MEMBERS PRESENT: Chairman Dini
Vice Chairman Schofield
Mr. Craddock
Mr. DuBois
Mr. Jeffrey
Mr. May
Mr. Mello
Mr. Nichilas
Mr. Polish
Mr. Prengaman
Mr. Redelsperger

MEMBERS ABSENT: None

GUESTS: Mr. Bob Gagnier, SNEA Executive Director
Mr. Glenn DuBois, Mgmt. Task Force

Chairman Dini called the meeting to order at 8:10 A.M. The first bill to be heard is AB-524 - Transfers personnel division from Department of Administration to Department of General Services.

Mr. Glenn DuBois, Implementation Director for the Governor's Management Task Force: I am here to speak in support of AB-524, the bill calling for the transfer of the Personnel Division from the present Department of Administration to the Department of General Services. This bill is an outgrowth of a recommendation by the Governor's Management Task Force. Evaluation by the Task Force determined that there is an organizational conflict and that you have the budget controls in the same department as you have the personnel controls. That, in essence, creates potentially, although we did not find evidence of it to date, a circumstance where personnel practices would be dictated by budgetary constraints. In essence, all personnel practices should be reviewed in light of budgetary constraints, but we do not feel that in any given position, or one department, should have the control over both of those elements. We feel that they should retain their own integrity in presenting findings. The transfer, in effect, does not make any major changes. This bill would simply change the individual that the head of the Personnel Division would be reporting to. In light of some of the other bills that are being presented with regard to the review of the personnel system, AB-528, we would like to suggest that this bill be passed because we would like to see some executive branch or administrative changes instituted while this review is being conducted. I am aware that there are other bills that have suggested department status and I am not going to take issue with that right here, but I think when we do sit down and

review the organizational structure as this interim study would be doing, we can still maintain that review and at the same time I do not see a conflict with making this transfer.

Mr. Jim Wittenberg, Personnel Administrator: We certainly support the change and I think it will eliminate at least the image of budget control, or too much budget control on impact on personal matters. For that reason, as well as others, the Department of General Services is the logical place for the personnel function to be placed in terms of the responsibilities within that agency.

Mr. Mello: Does this change the classification of anyone? I see where the Director is classified, but that's not talking about the Administrator.

Mr. DuBois: No, we did not stipulate that in the bill, but that is certainly an amendment that we can make.

Mr. Dini: Do you think that this particularly fits with Buildings and Grounds, Central Data Processing and Purchasing? That's the difficult part of the bill.

Mr. DuBois: Yes, I understand that the comparison is sometimes to be made and probably will be made by individuals speaking in opposition to this bill; that it is not the same as, say, the Motor Pool operation. It does have more far-reaching implications in terms of agency operations. It is a support service, however, and we would primarily see a need to move it from Administration, rather than to General Services, as opposed to a department status.

Mr. Dini: Is the existing Director of General Services have a background in personnel matters?

Mr. DuBois: Not to my knowledge.

Mr. Mello: Are you in favor of this bill?

Mr. Wittenberg: Yes.

Mr. Mello: If you are to be moved, though, and we amend this bill, can you think of another division that you could best serve under, than General Services?

Mr. Wittenberg: No, I can't.

Mr. Bob Gagnier: I am glad that the Management Task Force has recognized what we have been saying for a number of years - that the State Personnel Division does not belong in the

Department of Administration. We agree on that much of it. Where we disagree is what should be done with the Personnel Division. Mr. DuBois knew what one of the arguments was that we were going to make and that is that the Personnel Division function of state government deserves more status than the Motor Pool Divsion. They are directly and indirectly responsible for the expenditure of $150 million per year, so, really I am not here so much to speak against AB-524 as I am AB-477, which is your alternative to this bill, and that would be to create a separate department of personnel, headed by a director who would be immediately responsible to the Governor.

Mr. May: How does this relate to that study that Functions kicked out late last night:

Mr. Gagnier: I think that the study has to clear three more committees in both Houses. I would hate to suggest that you kill either our bill, AB-477 or this one, based upon the study. I suppose you could say that this would be the type of thing that should be studied and I did indicate when I testified on AB-477 that if the study passes, we will withdraw that bill.

