bargaining unit is not appropriate.
- The union that entered the contract with the employer is no longer in existence or is unable or unwilling to represent the employees.
- The contract discriminates between employees on racial grounds.
- The contracting union is involved in a basic internal conflict with resulting unstabilizing confusion about the identity of the union.
- The employer's operations have changed substantially since the contract was executed.

Time provisions

Under the NLRB rules a valid contract for a fixed period of 3 years or less will bar an election for the period covered by the contract. A contract for a fixed period of more than 3 years will bar an election sought by a contracting party during the life of the contract, but will act as a bar to an election sought by an outside party for only 3 years following its effective date. A contract of no fixed period will not act as a bar at all.

When a petition can be filed if there is an existing contract

If there is no existing contract, a petition can bring about an election if it is filed before the day a contract is signed. If the petition is filed on the same day the contract is signed, the contract bars an election, unless the contract is effective immediately or retroactively and the employee has not been informed at the time of execution that a petition has been filed. Once the contract becomes effective as a bar to an election, no petition will be accepted until near the end of the period during which the contract is effective as a bar. Petitions filed not more than 90 days but over 60 days before the end of the contract-bar period will be accepted and can bring about an election. These time periods for filing petitions involving health care institutions are 120 and 90 days, respectively. Of course, a petition can be filed after the contract expires. However, the last 60 days of the contract-bar period is called an "insulated" period. During this time the parties to the existing contract are free to negotiate a new contract or to agree to extend the old one. If they reach agreement in this period, petitions will not be accepted until 90 days before the end of the new contract-bar period.

In addition to the contract-bar rules, the NLRB has established a rule that when a representative has been certified by the Board, the certification will ordinarily be binding for at least 1 year and a petition filed before the end of the certification year will be dismissed. In cases where the certified representative and the employer enter a valid collective-bargaining contract during the year, the contract becomes controlling, and whether a petition for an election can be filed is determined by the Board's contract-bar rules.

Effect of certification

Section 9(c)(3) prohibits the holding of an election in any collective-bargaining unit or subdivision thereof in which a valid election has been held during the preceding 12-month period. A new election may be held, however, in a larger unit, but not in the same unit or subdivision in which the previous election was held. For example, if all of the production and maintenance employees in Company A, including draftsmen in the company engineering office, are included in a collective-bargaining unit, an election among all the employees in the unit would bar another election among all the employees in the unit for 12 months. Similarly, an election among the draftsmen only would bar another election among the draftsmen for 12 months. However, an election among the draftsmen would not bar a later election during the 12-month period among all the production and maintenance employees including the draftsmen.

Effect of prior election

It is the Board's interpretation that Section 9(c)(3) prohibits only the holding of an election during the 12-month period, but does not prohibit the filing of a petition. Accordingly, the NLRB will accept a petition filed not more than 60 days before the end of the 12-month period. The election cannot be held, of course, until after the 12-month period. If an election is held and a representative certified, that certification is binding for 1 year and a petition for another election in the same unit will be dismissed if it is filed during the 1-year period after the certification. If an election is held and no representative is certified, the election bars another election for 12 months. A petition for another election in the same unit can be filed not more than 60 days before the end of the 12-month period and the election can be held after the 12-month period expires.

When a petition can be filed if there has been a prior election

The Representation Election

Section 9(c)(1) provides that if a question of representation exists, the NLRB must make its determination by means of a secret ballot election. In a representation election employees are given a choice of one or more bargaining representatives or no representative at all. To be certified as the

bargaining representative, an individual or a labor organization must receive a majority of the valid votes cast.

Consent-election agreements

An election may be held by agreement between the employer and the individual or labor organization claiming to represent the employees. In such an agreement the parties would state the time and place agreed on, the choices to be included on the ballot, and a method to determine who is eligible to vote. They would also authorize the NLRB Regional Director to conduct the election.

Who determines election matters

If the parties are unable to reach an agreement, the Act authorizes the NLRB to order an election after a hearing. The Act also authorizes the Board to delegate to its Regional Directors the determination on matters concerning elections. Under this delegation of authority the Regional Directors can determine the appropriateness of the unit, direct an election, and certify the outcome. Upon the request of an interested party, the Board may review the action of a Regional Director, but such review does not stop the election process unless the Board so orders. The election details are left to the Regional Director. Such matters as who may vote, when the election will be held, and what standards of conduct will be imposed on the parties are decided in accordance with the Board's rules and its decisions.

Who may vote in a representation election

To be entitled to vote, an employee must have worked in the unit during the eligibility period set by the Board and must be employed in the unit on the date of the election. Generally, the eligibility period is the employer's payroll period just before the date on which the election was directed. This requirement does not apply, however, to employees who are ill, on vacation, or temporarily laid off, or to employees in military service who appear in person at the polls. The NLRB rules take into consideration the fact that employment is typically irregular in certain industries. In such industries eligibility to vote is determined according to formulas designed to permit all employees who have a substantial continuing interest in their employment conditions to vote. Examples of these formulas, which differ from case to case, are:

- In one case, employees of a construction company were allowed to vote if they worked for the employer at least 65 days dur[illegible]he year before the "eligibility date" for the election.

- In another case longshoremen who worked at least 700 hours during a specified contract year, and at least 20 hours in each full month between the end of that year and the date on which the election was directed, were allowed to vote.
- Radio and television talent employees and musicians in the television film, motion picture, and phonograph recording industries have been held eligible to vote if they worked in the unit 2 or more days during the year before the date on which the election was directed.

When strikers may be allowed to vote

Section 9(c)(3) provides that economic strikers who have been replaced by bona fide permanent employees may be entitled to vote in "any election conducted within 12 months after the commencement of the strike." The permanent replacements are also eligible to vote at the same time. As a general proposition a striker is considered to be an economic striker unless found by the NLRB to be on strike over unfair labor practices of the employer. Whether the economic striker is eligible to vote or not is determined on the facts of each case.

When elections are held

Ordinarily, elections are held within 30 days after they are directed. Seasonal drops in employment or any change in operations which would prevent a normal work force from being present may cause a different election date to be set. Normally an election will not be conducted when unfair labor practice charges have been filed based upon conduct of a nature which would have a tendency to interfere with the free choice of the employees in an election, except that, in certain cases, the Board may proceed to the election if the charging party so requests.

Conduct of elections

NLRB elections are conducted in accordance with strict standards designed to give the employee-voters an opportunity to freely indicate whether they wish to be represented for purposes of collective bargaining. Election details, such as time, place, and notice of an election, are left largely to the Regional Director who usually obtains the agreement of the parties on these matters. Any party to an election who believes that the Board election standards were not met may, within 5 days after the tally of ballots has been furnished, file objections to the election with the Regional Director under whose supervision the election was held. The Regional Director's rulings on these objections may be appealed

to the Board for decision except in the case of elections that are held by consent of the parties, in which case the Regional Director's rulings are final.

An election will be set aside if it was accompanied by conduct that the NLRB considers created an atmosphere of confusion or fear of reprisals and thus interfered with the employees' freedom of choice. In any particular case the NLRB does not attempt to determine whether the conduct actually interfered with the employees' expression of free choice, but rather asks whether the conduct tended to do so. If it is reasonable to believe that the conduct would tend to interfere with the free expression of the employees' choice, the election may be set aside. Examples of conduct the Board considers to interfere with employee free choice are:

- Threats of loss of jobs or benefits by an employer or a union to influence the votes or union activities of employees.
- Misstatements of important facts in the election campaign by an employer or a union where the other party does not have a fair chance to reply.
- An employer firing employees to discourage or encourage their union activities or a union causing an employer to take such action.
- An employer or a union making campaign speeches to assembled groups of employees on company time within the 24-hour period before the election.
- The incitement of racial or religious prejudice by inflammatory campaign appeals made by either an employer or a union.
- Threats or the use of physical force or violence against employees by an employer or a union to influence their votes.
- The occurrence of extensive violence or trouble or widespread fear of job losses which prevents the holding of a fair election, whether or not caused by an employer or a union.

Unfair Labor Practices of Employers

The unfair labor practices of employers are listed in Section 8(a) of the Act; those of labor organizations in Section 8(b). Section 8(c) lists an unfair labor practice that can be committed only by an employer and a labor organization acting together. The "Types of Cases" chart at pages 24–25 may be helpful in getting to know the relationship between the various unfair labor practice sections of the Act.

Section 8(a)(1)—Interference with Section 7 Rights

Section 8(a)(1) forbids an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." Any prohibited interference by an employer with the rights of employees to organize, to form, join, or assist a labor organization, to bargain collectively, or to refrain from any of these activities, constitutes a violation of this section. This is a broad prohibition on employer interference, and an employer violates this section whenever it commits any of the other employer unfair labor practices. In consequence, whenever a violation of Section 8(a)(2), (3), (4), or (5) is committed, a violation of Section 8(a)(1) is also found. This is called a "derivative violation" of Section 8(a)(1.)

Employer conduct may of course independently violate Section 8(a)(1). Examples of such independent violations are:

Examples of violations of Section 8(a)(1)

- Threatening employees with loss of jobs or benefits if they should join or vote for a union.
- Threatening to close down the plant if a union should be organized in it.
- Questioning employees about their union activities or membership in such circumstances as will tend to restrain or coerce the employees.
- Spying on union gatherings, or pretending to spy.
- Granting wage increases deliberately timed to discourage employees from forming or joining a union.

Section 8(a)(2)—Domination or Illegal Assistance and Support of a Labor Organization

Section 8(a)(2) makes it unlawful for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." This section not only outlaws "company unions" that are dominated by the employer, but also forbids an

employer to contribute money to a union it favors or to give a union improper advantages that are denied to rival unions.

Domination

A labor organization is considered dominated within the meaning of this section if the employer has interfered with its formation and has assisted and supported its operation and activities to such an extent that it must be looked at as the employer's creation instead of the true bargaining representative of the employees. Such domination is the result of a combination of factors and has been found to exist where there is not only the factor of the employer getting the organization started, but also such other factors as the employer deciding how the organization will be set up and what it will do, or representatives of management actually taking part in the meetings and activities of the organization and trying to influence its actions and policies.

Illegal assistance and support

Interference that is less than complete domination is found where an employer tries to help a union that it favors by various kinds of conduct, such as giving the favored union improper privileges that are denied to other unions competing to organize the employees, or recognizing a favored union when another union has raised a real representation claim concerning the employees involved. Financial support of unions violates the noninterference provision of this section whether it is a direct payment to the assisted union or indirect financial aid.

Examples of violations of Section 8(a)(2)

An employer violates Section 8(a)(2) by:

- Taking an active part in organizing a union or a committee to represent employees.
- Bringing pressure on employees to join a union, except in the enforcement of a lawful union-security agreement.
- Allowing one of several unions, competing to represent employees, to solicit on company premises during working hours and denying other unions the same privilege.
- Soliciting and obtaining from employees and applicants for employment, during the hiring procedure, applications for union membership and signed authorizations for the checkoff of union dues.

In remedying such unfair labor practices, the NLRB distinguishes between domination of a labor organization and conduct which amounts to no more than illegal assistance. When a union is found to be dominated by an employer, the Board has announced it will order the organization completely disestablished as a representative of employees. But, if the organization is found only to have been supported by employer assistance amounting to less than domination, the Board usually orders the employer to stop such support and to withhold recognition from the organization until such time as it has been certified by the Board as a bona fide representative of employees.