Mr. May: My question is, then, that the study carries a provision for $37,000 appropriation and if we remove this from the Department of Administration into General Services, then spend $37,000 on a study before we have a chance to see what if any effect this bill have; it appears to be a little bit contradictory.

Mr. Dini: Is the Association supporting the study?

Mr. Gagnier: Yes, we have been proposing a study similar to that for many years.

This concluded the testimony on AB-524. Mr. Dini indicated that no action would be taken on this bill pending the outcome of that study.

The next bill to be considered is AB-525 - Provides for collective bargaining by state employees.

Mr. Gagnier: I would like to comment why we feel, and this will be primarily for those of you who have not served on this committee in the past, that state employees should have separate legislation, rather than being included in NRS-288. NRS-288 was written and designed for local government and today is called the Local Government Employment Management Act. Everything in it is designed for local governments, such as the time limits. Within NRS-288, they talk about a number of time limits, all

geared to the budgetary process of local government, which has absolutely no bearing whatsoever on the budgetary needs of state government. As an example, they start negotiations in the middle of the winter and must be concluded with that negotiation prior to June 1. In our case, it would be useless for us to negotiate at that time because we should negotiate for a budgetary cycle that would start sometime in July or August, preparing for the next legislative session. Also, in the area of negotiating, economic matters are involved and we must negotiate on a two-year cycle, while the testimony you were getting at the joint hearings was that in many instances their negotations are for one year, although there are some contracts for a longer period. That's one instance. Another major one is that NRS-288 was designed to be utilized by governments that are both legislative and executive. We do not have that case in state government. We must negotiate with an executive branch of government and then, if it is a legislative issue, we must go on to the legislative branch. For that reason, binding arbitration, which you have heard so much about these two joint hearings, is of little or no concern to us insofar as negotiations on legislative issues with the Governor are concerned. What good would binding arbitration do us in negotiating with the Governor, since, whatever the binding settlement, would have to be referred to you gentlemen, who are in effect the arbitrators. If we reach agreement, fine, if we don't reach agreement, you'll arbitrate the disagreement, anyway. Even if we do reach agreement, there is no mandate saying that the Legislature will adopt the agreement. That matter of arbitration as being binding is not a major issue. So, I think that you can see that here are a few of the differences that we have between NRS-288 and what we are proposing and that is why our bill AB-525 would add a new section to Title XXIII. We would just as soon put it into NRS-284, but the bill drafter says 'no, it should be a separate section', within Title XXIII which contains the general government law, the state government law, the insurance law for public employees and NRS-288.

AB-525 is based upon, but not identical to, an agreement that we reached in 1978 between ourselves and the administration. At that time, it had been hoped to establish an employment-management relations policy by regulation. This is about the ninth draft of that document and was the final one of the many that we worked on. We agreed with the administration to present that regulation to the Personnel Advisory Commission for adoption, however, in the meantime, the Legislative Counsel, Mr. Daykin, indicated that they could not adopt it unless they had statutory language approval. Two years ago, this committee and the Assembly approved implementing legislation. It passed out of this committee; it passed out of the Assembly and passed out of the Senate Government Affairs Committee. It was killed, however, by

Senate Finance because of the fiscal note, which we felt was ridiculous, and was not even considered on the Assembly side, Ways and Means did not consider a fiscal note because they felt it was not necessary because the Personnel Division siad that in order to implement the rule that they had already agreed to they would need new staff, and we disagreed with that.

With those preparatory remarks, I will say that there are some differences in this and the rule that was agreed to. Some of them are put in by the bill drafter because they are necessary. You cannot refer in here-as an example-to regulations, these regulations, etc. There are some changes and there are some amendments that I would propose because at the time we had this drafted, we could not think, between the bill drafters and ourselves, of adequate language to cover a couple of these subjects. As an example, we referred in the regulation to salary grade numbers. You can't do that in the law. The bill, in general, sets up a two-level tier negotiation.

Section 2 merely states the purpose and the policy and that is very similar to the language contained in NRS-288, for local governments. Then it defines the terms that will be used in this new section, starting with Section 3 and on to Section 4. The first amendment in Section 4, the definition of an administrative employee says: every employee in the unclassified service of the state and every agency and division head holding a position in the classified service of the state. We would like to propose an amendment. It would read: An administrative employee means an employee (after subsection 1 and 2, there would be a new subsection 3) formulating and administering and managing state policies who on December 31, 1980 was in a salary grade having a maximum salary in excess of $30,000. Now, this is equivalent to a Grade 40, currently, in state government. There are approximately 210 employees in state government in Grade 40 and above, at last count. My count is old, however. It is necessary to identify administrative employees because later on they are going to be excluded from collective bargaining.

Section 5 is the definition of bargaining collectively. It is essentially the same as is used in most labor relations. Classified employees is a simple definition. Commission is the commission created by NRS-284, the Personnel Advisory Commission. Confidential employee is the next one and, here again, we had a great deal of difficulty with this and we did not put in the wording that was in the rule because the bill drafters had some difficulty with it. I understand they no longer do.

Mr. Nicholas: I am interested in why you use a dollar amount $30,000, rather than the Grade 40 since we know that we are going to have variances in dollars continually?

Mr. Gagnier: First of all, the lawyers downstairs tell me that you cannot refer to the Grade number because the Legislature has no control over the Grade number. The day after this would take effect, it would be possible for the state to change the Grade numbers. We chose the date, December 31, so that anybody who was in a Grade 40 at that time, if we just said 'a salary of in excess of $30,000', that would change as soon as the Legislature adoptes the pay package for state employees. This was the way it was determined that we could pin it down.

We would propose an amendment that would read: confidential employee means employees of the Department of Administration personnel officers, analysts and technicians of state agencies, managerial employees and technical supervisory employees of the Central Data Processing Division, the Department of General Services and employees of local government Employee-Management Relations Board. If you were to process the legislation that was just up, it would have to be changed to the Department of Administration and the Personnel Division of the Department of General Services.

In Section 10, we have specified the University of Nevada System so that there can be no question as to whether this law applies to the University.

Section 11 uses the same definition of 'strike', as contained in NRS-288. In this statute, we are specifically excluded from the provisions of that law for collective bargaining purposes but we are specifically included in the last section of the law which pertains to strikes. This law would take us out of NRS-288 and put our own no-strike law in, which would be the same.

Section 12 speaks of the rights, and says that except as specifically limited by provisions of this chapter, all classified employees have the right to join, form and participate in or to refrain from joining, forming or participating in any employee organization. Subsection 2 of Section 12 is an extremely important one because that designates the bargaining unit within state government. It speaks of the 'purposes of this chapter, there is one negotiating unit. It provides exclusions: administrative and confidential employees, students, part-time employees and employees employed under CETA. Subsection 3 is just to assure that a public employer does not use these excluded employees to subvert the intent of the chapter. Subsection 4 is a non-discrimination clause.

Section 13 speaks to who will do the negotiating and in this case it is the Governor or his designated agent on behalf of every public employer.

Mr. Dini: Why do you use the term 'public employer'? That includes all local governments, doesn't it?

Mr. Gagnier: It is defined in Section 10 to mean the state of Nevada and each department, board, commission or other agency.

In subsection 3, we get into the 2 tier level. What we are saying here is that if there is an employer organization which has entered into an agreement with the Governor for the large unit of classified employees, that organization may then negotiate supplemental agreements concerning terms and conditions of employment peculiar to an agency with that agency. Otherwise, what will happen, we will get bogged down with the Governor in negotiating things that maybe only pertain to only one agency, so why negotiate in the broad agreement something that will only pertain to one agency. As an example, we could be talking about uniform allowances in one particular agency. The key phrase here is in Line 7, Page 3: 'peculiar to that agency'.

Mr. May: Many times in this committee we have gotten into the gray areas between the Executive Department and other branches of government. Don't you now have a reverse situation where the Governor may sign and enforce an agreement where it is binding on all employees? Did you discuss the constitutional aspects?

Mr. Gagnier: No, we don't feel that there are any constitutional problem. There might if we attempted to make the agreement reached, say, between ourselves and the Governor. If we tried to make that binding on you. We can't do that. That would take a constitutional amendment. There is no binding effect upon the Legislature. Even if we have reached an agreement, it has to be sent to the Legislature for approval.