Remedy in cases of domination differs from that in cases of illegal assistance and support

It should be noted in connection with the last example, above, that Section 8(a)(2) provides that an employer may permit employees to confer with it on union business during working hours without loss of pay. This means that both the employee and the union representative who goes along to discuss a grievance with the employer during working hours may do so without loss of pay.

When an employer can pay employees for union activity during working hours

Section 8(a)(3)—Discrimination Against Employees

Section 8(a)(3) makes it an unfair labor practice for an employer to discriminate against employees "in regard to hire or tenure of employment or any term or condition of employment" for the purpose of encouraging or discouraging membership in a labor organization. In general, the Act makes it illegal for an employer to discriminate in employment because of an employee's union or other group activity within the protection of the Act. A banding together of employees, even in the absence of a formal organization, may constitute a labor organization for purposes of Section 8(a)(3). It also prohibits discrimination because an employee has refrained from taking part in such union or group activity except where a valid union-shop agreement is in effect. Discrimination within the meaning of the Act would include such action as refusing to hire, discharging, demoting, assigning to a less desirable shift or job, or withholding benefits.

As previously noted, Section 8(a)(3) provides that an employee may be discharged for failing to pay the required union initiation fees and dues uniformly required by the exclusive bargaining representative under a lawful union-shop contract. The section provides further, however, that no employer can justify any discriminatory action against an employee for nonmembership in a union if it has reason to believe that membership in the union was not open to the employee on the same

The union-shop exception to Section 8(a)(3)

terms and conditions that apply to others, or if it has reason to believe that the employee was denied membership in the union for some reason other than failure to pay regular dues and initiation fees.

Even where there is a valid union-security agreement in effect, an employer may not pay the union the dues and fees owed by its employees. The employer may, however, deduct these amounts from the wages of its employees and forward them to the union for each employee who has *voluntarily* signed a dues "checkoff" authorization. Such checkoff authorization may be made irrevocable for no more than a year. But employees may revoke their checkoff authorizations after a Board-conducted election in which the union's authority to maintain a union-security agreement has been withdrawn.

The Act does not limit employer's right to discharge for economic reasons

This section does not limit an employer's right to discharge, transfer, or lay off an employee for genuine economic reasons or for such good cause as disobedience or bad work. This right applies equally to employees who are active in support of a union and to those who are not. However, the fact that a lawful reason for the discharge or discipline of employees may exist does not entitle an employer to discharge or discipline them when the true reason is the employees' union or other activities protected by the law.

An employer who is engaged in good-faith bargaining with a union may lock out the represented employees, sometimes even before impasse is reached in the negotiations, if it does so to further its position in bargaining. But a bargaining lockout may be unlawful if the employer is at that time unlawfully refusing to bargain or is bargaining in bad faith. It is also unlawful if the employer's purpose in locking out its employees is to discourage them in their union loyalties and activities, that is, if the employer is motivated by hostility toward the union. Thus, a lockout to defeat a union's efforts to organize the employer's employees would violate the Act, as would the lockout of only those of its employees who are members of the union. On the other hand, lockouts are lawful which are intended to prevent any unusual losses or safety hazards which would be caused by an anticipated "quickie" strike.

And a whipsaw strike against one employer engaged in multiemployer bargaining justifies a lockout by any of the other employers who are party to the bargaining.

Examples of illegal discrimination under Section 8(a)(3) include:

- Discharging employees because they urged other employees to join a union.
- Refusing to reinstate employees when jobs they are qualified for are open because they took part in a union's lawful strike.
- Granting of "superseniority" to those hired to replace employees engaged in a lawful strike.
- Demoting employees because they circulated a union petition among other employees asking the employer for an increase in pay.
- Discontinuing an operation at one plant and discharging the employees involved followed by opening the same operation at another plant with new employees because the employees at the first plant joined a union.
- Refusing to hire qualified applicants for jobs because they belong to a union. It would also be a violation if the qualified applicants were refused employment because they did not belong to a union, or because they belonged to one union rather than another.

Examples of violations of Section 8(a)(3)

Section 8(a)(4)—Discrimination for NLRB Activity

Section 8(a)(4) makes it an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act." This provision guards the right of employees to seek the protection of the Act by using the processes of the NLRB. Like the previous section, it forbids an employer to discharge, lay off, or engage in other forms of discrimination in working conditions against employees who have filed charges with the

I. CHARGES OF UNFAIR LABOR PRACTICES (C CASES)

Charge Against Employer

Section of the Act **CA**

8(a)(1) To interfere with, restrain, or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).

8(a)(2) To dominate or interfere with the formation or administration of a labor organization or contribute financial or other support to it.

8(a)(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

8(a)(4) To discharge or otherwise discriminate against employees because they have given testimony under the Act.

8(a)(5) To refuse to bargain collectively with representatives of its employees.

Charge Against Labor Organization

Section of the Act **CB**

8(b)(1)(A) To restrain or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).

8(b)(1)(B) To restrain or coerce an employer in the selection of its representatives for collective bargaining or adjustment of grievances.

8(b)(2) To cause or attempt to cause an employer to discriminate against an employee.

8(b)(3) To refuse to bargain collectively with employer.

8(b)(5) To require of employees the payment of excessive or discriminatory fees for membership.

8(b)(6) To cause or attempt to cause an employer to pay or agree to pay money or other thing of value for services which are not performed or not to be performed.

Section of the Act **CC**

8(b)(4)(i) To engage in, or induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce, to engage in a strike, work stoppage, or boycott, or *(ii)* to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object is:

(A) To force or require any employer or self-employed person to join any labor or employer organization or to enter into any agreement prohibited by Sec. 8(e).

(B) To force or require any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or force or require any other employer to recognize or bargain with a labor organization as the representative of its employees unless such labor organization has been so certified.

(C) To force or require any employer to recognize or bargain with a particular labor organization as the representative of its employees if another labor organization has been certified as the representative.

Section of the Act **CD**

(D) To force or require any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another trade, craft, or class, unless such employer is failing to conform to an appropriate Board order or certification.

Section of the Act **CG**

8(g) To strike, picket, or otherwise concertedly refuse to work at any health care institution without notifying the institution and the Federal Mediation and Conciliation Service in writing 10 days prior to such action.

CASES

	Charge Against Labor Organization and Employer	2. PETITIONS FOR CERTIFICATION OR DECERTIFICATION OF REPRESENTATIVES (R CASES)	3. OTHER PETITIONS
		By or in Behalf of Employees	By or in Behalf of Employees
Section of the Act **CP** *8(b)(7)* To picket, cause, or threaten the picketing of any employer where an object is to force or require an employer to recognize or bargain with a labor organization as the representative of its employees, or to force or require the employees of an employer to select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees: (A) where the employer has lawfully recognized any other labor organization and a question concerning representation may not appropriately be raised under Section 9(c), (B) where within the preceding 12 months a valid election under Section 9(c) has been conducted, or (C) where picketing has been conducted without a petition under 9(c) being filed within a reasonable period of time not to exceed 30 days from the commencement of the picketing; except where the picketing is for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, and it does not have an effect of interference with deliveries or services.	*Section of the Act* **CE** *8(e)* To enter into any contract or agreement (any labor organization and any employer) whereby such employer ceases or refrains or agrees to cease or refrain from handling or dealing in any product of any other employer, or to cease doing business with any other person.	*Section of the Act* **RC** *9(c)(1)(A)(i)* Alleging that a substantial number of employees wish to be represented for collective bargaining and their employer declines to recognize their representative.*	*Section of the Act* **UD** *9(e)(1)* Alleging that employees (30 percent or more of an appropriate unit) wish to rescind an existing union-security agreement.
		Section of the Act **RD** *9(c)(1)(A)(ii)* Alleging that a substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.*	By a Labor Organization or an Employer
		By an Employer	*Board Rules* **UC** *Subpart C* Seeking clarification of an existing bargaining unit.
		Section of the Act **RM** *9(c)(1)(B)* Alleging that one or more claims for recognition as exclusive bargaining representative have been received by the employer.*	*Board Rules* **AC** *Subpart C* Seeking amendment of an outstanding certification of bargaining representative.
		*If an 8(b)(7) charge has been filed involving the same employer, these statements in RC, RD, and RM petitions are not required.	

Charges filed with the National Labor Relations Board are letter-coded and numbered. Unfair labor practice charges are classified as "C" cases and petitions for certification or decertification of representatives as "R" cases. This chart indicates the letter codes used for "C" cases, at left, and "R" cases, above, and also presents a summary of each section involved.

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NLRB, given affidavits to NLRB investigators, or testified at an NLRB hearing. Violations of this section are in most cases also violations of Section 8(a)(3).

Examples of violations of Section 8(a)(4)

Examples of violations of Section 8(a)(4) are:

- Refusing to reinstate employees when jobs they are otherwise qualified for are open because they filed charges with the NLRB claiming their layoffs were based on union activity.
- Demoting employees because they testified at an NLRB hearing.

Section 8(a)(5)—Refusal To Bargain in Good Faith

Section 8(a)(5) makes it illegal for an employer to refuse to bargain in good faith about wages, hours, and other conditions of employment with the representative selected by a majority of the employees in a unit appropriate for collective bargaining. A bargaining representative which seeks to enforce its right concerning an employer under this section must show that it has been designated by a majority of the employees, that the unit is appropriate, and that there has been both a demand that the employer bargain and a refusal by the employer to do so.

Required subjects of bargaining

The duty to bargain covers all matters concerning rates of pay, wages, hours of employment, or other conditions of employment. These are called "mandatory" subjects of bargaining about which the employer, as well as the employees' representative, must bargain in good faith, although the law does not require "either party to agree to a proposal or require the making of a concession." These mandatory subjects of bargaining include but are not limited to such matters as pensions for present and retired employees, bonuses, group insurance, grievance procedure, safety practices, seniority, procedures for discharge, layoff, recall, or discipline, and the union shop. On "nonmandatory" subjects, that is, matters that are lawful but not related to "wages, hours, and other conditions of employment," the parties are free to bargain and to agree, but neither party may insist on bargaining on such subjects over the objection of the other party.

Duty to bargain defined

An employer who is required to bargain under this section must, as stated in Section 8(d), "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party."

An employer, therefore, will be found to have violated Section 8(a)(5) if its conduct in bargaining, viewed in its entirety, indicates that the employer did not negotiate with a good-faith intention to reach agreement. However, the employer's good faith is not at issue where its conduct constitutes an out-and-out refusal to bargain on a mandatory subject. For example, it is a violation for an employer, regardless of good faith, to refuse to bargain about a subject which it believes is not a mandatory subject of bargaining, when in fact it is.

What constitutes a violation of Section 8(a)(5)

The duty of an employer to meet and confer with the representative of its employees includes the duty to deal with whoever is designated by the employees' representative to carry on negotiations. An employer may not dictate to a union its selection of agents or representatives and the employer must, in general, recognize the designated agent.

Duty to meet and confer

The employer's duty to bargain includes the duty to supply upon request information that is "relevant and necessary" to allow the employees' representative to bargain intelligently and effectively with respect to wages, hours, and other conditions of employment.