Mr. Dini: It seems to me that it is binding on all public employers and you are saying then that he could bind the University of Nevada System.

Mr. Gagnier: To those issues, as he does now.

Mr. Dini: The Board of Regents are the ones, constitutionally, are the ones who provide that service there.

Mr. Gagnier: If we are negotiating items that are peculiar to the University, we would be negotiating with the University. But if we are talking about rules and regulations, those apply to all agencies, including the University. We're not talking about the day to day operations, we are talking about personnel policies and regulations, per diem, insurance, many of the things that would come to the Legislature, anyway, and when you pass them, they are binding on the University, as well as the Department of Resources.

Section 14, matters subject to mandatory collective bargaining lists Items (a) through (i).

Mr. May: Mr. Chairman, are these identical to those in NRS-288 now for other public employees?

Mr. Gagnier: No, it is not.

Mr. May: What are the differences?

Mr. Gagnier: NRS-288 starts off with: "salaries or wage rates or other forms of direct monetary compensation". We say: "Salaries, wages and hours of employment". And then we say: "Other terms and conditions of employment, including but not limited to:". There is no similarity, really, at all. These are the items which we felt were necessary to our NRS-288.150. In putting it into the law, it was felt that we should enumerate these because they are enumerated in NRS-288. We went back to the bill that was originally introduced in this committee two years ago. When we agreed with the administration in 1978 on the rule, we did it in reverse and in the regulation, rather than saying what was negotiable, we said what was not negotiable. In 1975, we switched NRS-288 from negative to positive. We have no objection either way.

Mr. May: In NRS-288, it says that the scope of mandatory bargaining is limited to, and your's says that other terms and conditions of employment, including but not limited to.

Mr. Gagnier: There is a difference. They are exactly the opposite. We believe that we should not be limited because in those issues of major significance, we don't have the final say in negotiating the agreement, you do. In local governments, for example, they cannot negotiate a law change. We will. We will negotiate with the Governor to change a law. We will, jointly, propose a change to the Legislature. We feel that this is a major distinction between local government employees and us.

Mr. May: I don't know how I am going to put this. I would anticipate that if the Association is serious about this, and now have a foot in the door, the way this thing is written, you have the door all the way open. There must be some things you want to take out.

Mr. Gagnier: Would you like me to read the language that we had in the regulation? A copy is attached as EXHIBIT A, and made a part of these minutes. The text starts with Article IX - Meeting and Conferring, Sec. 1(a) through (k). In explaining (k), Mr. Gagnier stated: In other words, you are saying there that you can take disciplinary action against an employee, subject to the grievance procedure. They would still have the right to appeal, you can lay off employees because of lack of work or funds, but it would have to be subject to the regulations on layoff.

In Section 16, subsection 2 is the determination of how you become designated as the employee representative, and states that it would be the exclusive representative of the classified employees, if recognized.

Mr. Craddock: In instances, I have been led to believe that employee organizations may serve their membership better if they didn't require a majority as a criteria for representing all. Now, this may not be applicable to state employees. Sometimes an organization may be caught in a position of doing things for an individual member that maybe was not totally entitled to their support, for the sake of inducing membership to maintain the 50%. Do you have any thoughts on that?

Mr. Gagnier: We we discussed this earlier in the session, the discussion centered around the fact that an employee organization might be forced into a situation where because it was a popular grievance, could bring in more members.

Mr. Craddock: That's about right. To induce membership - the expansion of membership.

Mr. Gagnier: I have to say that in state government our experience has been that we lose more members because of grievances than we get. Where we have more like an industrial union, a broad spectrum of membership, there are many instances where we file a grievance and the supervisor that we file a grievance against is a member. They don't always quit, but sometimes they do. If you are not supported by a majority, then you probably shouldn't have this negotiating part.