Duty to supply information

Where there is a history of bargaining between a union and a number of employers acting jointly, the employees who are thus represented constitute a multiemployer bargaining unit. Once such a unit has been established, any of the participating employers—or the union—may retire from this multiemployer bargaining relationship only by mutual assent or by a timely submitted withdrawal. Withdrawal is considered timely if unequivocal notice of the withdrawal is given near the termination of a collective-bargaining agreement but before bargaining begins on the next agreement. However, if the union agrees, an employer may also withdraw from a multiemployer unit and sign an individual contract with the union where there has been a breakdown in the multiemployer negotiations leading to an impasse and a resultant strike.

Multiemployer bargaining

Finally, the duty of an employer to bargain includes the duty to refrain from unilateral action, that is, taking action on its own with respect to matters concerning which it is required to bargain, and from making changes in terms and conditions of employment without consulting the employees' representative.

Duty to refrain from unilateral action

Duty of successor employers

An employer who purchases or otherwise acquires the operations of another may be obligated to recognize and bargain with the union which represented the employees before the business was transferred. In general, these bargaining obligations exist—and the purchaser is termed a successor employer—where there is a substantial continuity in the employing enterprise despite the sale and transfer of the business. Whether the purchaser is a successor employer is dependent on several factors, including the number of employees taken over by the purchasing employer, the similarity in operations and product of the two employers, the manner in which the purchaser integrates the purchased operations into its other operations, and the character of the bargaining relationship and agreement between the union and the original employer.

Examples of violations of Section 8(a)(5)

Examples of violations of Section 8(a)(5) are as follows:

- Refusing to meet with the employees' representative because the employees are out on strike.
- Insisting, until bargaining negotiations break down, on a contract provision that all employees will be polled by secret ballot before the union calls a strike.
- Refusing to supply the employees' representative with cost and other data concerning a group insurance plan covering the employees.
- Announcing a wage increase without consulting the employees' representative.
- Subcontracting certain work to another employer without notifying the union that represents the affected employees and without giving the union an opportunity to bargain concerning the change in working conditions of the employees.

Section 8(e)—Entering a Hot Cargo Agreement

Section 8(e), added to the Act in 1959, makes it an unfair labor practice for any labor organization and any employer to enter into what is commonly called a "hot cargo" or "hot goods" agreement. It may also limit the restrictions that can be placed on the subcontracting of work by an employer. The typical hot cargo or hot goods clause in use before the 1959 amendment to the Act provided that employees would not be required by their employer to handle or work on goods or materials going to, or coming from, an employer designated by the union as "unfair." Such goods were said to be "hot

cargo," thereby giving Section 8(e) its popular name. These clauses were most common in the construction and trucking industries.

Section 8(e) forbids an employer and a labor organization to make an agreement whereby the employer agrees to stop doing business with any other employer and declares void and unenforceable any such agreement that is made. It should be noted that a strike or picketing, or any other employee action, or the threat of it, to force an employer to agree to a hot cargo provision, or to force it to act in accordance with such a clause, has been held by the Board to be a violation of Section 8(b)(4). Exceptions are allowed in the construction and garment industries, and a union may seek, by contract, to keep within a bargaining unit work that is being done by the employees in the unit or to secure work which is "fairly claimable" in that unit.

What is prohibited

In the construction industry a union and an employer in the industry may agree to a provision that restricts the contracting or subcontracting of work to be done at the construction site. Such a clause contained in the agreement between the employer and the union typically provides that if work is subcontracted by the employer it must go to an employer who has an agreement with the union. A union in the construction industry may engage in a strike and picketing to obtain, but not to enforce, contractual restrictions of this nature. Similarly, in the garment industry an employer and a union can agree that work to be done on the goods or on the premises of a jobber or manufacturer, or work that is part of "an intergrated process of production in the apparel and clothing industry," can be subcontracted only to an employer who has an agreement with the union. This exception, unlike the previous one concerning the construction industry, allows a labor organization in the garment industry not only to seek to obtain, but also to enforce, such a restriction on subcontracting by striking, picketing, or other lawful action.

Exceptions for construction and garment industries

Unfair Labor Practices of Labor Organizations

Section 8(b)(1)(A) forbids a labor organization or its agents "to restrain or coerce employees in the exercise of the rights guaranteed in section 7." The section also provides that it is not intended to "impair the rights of a labor organization to prescribe its own rules" concerning membership in the labor organization.

Section 8(b)(1)(A)—Restraint and Coercion of Employees

Section 8(b)(1)(A) compared with Section 8(a)(1)

Like Section 8(a)(1), Section 8(b)(1)(A) is violated by conduct that independently restrains or coerces employees in the exercise of their Section 7 rights regardless of whether the conduct also violates other provisions of Section 8(b). But whereas employer violations of Section 8(a)(2), (3), (4), and (5) are held to be violations of Section 8(a)(1) too, the Board has held, based on the intent of Congress when Section 8(b)(1)(A) was written, that violations of Section 8(b)(2) through (7) do not also "derivatively" violate Section 8(b)(1)(A). The Board does hold, however, that making or enforcing illegal union-security agreements or hiring agreements that condition employment on union membership not only violates Section 8(b)(2) but also Section 8(b)(1)(A), since such action restrains or coerces employees in their Section 7 rights.

Union conduct which is reasonably calculated to restrain or coerce employees in their Section 7 rights violates Section 8(b)(1)(A) whether or not it succeeds in actually restraining or coercing employees.

A union may violate Section 8(b)(1)(A) by coercive conduct of its officers or agents, of pickets on a picket line endorsed by the union, or of strikers who engage in coercion in the presence of union representatives who do not repudiate the conduct.

What violates Section 8(b)(1)(A)

Unlawful coercion may consist of acts specifically directed at an employee such as physical assaults, threats of violence, and threats to affect an employee's job status. Coercion also includes other forms of pressure against employees such as acts of a union while representing employees as their exclusive bargaining agent (see Sec. 9(a), p. 10). A union which is a statutory bargaining representative owes a duty of fair representation to all the employees it represents. It may exercise a wide range of reasonable discretion in carrying out the representative function, but it violates Section 8(b)(1)(A) if, while acting as the employees' statutory bargaining representative, it takes or withholds action in connection with their employment because of their union activities or for any irrelevant or arbitrary reason such as an employee's race or sex.

Section 8(b)(1)(A) recognizes the right of unions to establish and enforce rules of membership and to control their internal affairs. This right is limited to union rules and discipline which affect the

rights of employees as union members and which are not enforced by action affecting an employee's employment. Also, rules to be protected must be aimed at matters of legitimate concern to unions such as the encouragement of members to support a lawful strike or participation in union meetings. Rules which conflict with public policy, such as rules which limit a member's right to file unfair labor practice charges, are not protected. And a union may not fine a member for filing a decertification petition although it may expel that individual for doing so.

Examples of restraint or coercion that violate Section 8(b)(1)(A) when done by a union or its agents include the following:

Examples of violations of Section 8(b)(1)(A)

- Mass picketing in such numbers that nonstriking employees are physically barred from entering the plant.
- Acts of force or violence on the picket line, or in connection with a strike.
- Threats to do bodily injury to nonstriking employees.
- Threats to employees that they will lose their jobs unless they support the union's activities.
- Statement to employees who oppose the union that the employees will lose their jobs if the union wins a majority in the plant.
- Entering into an agreement with an employer which recognizes the union as exclusive bargaining representative when it has not been chosen by a majority of the employees.
- Fining or expelling members for crossing a picket line which is unlawful under the Act or which violates a no-strike agreement.
- Fining employees for conduct in which they engaged after resigning from the union.
- Fining or expelling members for filing unfair labor practice charges with the Board or for participating in an investigation conducted by the Board.

The following are examples of restraint or coercion that violate Section 8(b)(1)(A) when done by a union which is the exclusive bargaining representative:

- Refusing to process a grievance in retaliation against an employee's criticism of union officers.

- Maintaining a seniority arrangement with an employer under which seniority is based on the employee's prior representation by the union elsewhere.
- Rejecting an application for referral to a job in a unit represented by the union based on the applicant's race or union activities.

Section 8(b)(1)(B)—Restraint and Coercion of Employers

Section 8(b)(1)(B) prohibits a labor organization from restraining or coercing an employer in the selection of a bargaining representative. The prohibition applies regardless of whether the labor organization is the majority representative of the employees in the bargaining unit. The prohibition extends to coercion applied by a union to a union member who is a representative of the employer in the adjustment of grievances. This section is violated by such conduct as the following:

Examples of violations of Section 8(b)(1)(B)

- Insisting on meeting only with a company's owners and refusing to meet with the attorney the company has engaged to represent the company in contract negotiations, and threatening to strike to force the company to accept its demands.
- Striking against several members of an employer association that had bargained with the union as the representative of the employers with resulting individual contracts being signed by the struck employers.
- Insisting during contract negotiations that the employer agree to accept working conditions which will be established by a bargaining group to which it does not belong.
- Fining or expelling supervisors for the way they apply the bargaining contract while carrying out their supervisory functions.

Section 8(b)(2)—Causing or Attempting To Cause Discrimination

Section 8(b)(2) makes it an unfair labor practice for a labor organization to cause an employer to discriminate against an employee in violation of Section 8(a)(3). As discussed earlier, Section 8(a)(3) prohibits an employer from discriminating against an employee in regard to wages, hours, and other conditions of employment for the purpose of encouraging or discouraging membership in a labor organization. It does allow, however, the making of union-security agreements under certain specified conditions.

A union violates Section 8(b)(2), for example, by demanding that an employer discriminate against employees because of their lack of union membership where there is no valid union-shop agreement in effect. The section can also be violated by agreements or arrangements with employers that unlawfully condition employment or job benefits on union membership, on the performance of union membership obligations, or on arbitrary grounds. Union conduct affecting an employee's employment in a way which is contrary to provisions of the bargaining contract may likewise be violative of the section. But union action which causes detriment to an individual employee in that individual's employment does not violate Section 8(b)(2) if it is consistent with nondiscriminatory provisions of a bargaining contract negotiated for the benefit of the total bargaining unit or if it is for some other legitimate purpose.

What violates Section 8(b)(2)

To find that a union caused an employer to discriminate, it is not necessary to show that any express demand was spoken. A union's conduct, accompanied by statements advising or suggesting that action is expected of an employer, may be enough to find a violation of this section if the union's action can be shown to be a causal factor in the employer's discrimination.

Contracts or informal arrangements with a union under which an employer gives preferential treatment to union members are violations of Section 8(b)(2). It is not unlawful for an employer and a union to enter an agreement whereby the employer agrees to hire new employees exclusively through the union hiring hall so long as there is neither a provision in the agreement nor a practice in effect that discriminates against nonunion members in favor of union members or otherwise discriminates on the basis of union membership obligations. Both the agreement and the actual operation of the hiring hall must be nondiscriminatory; referrals must be made without reference to union membership or irrelevant or arbitrary considerations such as race. Referral standards or procedures, even if nondiscriminatory on their face, are unlawful when they continue previously discriminatory conditions of referral. However, a union may in setting referral standards consider legitimate aims such as sharing available work and easing the impact of local unemployment. It may also charge referral fees if the amount of the fee is reasonably related to the cost of operating the referral service.

Illegal hiring-hall agreements and practices

Illegal union-security agreements

Union-security agreements that require employees to become members of the union after they are hired are permitted by this section as previously discussed. Union-security agreements that do not meet all the requirements listed on page 3 will not support a discharge. A union that attempts to force an employer to enter an illegal union-security agreement, or that enters and keeps in effect such an agreement, violates Section 8(b)(2), as does a union that attempts to enforce such an illegal agreement by bringing about an employee's discharge. Even when a union-security provision of a bargaining contract meets all statutory requirements so that it is permitted by Section 8(a)(3), a union may not lawfully require the discharge of employees under the provision unless the employees had been informed of the union-security agreement and of their specific obligation under it. And a union violates Section 8(b)(2) if it tries to use the union-security provisions of a contract to collect payments other than periodic dues and initiation fees uniformly required of members. Assessments, fines, and penalties may not be enforced by application of a union-security contract.

Examples of violations of Section 8(b)(2)

Examples of violations of Section 8(b)(2) are:

- Causing an employer to discharge employees because they circulated a petition urging a change in the union's method of selecting shop stewards.
- Causing an employer to discharge employees because they made speeches against a contract proposed by the union.
- Making a contract that requires an employer to hire only members of the union or employees "satisfactory" to the union.
- Causing an employer to reduce employees' seniority because they engaged in antiunion acts.
- Refusing referral or giving preference on the basis of race or union activities in making job referrals to units represented by the union.
- Seeking the discharge of an employee under a union-security agreement for failure to pay a fine levied by the union.

Section 8(b)(3)—Refusal To Bargain in Good Faith

Section 8(b)(3) makes it illegal for a labor organization to refuse to bargain in good faith with an employer about wages, hours, and other conditions of employment if it is the representative of that employer's employees. This section imposes on labor organizations the same duty to bargain in good

faith that is imposed on employers by Section 8(a)(5). Both the labor organization and the employer are required to follow the procedure set out in Section 8(d) before terminating or changing an existing contract (see pages 7 and 8).

A labor organization that is the employees' representative must meet at reasonable times with the employer or his designated representative, must confer in good faith on matters pertaining to wages, hours, or other conditions of employment, or the negotiation of an agreement, or any question arising under an agreement, and must sign a written agreement if requested and if one is reached. The obligation does not require the labor organization or the employer to agree to a proposal by the other party or make a concession to the other party, but it does require bargaining with an open mind in an attempt to reach agreement. So, while a union may try in contract negotiations to establish wages and benefits comparable to those contained in other bargaining agreements in the area, it may not insist on such terms without giving the employer an opportunity to bargain about the terms. Likewise, a union may seek *voluntary* bargaining on nonmandatory subjects of bargaining (p. 26), such as a provision for an industry promotion fund, but may not *insist* on bargaining about such subjects or condition execution of a contract on the reaching of agreement on a nonmandatory subject.

Where a union has been bargaining with a group of employers in a multiemployer bargaining unit, it may withdraw at any time from bargaining upon that basis and bargain with one of the employers individually if the individual employer and the multiemployer group agree to the union's withdrawal. And even in the absence of employer consent a union may withdraw from multiemployer bargaining by giving the employers unequivocal notice of its withdrawal near the expiration of the agreement but before bargaining on a new contract had begun. In some circumstances a union may withdraw after a breakdown in the multiemployer bargaining.

Section 8(b)(3) not only requires that a union representative bargain in good faith with employers, but also requires that the union carry out its bargaining duty fairly with respect to the employees it represents. A union, therefore, violates Section 8(b)(3) if it negotiates a contract which conflicts with that duty, such as a contract with racially discriminatory provisions, or if it refuses to handle grievances under the contract for irrelevant or arbitrary reasons.

Section 8(b)(3) is violated by any of the following:

- Insisting on the inclusion of illegal provisions in a contract, such as a closed shop or a discriminatory hiring hall.
- Refusing to negotiate on a proposal for a written contract.
- Striking against an employer who has bargained, and continues to bargain, on a multi-employer basis to compel it to bargain separately.
- Refusing to meet with the attorney designated by the employer as its representative in negotiations.
- Terminating an existing contract and striking for a new one without notifying the employer, the Federal Mediation and Conciliation Service, and the state mediation service, if any.
- Conditioning the execution of an agreement upon inclusion of a nonmandatory provision such as a performance bond.
- Refusing to process a grievance because of the race, sex, or union activities of an employee for whom the union is the statutory bargaining representative.

Examples of violations of Section 8(b)(3)

Section 8(b)(4)—Prohibited Strikes and Boycotts

Section 8(b)(4) prohibits a labor organization from engaging in strikes or boycotts or taking other specified actions to accomplish certain purposes or "objects" as they are called in the Act. The proscribed action is listed in clauses (i) and (ii), the objects are described in subparagraphs (A) through (D). A union commits an unfair labor practice if it takes any of the kinds of action listed in clauses (i) and (ii) as a means of accomplishing any of the objects listed in the four subparagraphs.

Clause (i) forbids a union to engage in a strike, or to induce or encourage a strike, work stoppage, or a refusal to perform services by "any individual employed by any person engaged in commerce or in an industry affecting commerce" for one of the objects listed in subparagraphs (A) through (D). The words "induce and encourage" are considered by the U.S. Supreme Court to be broad enough to include every form of influence or persuasion. For example, it has been held by the NLRB that a work stoppage on a picketed construction project was "induced" by a union through its business agents who, when they learned about the picketing, told the job stewards that they (the business agents) would not work behind the [illegible] line. It was considered that this advice not only induced

Proscribed action: Inducing or encouraging a strike, work stoppage, boycott

the stewards to leave the job, but caused them to pass the information on to their fellow employees, and that such conduct informed the other employees that they were expected not to work behind the picket line. The word "person" is defined in Section 2(1) as including "one or more individuals, labor organizations, partnerships, associations, corporations," and other legal persons. As so defined, the word "person" is broader than the word "employer." For example, a railroad company, although covered by the Railway Labor Act, is excluded from the definition of "employer" in the National Labor Relations Act and, therefore, neither the railroad company nor its employees are covered by the National Labor Relations Act. But a railroad company is a "person engaged in commerce" as defined above and, therefore, a labor organization is forbidden to "induce or encourage" individuals employed by a railroad company to engage in a strike, work stoppage, or boycott for any of the objects in subparagraphs (A) through (D).

Clause (ii) makes it an unfair labor practice for a union to "threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce" for any of the proscribed objects. Even though no direct threat is voiced by the union, there may nevertheless be coercion and restraint that violates this clause. For example, where a union picketed a construction job to bring about the removal of a nonunion subcontractor in violation of Section 8(b)(4)(B), the picketing induced employees of several other subcontractors to stop work. When the general contractor asked what could be done to stop the picketing, the union's business agent replied that the picketing would stop only if the nonunion subcontractor were removed from the job. The NLRB held this to be "coercion and restraint" within the meaning of clause (ii).

Proscribed action: Threats, coercion, and restraint

Section 8(b)(4)(A) prohibits unions from engaging in clause (i) or (ii) action to compel an employer or self-employed person to join any labor or employer organization; or to force an employer to enter a hot cargo agreement prohibited by Section 8(e). Examples of violations of this section are:

Subparagraph (A)—Prohibited object: Compelling membership in an employer or labor organization or compelling a hot cargo agreement

- In an attempt to compel a beer distributor to join a union, the union prevents the distributor from obtaining beer at a brewery by inducing the brewery's employees to refuse to fill the distributor's orders.

Examples of violations of Section 8(b)(4)(A)

- In an attempt to secure for its members certain stevedoring work required at an employer's unloading operation, the union pickets to force the employer either to join an employer association with which the union has a contract or to hire a stevedoring firm that is a member of the association.
- A union pickets an employer (one not in the construction industry), or threatens to picket it, to compel that employer to enter into an agreement whereby the employer will only do business with persons who have an agreement with a union.

Subparagraph (B)—Prohibited object: Compelling a boycott or work stoppage

Section 8(b)(4)(B) contains the Act's secondary boycott provision. A secondary boycott occurs if a union has a dispute with Company A and in furtherance of that dispute causes the employees of Company B to stop handling the products of Company A, or otherwise forces Company B to stop doing business with Company A. The dispute is with Company A, called the "primary" employer, the union's action is against Company B, called the "secondary" employer, hence the term "secondary boycott." In many cases the secondary employer is a customer or supplier of the primary employer with whom the union has the dispute. In general, the Act prohibits both the secondary boycott and the threat of it. Examples of prohibited secondary boycotts are:

Examples of violations of Section 8(b)(4)(B)

- Picketing an employer to force it to stop doing business with another employer who has refused to recognize the union.
- Asking the employees of a plumbing contractor not to work on connecting up air-conditioning equipment manufactured by a nonunion employer whom the union is attempting to organize.
- Urging employees of a building contractor not to install doors which were made by a manufacturer which is nonunion or which employs members of a rival union.
- Telling an employer that its plant will be picketed if that employer continues to do business with an employer the union has designated as "unfair."

The prohibitions of Section 8(b)(4)(B) do not protect a secondary employer from the incidental effects of union action that is taken directly against the primary employer. Thus, it is lawful for a union to urge employees of a secondary supplier at the primary employer's plant not to cross

a picket line there. Section 8(b)(4)(B) also does not proscribe union action to prevent an employer from contracting out work customarily performed by its employees, even though an incidental effect of such conduct might be to compel that employer to cease doing business with the subcontractor.

In order to be protected against the union action that is prohibited under this subparagraph the secondary employer has to be a neutral as concerns the dispute between the union and the primary employer. For secondary boycott purposes an employer is considered an "ally" of the primary employer and, therefore, not protected from union action in certain situations. One is based on the ownership and operational relationship between the primary and secondary employers. Here, a number of factors are considered, particularly the following: Are the primary and secondary employers owned and controlled by the same person or persons? Are they engaged in "closely integrated operations"? May they be treated as a single employer under the Act? Another test of the "ally" relationship is based on the conduct of the secondary employer. If an employer, despite its claim of neutrality in the dispute, acts in a way that indicates that it has abandoned its "neutral" position, the employer opens itself up to primary action by the union. An example of this would be an employer who, claiming to be a neutral, enters into an arrangement with a struck employer whereby it accepts and performs farmed-out work of that employer who would normally do the work itself, but who cannot perform the work because its plant is closed by a strike.

When an employer is not protected from secondary strikes and boycotts

When employees of a primary employer and those of a secondary employer work on the same premises, a special situation is involved and the usual rules do not apply. A typical example of the shared site or "common situs" situation is where a subcontractor with whom a union has a dispute is engaged at work on a construction site alongside other subcontractors, with whom the union has no dispute. Picketing at a common situs is permissible if directed solely against the primary employer. But it is prohibited if directed against secondary employers regularly engaged at that site. To assist in determining whether picketing at a common site is restricted to the primary employer and therefore permissible, or directed at a secondary employer and therefore violative of the statute, the NLRB and the courts have suggested various guidelines for evaluating the object of the picketing, including the following:

When a union may picket an employer who shares a site with another employer

Subject to the qualification noted below, the picketing would appear to be primary picketing, if the picketing is:

1. Limited to times when the employees of the primary employer are working on the premises.
2. Limited to times when the primary employer is carrying on its normal business there.
3. Confined to places reasonably close to where the employees of the primary employer are working.
4. Conducted so that the picket signs, the banners, and the conduct of the pickets indicate clearly that the dispute is with the primary employer and not with the secondary employer.