In Section 18, you see the creation of an administrative judge. This is unique and was an agreement reached with the administration in 1978. This is a thoroughly neutral resident. We do not view the problem that the people in local government have with resident/non-resident, because in their case, where they are talking about arbitrators, you have many local government jurisdictions in this state. They are using a large number of fact finders or arbitrators who are AAA. Nevada has very few AAA members. I only know of two. We determined that we needed a

different procedure and we didn't like the idea of having always to go to California to find somebody, so we came up with the proposal to create something different called an administrative judge. We were also concerned, quite frankly. We could have vested this authority with the Personnel Advisory Commission. But, remember, the PAC is appointed by management - by the Governor. The Governor is the one we are negotiating with and he appoints the people that would normally be the arbitrators of our disputes. And, that is not equitable. The administrative judge would be jointly appointed where the Governor or his designated agency and the employee organization would get together and would attempt to pick a resident of the state of Nevada who was not employed by the executive branch of government or closely allied with any political party, and try to agree on one. If we could not agree, then we would each submit a list of three names and strike those names until we ended up with one. It is different than in NRS-288, because it determines that the six names that would be there - who gets to strike the first name is determined by a flip of a coin. This is important because if you designate either side to be the first to strike a name, you rig the whole thing. All you have to do is make sure all three of the people you picked are hard-nosed your side and if you get the last strike, you will get one of your people. You are guaranteed to get one of your people.

In this bill, in Sec. 18, you would set the tenor for negotiations, if you can jointly select a person, you have a pretty good idea that you are going to at least get along and without a great deal of animosity in your negotiations.

Mr. May: In subsection 1, in the qualifications of the administrative judge, it states that he must not be an employee of the executive branch of government or closely allied with any political party. There is no reference, though, to a public employee. Isn't it fair that if you can't work for the executive branch that you also not be allowed to be a state employee?

Mr. Gagnier: Oh, certainly. No, it isn't in there. You are right. It wasn't in the rule, either. We certainly don't have any objections to that.

Mr. May: This should be an extremely neutral individual.

Mr. Gagnier: I think you have made a very valid point.

In Sec. 28, the provisions regarding strikes in NRS-288 by state employees is in effect now and since 1969.

In Section 31, we have put in (g): Lobby at the legislature or engage in any other activity contrary to any agreement of the parties. The intent is that it is a prohibitive practice to

lobby at the Legislature contrary to any agreement. It would be like us agreeing with the administration for a 15% pay increase and then coming over here lobbying for 20%. Or the administration coming over here lobbying for 10%.

Mr. May: How about lobbying outside the legislative building, say, at social functions?

Mr. Gagnier: This was one of the trickiest areas that we had to discuss. It was put in here in response to a concern generated in the Senate Government Affairs Committee. We do not feel that strongly about it. I think that it would backfire on anybody who would attempt to do this. If you know that we have reached an agreement and one or the other of us is over here doing something contrary to that agreement, I think you would have our necks.

Mr. May: Is there any provision here that the Legislature will be furnished with a copy of that agreement.

Mr. Gagnier: Only insofar as it is in starting on the bottom of Page 5 and continuing on the top of Page 6.

Sections 35 on to the end are the bill drafters' changes. I should mention the last section, Sec. 40. This is not a bill drafter's change. This is just in case the two parties could not get together quickly enough and you could have an interim person to be able to do that. This would just be a temporary measure before the employee organization and the Governor could get together.

Mr. Redelsperger: How much of a departure is this from the present procedure?

Mr. Gagnier: The present procedure is that we meet and confer by sufferance. If the administration wishes to meet and confer with us, they may. If they don't want to, they don't have to. The main change is that it requires the administration to negotiate with us in good faith and if we cannot reach an agreement, to submit that agreement to some third party for advisory factfinding, or recommendation. Right now, there is no legal mandate that the administration must negotiate in good faith.

Mr. Nicholas: What is the fiscal impact on this, Mr. Chairman?

Mr. Dini: $510,000.00.

Mr. Gagnier: We had no input to the fiscal note on this and we do not agree with it.

If you consider that the administrative judge is going to be a full time position or that the state Personnel Division is going to add a whole bunch of people; it is very strange, two years ago, when we agreed to the rule, it had no fiscal impact and they were willing to go with it as a rule. They took the same thing, provided for it by law and, all of a sudden, they needed three or four new people on their staff to do what they said they were already doing. The fiscal notes are intended primarily to kill the bill.