These guidelines are known as the *Moore Dry Dock* standards from the case in which they were first formulated by the NLRB. However, the NLRB has held that picketing at a common situs may be unlawful notwithstanding compliance with the *Moore Dry Dock* standards if a union's statements or actions otherwise indicate that the picketing has an unlawful objective.

Picketing contractors' gates

In some situations a company may set aside, or reserve, a certain plant gate, or entrance to its premises, for the exclusive use of a contractor. If a union has a labor dispute with the company and pickets the company's premises, including the gate so reserved, the union may be held to have violated Section 8(b)(4)(B). The U.S. Supreme Court has stated the circumstances under which such a violation may be found as follows:

> There must be a separate gate, marked and set apart from other gates; the work done by the men who use the gate must be unrelated to the normal operations of the employer, and the work must be of a kind that would not, if done when the plant were engaged in its regular operations, necessitate curtailing those operations.

However, if the reserved gate is used by employees of both the company and the contractor, the picketing would be considered primary and not a violation of Section 8(b)(4)(B).

Subparagraph (B)—Prohibited object: Compelling recognition of an uncertified union

Section 8(b)(4)(B) also prohibits secondary action to compel an employer to recognize or bargain with a union that is not the certified representative of its employees. If a union takes action described in clause (i) or (ii) against a secondary employer, and the union's object is recognition by the primary employer, the union commits an unfair labor practice under this section. To establish

that the union has an object of recognition, a specific demand by the union for recognition need not be shown; a demand for a contract, which implies recognition or at least bargaining, is enough to establish an 8(b)(4)(B) object.

Subparagraph (C)—Prohibited object: Compelling recognition of a union if another union has been certified

Section 8(b)(4)(C) forbids a labor organization from using clause (i) or (ii) conduct to force an employer to recognize or bargain with a labor organization other than the one that is currently certified as the representative of its employees. Section 8(b)(4)(C) has been held not to apply where the picketing union is merely protesting working conditions which are substandard for the area.

Subparagraph (D)—Prohibited object: Compelling assignment of certain work to certain employees

Section 8(b)(4)(D) forbids a labor organization from engaging in action described in clauses (i) and (ii) for the purpose of forcing any employer to assign certain work to "employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class." The Act sets up a special procedure for handling disputes over work assignments that will be discussed later in this material (see page 53).

Publicity such as handbilling allowed by Section 8(b)(4)

The final provision in Section 8(b)(4) provides that nothing in Section 8(b)(4) shall be construed "to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer." Such publicity is not protected if it has "an effect of inducing any individual employed by any person other than the primary employer" to refuse to handle any goods or not to perform services. The Supreme Court has held that this provision permitted a union to distribute handbills at the stores of neutral food chains asking the public not to buy certain items distributed by a wholesaler with whom the union had a primary dispute. Moreover, it has also held that peaceful picketing at the stores of a neutral food chain to persuade customers not to buy the products of a struck employer when they traded in these stores was not prohibited by Section 8(b)(4).

Section 8(b)(5)—Excessive or Discriminatory Membership Fees

Section 8(b)(5) makes it illegal for a union to charge employees who are covered by an authorized union-security agreement a membership fee "in an amount which the Board finds excessive or discriminatory under all the circumstances." The section also provides that the Board in making its finding must consider among other factors "the practices and customs of labor organizations in the

particular industry, and the wages currently paid to the employees affected."

Examples of violations of this section include:

Examples of violations of Section 8(b)(5)

- Charging old employees who do not join the union until after a union-security agreement goes into effect an initiation fee of $15 while charging new employees only $5.
- Increasing the initiation fee from $75 to $250 and thus charging new members an amount equal to about 4 weeks' wages when other unions in the area charge a fee equal to about one-half the employee's first week's pay.

Section 8(b)(6)—"Featherbedding"

Section 8(b)(6) forbids a labor organization "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed."

Section 8(b)(7)—Organizational and Recognitional Picketing by Noncertified Unions

Section 8(b)(7) prohibits a labor organization that is not currently certified as the employees' representative from picketing or threatening to picket with an object of obtaining recognition by the employer (recognitional picketing) or acceptance by his employees as their representative (organizational picketing). The object of picketing is ascertained from all the surrounding facts including the message on the picket signs and any communications between the union and the employer. "Recognitional" picketing as used in Section 8(b)(7) refers to picketing to obtain an employer's initial recognition of the union as bargaining representative of its employees or to force the employer, without formal recognition of the union, to maintain a specific and detailed set of working conditions. It does not include picketing by an incumbent union for continued recogition or for a new contract. Neither does it include picketing which seeks to prevent the employer from undermining area standards of working conditions by operating at less than the labor costs which prevail under bargaining contracts in the area.

Recognitional and organizational picketing are prohibited in three specific instances:

A. When the employer has lawfully recognized another union and a representation election would be barred by either the provisions of the Act or the Board's Rules, as in the case of a valid contract between the employer and the other union (8(b)(7)(A)). (A union is

considered lawfully recognized when the employer's recognition of the union cannot be attacked under the unfair labor practice provisions of Section 8 of the Act.)

B. When a valid NLRB representation election has been held within the previous 12 months (8(b)(7)(B)).

C. When a representation petition is not filed "within a reasonable period of time not to exceed thirty days from the commencement of such picketing" (8(b)(7)(C)).

Publicity picketing

Subparagraph (C) is subject to an exception, called a proviso, which permits picketing "for the purpose of truthfully advising the public (including consumers)" that an employer does not employ union members or have a contract with a labor organization. However, such picketing loses the protection of this proviso if it has a substantial effect on the employer's business because it induces "any individual employed by any other person" to refuse to pick up or deliver goods or to perform other services.

Expedited elections under Section 8(b)(7)(C)

If an 8(b)(7)(C) charge is filed against the picketing union and a representation petition is filed within a reasonable time after the picketing starts, subparagraph (C) provides for an election to be held forthwith. This election requires neither a hearing nor a showing of interest among the employees. As a consequence the election can be held and the results obtained faster than in a regular election under Section 9(c), and for this reason it is called an "expedited" election. Petitions filed more than a reasonable time after picketing begins and petitions filed during picketing protected by the 8(b)(7)(C) proviso, discussed above, are processed under normal election procedures and the election will not be expedited. The reasonable period in which to file a petition cannot exceed 30 days and may be shorter, when, for instance, picketing is accompanied by violence.

Examples of violations of Section 8(b)(7)

Examples of violations of Section 8(b)(7) are as follows:

- Picketing by a union for organizational purposes shortly after the employer has entered a lawful contract with another union. (8(b)(7)(A))
- Picketing by a union for organizational purposes within 12 months after a valid NLRB election in which a majority of the employees in the unit voted to have no union. (8(b)(7)(B))
- Picketing by a union for recognition continuing for more than 30 days without the filing

of a representation petition where the picketing stops all deliveries by employees of another employer. (8(b)(7)(C))

Section 8(e)—Entering a Hot Cargo Agreement

Section 8(e) makes it an unfair labor practice for an employer or a labor organization to enter a hot cargo agreement. This section applies equally to unions and to employers. The discussion of this section as an unfair labor practice of employers has been treated as a discussion of an unfair labor practice of unions as well. (See pages 28 and 29.)

Section 8(g)—Striking or Picketing a Health Care Institution Without Notice

Section 8(g) prohibits a labor organization from engaging in a strike, picketing, or other concerted refusal to work at any health care institution without first giving at least 10 days' notice in writing to the institution and the Federal Mediation and Conciliation Service.

How the Act Is Enforced

The rights of employees declared by Congress in the National Labor Relations Act are not self-enforcing. To ensure that employees may exercise these rights, and to protect them and the public from unfair labor practices, Congress established the NLRB to administer and enforce the Act.

Organization of the NLRB

The NLRB includes the Board, which is composed of five members with their respective staffs, the General Counsel and staff, and the Regional, Subregional, and Resident Offices. The General Counsel has final authority on behalf of the Board, in respect to the investigation of charges and issuance of complaints. Members of the Board are appointed by the President, with consent of the Senate, for 5-year terms. The General Counsel is also appointed by the President, with consent of the Senate, for a 4-year term. Offices of the Board and the General Counsel are in Washington, D.C. To assist in administering and enforcing the law, the NLRB has established 33 Regional and a number of other field offices. These offices, located in major cities in various States and Puerto Rico are under the general supervision of the General Counsel.

The Board

The General Counsel

The Regional Offices

Functions of the NLRB

The Agency has two main functions: to conduct representation elections and certify the results, and to prevent employers and unions from engaging in unfair labor practices. In both kinds of cases the processes of the NLRB are begun only when requested. Requests for such action must be made in writing on forms provided by the NLRB and filed with the proper Regional office. The form used to request an election is called a "petition," and the form for unfair labor practices is called

a "charge." The filing of a petition or a charge sets in motion the machinery of the NLRB under the Act. Before discussing the machinery established by the Act, it would be well to understand the nature and extent of the authority of the NLRB.

Authority of the NLRB

The NLRB gets its authority from Congress by way of the National Labor Relations Act. The power of Congress to regulate labor-management relations is limited by the commerce clause of the United States Constitution. Although it can declare generally what the rights of employees are or should be, Congress can make its declaration of rights effective only in respect to enterprises whose operations "affect commerce" and labor disputes that "affect commerce." The NLRB, therefore, can direct elections and certify the results only in the case of an employer whose operations affect commerce. Similarly, it can act to prevent unfair labor practices only in cases involving labor disputes that affect, or would affect, commerce.

Enterprises whose operations affect commerce

"Commerce" includes trade, traffic, transportation, or communication within the District of Columbia or any Territory of the United States; or between any State or Territory and any other State, Territory, or the District of Columbia; or between two points in the same State, but through any other State, Territory, the District of Columbia, or a foreign country. Examples of enterprises engaged in commerce are:

What is commerce

- A manufacturing company in California that sells and ships its product to buyers in Oregon.
- A company in Georgia that buys supplies in Louisiana.
- A trucking company that transports goods from one point in New York State through Pennsylvania to another point in New York State.
- A radio station in Minnesota that has listeners in Wisconsin.

Although a company may not have any direct dealings with enterprises in any other State, its operations may nevertheless affect commerce. The operations of a Massachusetts manufacturing company that sells all of its goods to Massachusetts wholesalers affect commerce if the wholesalers ship to buyers in other States. The effects of a labor dispute involving the Massachusetts manufacturing concern would be felt in other States and the labor dispute would, therefore, "affect" commerce. Using this test, it can be seen that the operations of almost any employer can be said to affect commerce. As a result, the authority of the NLRB could extend to all but purely local enterprises.