Mr. Dini: It says that it is estimated it would take a minimum addition of two professional fiscal personnel analysts and one clerical and the professionals' fee paid for to acquire arbitrators and administrative judges. There is $23,000 for the first year for fees to cover the judge and arbitrators; travel, $2,300; to operate, $6,000. The final figures is $71,000 for two professionals, a fiscal analyst and one clerical.

Mr. Gagnier: We can't understand why they need all these people. If I recollect, two years ago they said they would have to have them because we had doubled our staff in anticipation of collective bargaining, which is not the case. We put in our budget a combined total of $8,000 for professional fees. I would be happy to provide the committee in writing all of those amendments but I would like to know whether you would like to have the amendment on the negotiability issues.

Mr. Dini: I wouldn't do that until next Tuesday night.

Mr. May: Local government employees are not defined in this bill before us, but they are in NRS-288, where it says: "any person employed by local government employers.

Mr. Gagnier: The reason for this - Sections 35 and on - under NRS-288, none of the provisions of that law apply to state employees, except the strike provision. The bill drafter has chosen to put the anti-strike legislation into our law and take it out of NRS-288 so that it is consistent. So, Sections 35,36 37 and 38 and 39 are all bill drafter changes, only.

Mr. Dini: Sections 25, 27 and 27 have the strike clause - it pulls it out of NRS-288 and puts it in these sections. Isn't there a California decision concerning the bargaining act by the Supreme Court.

Mr. Gagnier: I don't know if that decision has been rendered. I knew it was requested. I don't know what the final outcome was.

Mr. Redelsperger: When was the last time that the administration refused to bargain with you in good faith. I know that last session you reached agreement before the session started.

Mr. Gagnier: Out of the last six sessions, we have reached agreement twice, in 1975 and 1979. In our opinion, they refused to negotiate in good faith this year.

Mr. G. P. Etcheverry, Executive Director, Nevada League of Cities: As was mentioned at the start of this hearing, you know the position of the League by our technicians that testified in the last two meetings. First, let me give you some background. I am now the Executive Director of the Nevada League of Cities; prior to this, I was the mayor of Ely for some twelve years; councilman, two years prior to that. Prior to that, I was a labor organizer in White Pine County, with the United Mine Workers of America. I was an organizer, an international representative, local president, local secretary, so, I have had a little bit of background in collective bargaining, from the ground up. My union was involved in the McCarthy hearings, so I had extensive hearings in Denver and Las Vegas, concerning activities of our union at that particular time. I am not new to this game. I sit on the Employee-Management Relations Advisory Committee, past chairman for some three years and I am remaining silent on those two bills SB-536 and SB-537. I do have a concern about Lines 35-40 on Page 2. It appears to me in this language that for the purpose of this language, there is only one bargaining unit. I have to assume from that, that the bargaining unit is SNEA. I think the state employees should have the right to determine, as they do under NRS-288, who they should have as a bargaining unit. I do want to say at this point that the Nevada League of Cities is in favor of collective bargaining for state employees, but let's go back to the strike provisions under 288. I was one of the first public officials to be faced at a crucial time with a major walkout by the police department. It came on the heels of the open meeting law when it became effective in July, 1977. That weekend, the police officers decided that they wanted a meeting of the local governing body, in defiance of the open meeting law. It happened on a Friday and by Monday morning, I had three officers left on by police force. The rest had resigned en masse. We could have pursued action under 288 and at that time felt that was not the necessary thing to do, due to the fact that it was a small community and knowing everybody. We never did resolve that issue. I think that is one of the problems with 288.

The advisory committee, after many meetings, could only change three aspects of 288. That is 288.160, 288.170 and 288.200. Those are not too many changes in a collective bargaining bill of the magnitude that 288 is. We still feel that 288 is a good viable way of really getting collective bargaining to public employees, whether they are state or local. We feel that state employees should have the right to bargain, but under Chapter 288.