When the operations of an employer affect commerce

The Board does not act in all cases affecting commerce

Although the National Labor Relations Board could exercise its powers to enforce the Act in all cases involving enterprises whose operations affect commerce, the Board does not act in all such cases. In its discretion it limits the exercise of its power to cases involving enterprises whose effect on commerce is substantial. The Board's requirements for exercising its power or jurisdiction are called "jurisdictional standards." These standards are based on the yearly amount of business done by the enterprise, or on the yearly amount of its sales or of its purchases. They are stated in terms of total dollar volume of business and are different for different kinds of enterprises. The Board's standards in effect on July 1, 1976, are as follows:

NLRB jurisdictional standards

1. *Nonretail business:* Direct sales of goods to consumers in other States, or indirect sales through others (called outflow), of at least $50,000 a year; or direct purchases of goods from suppliers in other States, or indirect purchases through others (called inflow), of at least $50,000 a year.
2. *Office buildings:* Total annual revenue of $100,000 of which $25,000 or more is derived from organizations which meet any of the standards except the indirect outflow and indirect inflow standards established for nonretail enterprises.
3. *Retail enterprises:* At least $500,000 total annual volume of business.
4. *Public utilities:* At least $250,000 total annual volume of business, or $50,000 direct or indirect outflow or inflow.
5. *Newspapers:* At least $200,000 total annual volume of business.
6. *Radio, telegraph, television, and telephone enterprises:* At least $100,000 total annual volume of business.
7. *Hotels, motels, and residential apartment houses:* At least $500,000 total annual volume of business.
8. *Privately operated health care institutions:* At least $250,000 total annual volume of business for hospitals; at least $100,000 for nursing homes, visiting nurses associations, and related facilities; at least $250,000 for all other types of private health care institutions defined in the 1974 amendments to the Act. The statutory definition includes: "any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility,

or other institution devoted to the care of the sick, infirm, or aged person." Public hospitals are excluded from NLRB jurisdiction by Section 2(2) of the Act.

9. *Transportation enterprises, links and channels of interstate commerce:* At least $50,000 total annual income from furnishing interstate passenger and freight transportation services; also performing services valued at $50,000 or more for businesses which meet any of the jurisdictional standards except the indirect outflow and indirect inflow standards established for nonretail enterprises.
10. *Transit systems:* At least $250,000 total annual volume of business.
11. *Taxicab companies:* At least $500,000 total annual volume of business.
12. *Associations:* These are regarded as a single employer in that the annual business of all association members is totaled to determine whether any of the standards apply.
13. *Enterprises in the Territories and the District of Columbia:* The jurisdictional standards apply in the Territories; all businesses in the District of Columbia come under NLRB jurisdiction.
14. *National defense:* Jurisdiction is asserted over all enterprises affecting commerce when their operations have a substantial impact on national defense, whether or not the enterprises satisfy any other standard.
15. *Private universities and colleges:* At least $1 million gross annual revenue from all sources (excluding contributions not available for operating expenses because of limitations imposed by the grantor).
16. *Symphony orchestras:* At least $1 million gross annual revenue from all sources (excluding contributions not available for operating expenses because of limitations imposed by the grantor).

Through enactment of the 1970 Postal Reorganization Act, jurisdiction of the NLRB was extended to the United States Postal Service, effective July 1, 1971.

In addition to the above-listed standards, the Board asserts jurisdiction over gambling casinos in

Nevada and Puerto Rico, where these enterprises are legally operated, when their total annual revenue from gambling is at least $500,000.

Ordinarily if an enterprise does the total annual volume of business listed in the standard, it will necessarily be engaged in activities that "affect" commerce. The Board must find, however, based on evidence, that the enterprise does in fact "affect" commerce.

The Board has established the policy that where an employer whose operations "affect" commerce refuses to supply the Board with information concerning total annual business, etc., the Board may dispense with this requirement and exercise jurisdiction.

Finally, Section 14(c)(1) authorizes the Board, in its discretion, to decline to exercise jurisdiction over any class or category of employers where a labor dispute involving such employees is not sufficiently substantial to warrant the exercise of jurisdiction, provided that it cannot refuse to exercise jurisdiction over any labor dispute over which it would have asserted jurisdiction under the standards it had in effect on August 1, 1959. In accordance with this provision the Board has determined that it will not exercise jurisdiction over racetracks, owners, breeders, and trainers of racehorses, and real estate brokers.

In addition to the foregoing limitations the Act states that the term "employee" shall include any employee *except* the following:

The Act does not cover certain individuals

- Agricultural laborers.
- Domestic servants.
- Any individual employed by his parent or spouse.
- Independent contractors.
- Supervisors.
- Individuals employed by an employer subject to the Railway Labor Act.
- Government employees, including those employed by the U.S. Government, any Government corporation or Federal Reserve Bank, or any State or political subdivision such as a city, town, or school district.

Supervisors are excluded from the definition of "employee" and, therefore, not covered by the Act. Whether an individual is a supervisor for purposes of the Act depends on that individual's authority

over employees and not merely a title. A supervisor is defined by the Act as any individual who has the authority, acting in the interest of an employer, to cause another employee to be hired, transferred, suspended, laid off, recalled, promoted, discharged, assigned, rewarded, or disciplined, either by taking such action or by recommending it to a superior; or who has the authority responsibly to direct other employees or adjust their grievances; provided, in all cases, that the exercise of authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment. For example, a foreman who determined which employees would be laid off after being directed by the job superintendent to lay off four employees would be considered a supervisor and would, therefore, not be covered by the Act; a "strawboss" who, after someone else determined which employees would be laid off, merely informed the employees of the layoff and who neither directed other employees nor adjusted their grievances would not be considered a supervisor and would be covered by the Act.

Supervisor defined

All employees properly classified as "managerial," not just those in positions susceptible to conflicts of interest in labor relations, are excluded from the protection of the Act. This was the thrust of a decision of the Supreme Court in 1974.

The term "employer" includes any person who acts as an agent of an employer, but it does *not* include the following:

The Act does not cover certain employers

- The United States or any State Government, or any political subdivision of either, or any Government corporation or Federal Reserve Bank.
- Any employer subject to the Railway Labor Act.

NLRB Procedure

The authority of the NLRB can be brought to bear in a representation proceeding only by the filing of a petition. Forms for petitions must be signed, sworn to or affirmed under oath, and filed with the Regional Office in the area where the unit of employees is located. If employees in the unit regularly work in more than one regional area, the petition may be filed with the Regional Office of any of such regions. Section 9(c)(1) provides that when a petition is filed, "the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice." If the Board finds from the evidence presented at the hearing that "such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof." Where there are three or more choices on the ballot and none receives a majority, Section 9(c)(4) provides for a runoff between the choice

Procedure in representation cases

that received the largest and the choice that received the second largest number of valid votes in the election. After the election, if a union receives a majority of the votes cast, it is certified; if no union gets a majority, that result is certified. A union that has been certified is entitled to be recognized by the employer as the exclusive bargaining agent for the employees in the unit. If the employer fails to bargain with the union, it commits an unfair labor practice.

Procedure in unfair labor practice cases

The procedure in an unfair labor practice case is begun by the filing of a charge. A charge may be filed by an employee, an employer, a labor organization, or any other person. Like petitions, charge forms, which are also available at Regional Offices, must be signed, sworn to or affirmed under oath, and filed with the appropriate Regional Office—that is, the Regional Office in the area where the alleged unfair labor practice was committed. Section 10 provides for the issuance of a complaint stating the charges and notifying the charged party of a hearing to be held concerning the charges. Such a complaint will issue only after investigation of the charges through the Regional Office indicates that an unfair labor practice has in fact occurred.

In certain limited circumstances where an employer and union have an agreed-upon grievance arbitration procedure which will resolve the dispute, the Board will defer processing an unfair labor practice case and await resolution of the issues through that grievance arbitration procedure. If the grievance arbitration process meets the Board's standards, the Board may accept the final resolution and defer to that decision. If the procedure fails to meet all of the Board standards for deferral, the Board may then resume processing of the unfair labor practice issues.

An unfair labor practice hearing is conducted before an NLRB administrative law judge in accordance with the rules of evidence and procedure that apply in the U.S. District Courts. Based on the hearing record, the administrative law judge makes findings and recommendations to the Board. All parties to the hearing may appeal the administrative law judge's decision to the Board. If the Board considers that the party named in the complaint has engaged in or is engaging in the unfair labor practices charged, the Board is authorized to issue an order requiring such person to cease and desist from such practices and to take appropriate affirmative action.

Section 10(b) provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made." An exception is made if the charging party "was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge." It should be noted that the charging party must, within 6 months after the unfair labor practice occurs, file the charge with the Regional Office *and* serve copies of the charge on each person against whom the charge is made. Normally service is made by sending the charge by registered mail, return receipt requested.

The 6-month rule limiting issuance of complaint

If the Regional Director refuses to issue a complaint in any case, the person who filed the charge may appeal the decision to the General Counsel in Washington. Section 3(d) places in the General Counsel "final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints." If the General Counsel reverses the Regional Director's decision, a complaint will be issued. If the General Counsel approves the decision not to issue a complaint, there is no further appeal.

Appeal to the General Counsel if complaint is not issued

Powers of the NLRB

To enable the NLRB to perform its duties under the Act, Congress delegated to the Agency certain powers that can be used in all cases. These are principally powers having to do with investigations and hearings.

As previously indicated, all charges that are filed with the Regional Offices are investigated, as are petitions for representation elections. Section 11 establishes the powers of the Board and the Regional Offices in respect to hearings and investigations. The provisions of Section 11(1) authorize the Board or its agents to

Powers concerning investigations

- Examine and copy "any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question."
- Issue subpenas, on the application of any party to the proceeding, requiring the attendance and testimony of witnesses or the production of any evidence.
- Administer oaths and affirmations, examine witnesses, and receive evidence.
- Obtain a court order to compel the production of evidence or the giving of testimony.

The Act is remedial, not criminal

The National Labor Relations Act is not a criminal statute. It is entirely remedial. It is intended to prevent and remedy unfair labor practices, not to punish the person responsible for them. The Board is authorized by Section 10(c) not only to issue a cease-and-desist order, but "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."

Affirmative action may be ordered by the Board

The object of the Board's order in any case is twofold: to eliminate the unfair labor practice and to undo the effects of the violation as much as possible. In determining what the remedy will be in any given case, the Board has considerable discretion. Ordinarily its order in regard to any particular unfair labor practice will follow a standard form that is designed to remedy that unfair labor practice, but the Board can, and often does, change the standard order to meet the needs of the case. Typical affirmative action of the Board may include orders to an employer who has engaged in unfair labor practices to:

Examples of affirmative action directed to employers

- Disestablish an employer-dominated union.
- Offer certain named individuals immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges, and with backpay, including interest.
- Upon request, bargain collectively with a certain union as the exclusive representative of the employees in a certain described unit and sign a written agreement if an understanding is reached.

Examples of affirmative action that may be required of a union which has engaged in unfair labor practices include orders to:

Examples of affirmative action directed to unions

- Notify the employer and the employee that it has no objection to reinstatement of certain employees, or employment of certain applicants, whose discriminatory discharge, or denial of employment, was caused by the union.
- Refund dues or fees illegally collected, plus interest.

- Upon request, bargain collectively with a certain employer and sign a written agreement if one is reached.

The Board's order usually includes a direction to the employer or the union or both requiring them to post notices in the employer's plant or the union's office notifying the employees that they will cease the unfair labor practices and informing them of any affirmative action being undertaken to remedy the violation. Special care is taken to be sure that these notices are readily understandable by the employees to whom they are addressed.

Special Proceedings in Certain Cases

Special proceedings are required by the Act in certain kinds of cases. These include the determination of jurisdictional disputes under Section 10(k) and injunction proceedings under Section 10(l) and (j).

Proceedings in jurisdictional disputes

Whenever it is charged that any person has engaged in an unfair labor practice in violation of Section 8(b)(4)(D), the Board must hear and determine the dispute out of which the unfair labor practice arises. Section 8(b)(4)(D) prohibits unions from striking or inducing a strike to compel an employer to assign particular work to employees in one union, or in one trade or craft, rather than another. For a jurisdictional dispute to exist, there must be real competition between unions or between groups of employees for certain work. In effect, Section 10(k) provides an opportunity for the parties to adjust the dispute during a 10-day period after notice of the 8(b)(4)(D) charge has been served. At the end of this period if the parties have not submitted to the Board satisfactory evidence that they have adjusted, or agreed on a method of adjusting, the dispute, the Board is "empowered and directed" to determine which of the competing groups is entitled to have the work.

The investigation of certain charges must be given priority

Section 10(l) provides that whenever a charge is filed alleging a violation of certain sections of the Act relating to boycotts, picketing, and work stoppages, the preliminary investigation of the charge must be given priority over all other types of cases in the Regional Office where it is filed. The unfair labor practices subject to this priority concerning the investigation are those defined in Section 8(b)(4)(A), (B), or (C), all three subparagraphs of Section 8(b)(7), and Section 8(e). Section 10(m)

requires that second priority be given to charges alleging violations of Section 8(a)(3), the prohibition against employer discrimination to encourage or discourage membership in a union, and Section 8(b)(2), which forbids unions to cause or attempt to cause such discrimination.

Injunction proceedings under Section 10(l)

If the preliminary investigation of any of the first priority cases shows that there is reasonable cause to believe that the charge is true and that a complaint should issue, Section 10(l) further requires that the U.S. District Court be petitioned to grant an injunction pending the final determination of the Board. The section authorizes the court to grant "such injunctive relief or temporary restraining order as it deems just and proper." Another provision of the section prohibits the application for an injunction based on a charge of violation of Section 8(b)(7) (the prohibition on organizational or recognitional picketing in certain situations) if a charge against an employer alleging violation of Section 8(a)(2) has been filed and the preliminary investigation establishes reasonable cause to believe that such charge is true.

Injunction relief may be sought in other cases

Section 10(j) allows the Board to petition for an injunction in connection with any unfair labor practice after a complaint has been issued. This section does not require that injunctive relief be sought, but only makes it possible for the Board to do so in cases where it is considered appropriate.

Court Enforcement of Board Orders

In the U.S. Court of Appeals

If an employer or a union fails to comply with a Board order, Section 10(e) empowers the Board to petition the U.S. Court of Appeals for a court decree enforcing the order of the Board. Section 10(f) provides that any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any appropriate circuit court of appeals. When the court of appeals hears a petition concerning a Board order, it may enforce the order, remand it to the Board for reconsideration, change it, or set it aside entirely. If the court of appeals issues a judgment enforcing the Board order, failure to comply may be punishable by fine or imprisonment for contempt of court.

Review by the U.S. Supreme Court

In some cases the U.S. Supreme Court may be asked to review the decision of a circuit court of appeals particularly where there is a conflict in the views of different courts on the same important problem.

Conclusion

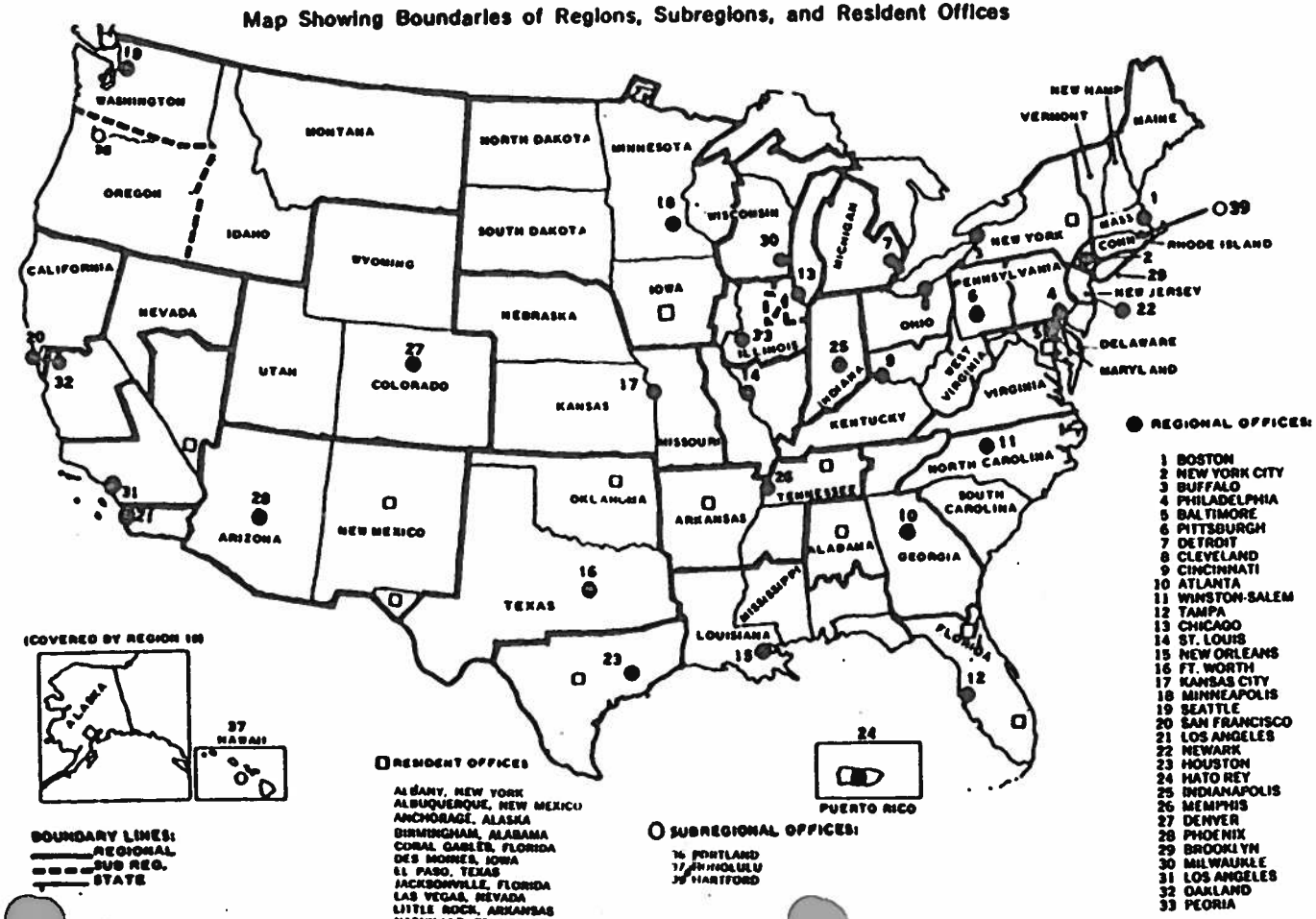
In this material the entire Act has been covered, but, of necessity, the coverage has been brief. No attempt has been made to state the law in detail or to supply you with a textbook on labor law. We have tried to explain the Act in a manner intended to make it easier to understand what the basic provisions of the Act are and how they may concern you. If it helps you to recognize and know your rights and obligations under the Act, and aids in determining whether you need expert assistance when a problem arises, its purpose will have been satisfied. More than that: the objective of the Act will have been furthered.

The objective of the National Labor Relations Act, to avoid or reduce industrial strife and protect the public health, safety, and interest, can best be achieved by the parties or those who may become parties to an industrial dispute. Voluntary adjustment of differences at the community and local level is almost invariably the speediest, most satisfactory, and longest lasting way of carrying out the objective of the Act.

Efforts are being made in all our Regional Offices to increase the understanding of all parties as to what the law requires of them. Long experience has taught us that when the parties fully understand their rights and obligations, they are more ready and able to adjust their differences voluntarily. Seldom do individuals go into a courtroom, a hearing, or any other avoidable contest, knowing that they are in the wrong and that they can expect to lose the decision. No one really likes to be publicly recorded as a law violator (and a loser too). Similarly, it is seldom that individuals refuse to accept an informal adjustment of differences that is reasonable, knowing that they can obtain no better result from the formal proceeding, even if they prevail.

The consequences of ignorance in these matters—formal proceedings that can be time-consuming and costly, and which are often followed by bitterness and antagonism—are economically wasteful, and usually it is accurate to say that neither party really wins. It is in an attempt to bring about more widespread awareness of the basic law and thus help the parties avoid these consequences that this material has been prepared and presented as a part of a continuing program to increase understanding of the National Labor Relations Act.

Map Showing Boundaries of Regions, Subregions, and Resident Offices



National Labor Relations Board Regional Directory

1 Boston, Mass. 02110, 12th Floor, Keystone Bldg., 99 High St.;
Telephone: 617–223–3300.
Director: Robert S. Fuchs; *Regional Attorney:* Michael F. Walsh.

39 (Subregion) Hartford, Conn. 06103, 750 Main St., Suite 1200; *Telephone:* 202–727–2154. *Officer-in-Charge:* Peter B. Hoffman.

2 New York, N.Y. 10278, 3614 Federal Bldg., 26 Federal Plaza; *Telephone:* 212–264–0300.
Director: Vacancy; *Regional Attorney:* Alvin P. Blyer.

3 Buffalo, N.Y. 14202, 901 Federal Bldg., 111 W. Huron St.; *Telephone:* 716–846–4931.
Director: Thomas W. Seeler; *Regional Attorney:* Richard L. De Prospero.

4 Philadelphia, Pa. 19106, 4400 William J. Green Jr. Federal Bldg., 600 Arch St.; *Telephone:* 215–597–7601.
Director: Peter W. Hirsch; *Regional Attorney:* Leonard Leventhal.

5 Baltimore, Md. 21201, Edward A. Garmatz Fed. Bldg. and Court House, 101 W. Lombard St.; *Telephone:* 301–962–2822.
Director: Vacancy; *Regional Attorney:* Louis J. D'Amico.

6 Pittsburgh, Pa. 15219, 10th Floor, Porter Bldg., 601 Grant St.; *Telephone:* 412–644-2977.
Director: Henry Shore; *Regional Attorney:* Edward A. Grupp.

7 Detroit, Mich. 48226, 300 Patrick V. McNamara Federal Bldg., 477 Michigan Ave.; *Telephone:* 313–226–3200.
Director: Bernard Gottfried; *Regional Attorney:* Harry D. Camp.

8 Cleveland, Ohio 44199, 1695 Anthony J. Celebrezze Federal Bldg., 1240 E. 9th St.; *Telephone:* 216–522–3715.
Director: Bernard Levine; *Regional Attorney:* John Kollar.

9 Cincinnati, Ohio 45202, 3003 Federal Office Bldg., 550 Main St.; *Telephone:* 513–684-3686.
Director: Emil C. Farkas; *Regional Attorney:* Thomas M. Sheeran.

10 Atlanta, Ga. 30303, Marietta Tower, Suite 2400, 101 Marietta Street, N.W.; *Telephone:* 404–221–2896.
Director: Curtis L. Mack; *Regional Attorney:* William E. Caldwell.

11 Winston-Salem, N.C. 27101, 447 U.S. Courthouse, Fed. Bldg., 215 N. Main Street; *Telephone:* 919–761–3201.
Director: Reed Johnston; *Regional Attorney:* Hugh F. Malone.