If it takes a special subsection, that's fine, but we feel then we are all in the same bargaining law. We have a little concern about the administrative judge. Knowing our experience with 288, there are points and times when an administrative judge is probably not the only way. I realize that the ultimate result will be determined here in the legislative building. It doesn't really say that in the bill. In fact, in one place in the bill, we are talking about an administrative judge or an arbitrator. I don't think that an administrative judge is really defined as to what his duties, when we go to arbitration. The Nevada League of Cities has expressed its desire to incorporate state employees in collective bargaining processes under SB-536 and SB-537.

Mr. Schofield: What you are really saying is that you are speaking for the bill, but you believe that there is a balance in NRS-288, but it could be changed rather than use this one.

Mr. Etcheverry: Yes, that's what I am trying to say.

Mr. John Capone, Employee Relations Officer, Governor's Office: I do feel that some comments need to be made with regard to this piece of legislation and I know that many of the committee members, in past sessions, have seen this same type of issue raised as to the appropriateness of formalized collective bargaining for state employees. In my estimation, and for background, prior to taking the position of Employee Relations Officer, I was commissioner of the Local Government Employee-Management Relations Board and worked very closely with the advisory committee that Mr. Etcheverry just mentioned. So, I have seen the operations of collective bargaining at the local government level. Most of you have seen it operating, perhaps, in your own sectors and, I am sure, you all have in these joint committee hearings, heard various types of comments on the Local Government Collective Bargaining Act - Chapter 288 of NRS. So, you are all becoming more and more familiar, whether you would like to or not, with the ins and outs, the different ramifications of formalized collective bargaining. It seems to me that this could be one of the most important issues facing this or any other Legislature in the coming years. Whether or not to place a form of binding requirement on the Governor, on the Executive Branch, to finalize various provisions of a contract with state employees;to compromise on different positions that involve the spending of taxpayers' money; to try to compromise certain of the management perogatives that currently do exist, and I think should exist to some extent in the operation of state government; perogatives that the Governor has and given to him by the electorate of the state to decide, not just for all state employees, but for the people of the state who have elected him, what is the most appropriate means for administering the government of the

state of Nevada in all of its aspects, not just employer relations. There has been discussion this session about an eminent study committee that the Legislature is going to put together to look at the personnel practices of the state. Just as an aside, it would seem to me that if there is any serious appetite in this committee or in any other committee of the Legislature to take a good close look at the subject of collective bargaining for state employees, the vehicle for that might well be this legislative study committee. I think that Mr. Dini mentioned the fact of a problem that the state of California was having with regard to the constitutionality of a negotiations issue. There is such a problem. The Supreme Court of that state recognizes it, and although it may not be finally resolved as yet, the issue was still raised and I think, as Mr. May pointed out earlier in one of his statements, we need to keep in mind some basic concerns of the possible problems that could arise at some point, if it was determined that a negotiated agreement of that type might not be, in fact, legal. It is at least one issue that needs to be looked at most closely in respect to this question. Mr. Etcheverry mentioned the on-going concern that local government entities have for the inclusion of state employees under a unified collective bargaining act, in this case, the example, Chapter 288 of NRS. That's an issue that needs to be looked at closely, because if we start piecemealing the interrelationships of employees and their employers at the government levels; if we make serious distinctions between local government employees and state employees, I submit that we may find ourselves facing kind of a whipsaw effect. What's good for the goose, may not always be good for the gander, but you'll find these arguments made in and around various employee groups. I think that certainly is another key issue that is worth looking into, but I think in a more appropriate format, such as a study committee. Looking at the bill itself, AB-525, there has been some reference to the fact that prior to the last session, there were efforts made to try to negotiate some informal process, rather than go through a legislative process, to come up with a form of resolution to this issue and try to move into a somewhat more formalized approach than we are currently working under; this meet and confer process. I was not present at that time, so I don't know what all went into the negotiations on that issue.