12 Tampa, Fla. 33602, 706 Robert L. Timberlake Jr. Federal Office Bldg., 500 Zack St.; *Telephone:* 813–228–2641.
Director: Harold A. Boire; *Regional Attorney:* Charles E. Deal.

13 Chicago, Ill. 60604, 881 Everett McKinley Dirksen Bldg., 219 S. Dearborn St.; *Telephone:* 312–353–7570.
Director: Vacancy; *Regional Attorney:* Donald D. Crawford.

14 St. Louis, Mo. 63101, Room 448, 210 N. 12th Blvd.; *Telephone:* 314–425–4167.
Director: Joseph H. Solien; *Regional Attorney:* Vacancy.

15 New Orleans, La. 70113, 2700 Plaza Tower, 1001 Howard Ave.; *Telephone:* 504–589–6361.
Director: Vacancy; *Regional Attorney:* Fallon W. Bentz.

16 Fort Worth, Tex. 76102, 8A24 Federal Office Bldg., 819 Taylor St.; *Telephone:* 817–334–2921.
Director: Michael M. Dunn; *Regional Attorney:* Jerome L. Avedon.

17 Kansas City, Kans. 66101, 616 Two Gateway Center, Fourth at State;
Telephone: 816–374–4518.
Director: Thomas C. Hendrix; *Regional Attorney:* Harold E. Jahn.

18 Minneapolis, Minn. 55101, 316 Federal Bldg., 110 S. 4th St.; *Telephone:* 612–725–2611.

Director: Robert J. Wilson; *Regional Attorney:* Herbert S. Dawidoff.

19 Seattle, Wash. 98174, 2948 Federal Bldg., 915 2d Ave.; *Telephone:* 206–442–4532.

Director: Vacancy; *Regional Attorney:* Walter J. Mercer.

36 (Subregion) Portland, Oreg. 97205, 825 Pittock Block, 921 SW Washington St.; *Telephone:* 503–221–3085.

Officer-in-Charge: Elwood G. Strumpf.

20 San Francisco, Calif. 94102, 13018 Federal Bldg., Box 36047, 450 Golden Gate Ave.; *Telephone:* 415–556–3197.

Director: Vacancy; *Regional Attorney:* Robert H. Miller.

37 (Subregion) Honolulu, Hawaii 96850, 300 Ala Moana Blvd., Room 7318; *Telephone:* 808 546–5100.

Officer-in-Charge: Dennis R. MacCarthy.

21 Los Angeles, Calif. 90014, 21th Floor, City National Bank Building, 606 S. Olive Street; *Telephone:* 213–688–5200.

Director: Wilford W. Johansen; *Regional Attorney:* Michael Fogerty.

22 Newark, N.J. 07102, 1600 Peter D. Rodino Jr. Federal Bldg., 970 Broad St.; *Telephone:* 201–645–2100.

Director: Arthur Eisenberg; *Regional Attorney:* William A. Pascarell.

23 Houston, Tex. 77002, 920 One Allen Center, 500 Dallas Ave.; *Telephone:* 713–226–4296.

Director: Louis V. Baldovin, Jr.; *Regional Attorney:* Arthur Safos.

24 Hato Rey, P.R. 00918, 591 Federico Degetau Fed. Bldg., U.S. Courthouse, Carlos E. Chardon Avenue; *Telephone:* 809–753–4347.

Director: Martin Arlook; *Regional Attorney:* Michael S. Maram.

25 Indianapolis, Ind. 46204, 232 Federal Office Bldg., 575 N. Pennsylvania St.; *Telephone:* 317–269–7430.

Director: William T. Little; *Regional Attorney:* George M. Dick.

26 Memphis, Tenn. 38104, 8th Floor, Mid-Memphis Tower, 1407 Union Avenue; *Telephone:* 901–222–2725.

Director: Gerald P. Fleischut; *Regional Attorney:* John F. Harrington.

27 Denver, Colo. 80202, 260 U.S. Custom House, 721 19th St.; *Telephone:* 303–837–3555.

Director: W. Bruce Gillis, Jr.; *Regional Attorney:* Albert A. Metz.

28 Phoenix, Ariz. 85067, 2d Floor, 3030 North Central Ave.; *Telephone:* 602–241–2350.

Director: Milo V. Price; *Regional Attorney:* Peter N. Maydanis.

29 Brooklyn, N.Y. 11241, 4th Floor, 16 Court St.; *Telephone:* 212–330–7713.

Director: Samuel M. Kaynard; *Regional Attorney:* Harold L. Richman.

30 Milwaukee, Wis. 53203, 230 Commerce Bldg., 744 N. 4th St.; *Telephone:* 414–291–3861.

Director: George S. Squillacote; *Regional Attorney:* Joseph A. Szabo.

31 Los Angeles, Calif. 90024, 12100 Federal Bldg., 11000 Wilshire Blvd.; *Telephone:* 213–824–7352.

Director: Roger W. Goubeaux; *Regional Attorney:* Bryon B. Kohn.

32 Oakland, Calif. 94604, Breuner Bldg., 2201 Broadway, 2d floor; *Telephone:* 415–273–7200.

Director: James S. Scott; *Regional Attorney:* Alan R. Berkowitz.

33 Peoria, Ill. 61602, 16th Floor, Savings Center Tower, 411 Hamilton Avenue; *Telephone:* 309 671–7080.

Director: Glenn A. Zipp; *Regional Attorney:* Michael B. Ryan.

RESIDENT OFFICES:

Albany, N.Y. 12207
Leo W. O'Brien Federal Bldg., Clinton Ave. at N. Pearl St.; *Telephone:* 518–472–2215.
Resident Officer: Thomas J. Sheridan.

Albuquerque, N. Mex. 87110
Patio Plaza Bldg., Upper Level, 5000 Marble Ave., NE.; *Telephone:* 505–766–2508.
Resident Officer: Robert A. Reisinger.

Anchorage, Alaska 99513
510 Anchorage Fed. Office Bldg., 701 C St.; *Telephone:* 907–271–5015.
Resident Officer: Delano D. Eyer.

Birmingham, Ala. 35203
2102 City Federal Bldg., 2026 2d Ave. North; *Telephone:* 205–254–1492.
Resident Officer: C. Douglas Marshall.

Coral Gables, Fla. 33146
410 Madruga Bldg., 1570 Madruga Ave.; *Telephone:* 305–350–5391.
Resident Officer: James L. Jeffers.

Des Moines, Iowa 50309
Federal Home Loan Bank Bldg., 907 Walnut St.; *Telephone:* 515–243–4391.
Resident Officer: Richard Anderson.

El Paso, Tex. 79902
307 Pershing Bldg., 4100 Rio Bravo St.; *Telephone:* 915 543–7737.
Resident Officer: Laureano A. Medrano.

Jacksonville, Fla. 32202
278 Federal Bldg., 400 W. Bay St.; *Telephone:* 904–791–3768.
Resident Officer: John C. Wooten.

Las Vegas, Nev. 89101
Room 3402, 300 Las Vegas Blvd. S.; *Telephone:* 702–385 6416.
Resident Officer: Kenneth A. Rose.

Little Rock, Ark. 72201
Suite 1120, 1 Union National Plaza; *Telephone:* 501–378 6311.
Resident Officer: Ronald M. Sharp.

Nashville, Tenn. 37203
Estes Kefauver Fed. Bldg., U.S. Courthouse, 801 Broadway; *Telephone:* 615–749–5921.
Resident Officer: Alton W. Barksdale.

San Antonio, Tex. 78206
Rm. A509, Fed. Office Bldg., 727 E. Durango Blvd.; *Telephone:* 512–229–6140.
Resident Officer: John C. Crawford.

San Diego, Calif. 92189
U.S. Courthouse, Rm. 2–N–20, 940 Front Street; *Telephone:* 714–293–6184.
Resident Officer: Claude R. Marston.

Tulsa, Okla. 74135
Skyline East Bldg., First Floor, South Tower, 6128 E. 38th St.; *Telephone:* 918–664–1420.
Resident Officer: Francis A. Molenda.

Washington, D.C. 20037
100 Gelman Bldg., 2120 L St., NW., *Telephone:* 202–254–7612.
Resident Officer: Angela S. Anderson.

WASHOE COUNTY
"To Protect and To Serve"

Exhibit G

PERSONNEL DEPARTMENT
I. Howard Reynolds, Director

1205 MILL STREET
POST OFFICE BOX 11130
RENO, NEVADA 89520
PHONE: (702) 785-4143

TESTIMONY BY I. HOWARD REYNOLDS,

PERSONNEL DIRECTOR, WASHOE COUNTY

In support of amending
NRS 288.150 as provided for in
SB 536 and SB 537

PROPOSED CHANGES

Paragraph 2 of NRS 288.150 currently lists twenty (20) items as mandatory subjects for bargaining. SB 536 and SB 537 would amend one of these subjects and remove two others as follows:

-Subparagraph 2(r) "Safety" would be changed to read "Safety of employees."

-Subparagraph 2(j) and 2(k), "Recognition clause" and "the method used to classify employees in the bargaining unit", would be removed from the scope of mandatory bargaining.

ARGUMENT SUPPORTING CHANGES

A. Safety

It is believed that this proposed change will better convey the intent of this subject, that is to negotiate matters pertaining to employee safety.

We would not want the current wording to be interpreted to mean something as broad as "public safety." Obviously, such a broad interpretation would make bargainable policy decisions which directly impact the level of service provided to the public. These decisions currently are, and should remain, matters that are exclusively reserved to the public agency elected bodies. The proposed change would ensure that this occurs.

B. Recognition Clause

As a mandatory subject of bargaining, this item is both unnecessary and contrary to the principles of sound collective bargaining. Although practically all collective bargaining agreements in both the public and private sector contain a "Recognition Clause," it is not a subject over which the parties negotiate.

In reality, recognition is almost a ministerial, perfunctory act and absent a group or groups of employees to represent as a bargaining unit, has little or no value. On the other hand, if you were to actually negotiate recognition, particularly if there were several competing employee organizations involved, the collective bargaining process would be absolute chaos. The two threshold questions of a) which group or groups of employees are to be covered by the negotiations and b) which employee organization is being recognized to negotiate on behalf of these employees, must be answered before negotiations commence, rather than being an integral part of the negotiating process.

The fact that "Recognition Clause" is unnecessary, as well as possibly being a conflicting provision, is answered in NRS 288.160 and NRS 288.170. These two sections of Chapter 288 provide for specific procedures under which bargaining units are determined and recognition is granted to employee organizations for these units. Both sections provide for an appeal process to the Local Government Employee-Management Relations Board which is statutorily empowered to deal with disputes arising out of either bargaining unit determination or recognition. Neither NRS 288.160 nor NRS 288.170 contemplate negotiating recognition. Therefore, listing "Recognition Clause" as a mandatory subject of bargaining under NRS 288.150 is both in conflict with these others sections in this chapter and not in the best interests of fostering positive employer-employee relationships.

C. The Method Used to Classify Employees in the Bargainig Unit

We on the management side of the table are proposing that this item be removed as a mandatory subject for bargaining for a very simple reason - we don't know what it means.

The right to classify positions, i.e., the determination of job content and the requisite skills, knowledge and abilities needed to perform that job, is generally viewed as a right reserved to management. The current language on this item in unclear as to what legitimately would fall within the scope of mandatory bargaining, and for this reason, we are asking that it be removed.