I think that it is very important to keep in mind the key fact that if we are going to create a negotiated type of process, a formalized collective bargaining process, we have to keep in mind that when you open the door to a particular organization to act "as the spokesman" for a unit or for state employees, you don't always have the luxury, down the road, of being able to pick and choose who that unit may be or even whether or not you may only be dealing with one organization. I think that Mr. Gagnier would like to have you believe that for all time into the future

you will only have to sit and talk with him, or his successor, assuming that he ever has a successor. I don't think that it is totally fair and accurate to assume that and I think that when we start talking about one-unit bargaining in the public sector, we are going against a definite trend in other states, in other jurisdictions towards multiple unit-type bargaining because there is a general recognition that different employees have different basic interests. To say that there shall be, as they say in Section 12 of their bill, one negotiating unit for all classified employees, with certain limited exceptions, I think it is an unrealistic view and Mr. Etcheverry touched on that in his earlier testimony. Also, to assume, as I say, that we are only going to have one spokesman, is not accurate, either. Believe it or not, the current status of the law in terms of state employee representation does not really provide a definite access by other labor organizations besides the State of Nevada Employees Association for any type of formalized, or even informal negotiating process. You may view that as good or bad, I am not taking a position, one way or another on that, but I have to say it does limit to quite an extent the amount of discussion or amount of on-going "negotiations" that the Executive Branch has to go into under current law. If we open it up, we will deal with that, if it has to be dealt with. We would be prepared to deal with any unit that we would be required to deal with, as a representative of employees. But, the more you piecemeal these units, the more complex the process becomes. And let's remember that ultimately it will rest on your shoulders as legislators to decide between the interests of various groups, various associations, unions, whatever the entity might be called, that might be coming to you representing state employees.

I don't think that you can assume that you will be dealing with one organization. When we get into this concept of an administrative judge, I think there is a basic recognition here, although it may not be stated, that there may be a need for more than one individual to assume that function. Because, if you look at the bill, it can be validly assumed that if a particular unit among state employees organized itself and chose a particular association or group to represent it, an administrative judge would need to be formed for that particular unit and I submit to you gentlemen that as these units become more diverse, you are going to have more and more need for the administrative judge function and you will have multiple persons in that role. As an aside, I think that's one of the reasons for the State Personnel's concern over the fiscal note question on this bill, not so much to kill the bill, as to show an awareness, a recognition of a fact that we may be talking about a very complex system, and not, just again, one administrative judge.

Mr. Capone (cont.): I have a basic concern in terms of some of the language here about the process for recognition of an employee organization. On Page 4, Section 17, it talks about an agrieved organization and how it would try to resolve the problem of the "employer not recognizing it" as the organization representing employees in a unit. I would assume we're talking in terms of 'employer', the state of Nevada and assume that the ultimate decision not to recognize an organization would have to come from the highest elected official in that entity, and that is the Governor. In the same section, they say that to resolve the question of non-recognition, they would go to the Commission, the Personnel Advisory Commission. Well, as Mr. Gagnier pointed himself, the PAC is appointed by the Governor. So, you've got the appointees of the Governor having to decide whether their appointing authority was right in not recognizing a particular labor organization. Just one, perhaps, small conflict there that I think needs to be reviewed. Even though he indicated to you that Chapter 288 of NRS is not utilized in some form or another, or not extensively utilized, if you look at 288 and look at a lot of the language in here, you see that the same kind of philosoph, the same kinds of approaches to various issues involving this bill exist in 288. If you are going to seriously consider the overall applicability of any statutory format for formalized collective bargaining, you need to look at a variety of models. 288 may very well be one. We have worked under that in this state for several years. But I would suggest that if you are really going to study this area, and do it effectively, then you need to look at other states that have had much longer experience with this type of activity at all levels of government (local). I would be more than happy to provide this committee with as much information as I can, not only on the issue of the California experience, and what they are presently going into under their law, but I do have access to a lot of resources at the federal level in the Department of Labor. I will try very hard to get as much material as I can to your committee prior to the next scheduled hearing on this issue might be, or at your convenience, I will make it available to Mr. Dini, for distribution to the committee.

I really don't think you can just gloss over this subject. If there is an appetite for it at all, it is important enough for the future of this state and its employees to go in and look closely at the issue and look at different models, functions and the problems they have had and come up with the best possible resolution of the issue that you can. It almost boils down to a non-partisan issue in that respect because it is a very important question to consider: do we need at all and, if so, what is the best way to go about it?

I just want to say for the record that I have worked through this particular committee on some other issues and I personally want to thank you for your cooperation, not just in this, but in other matters. It has been a good experience for me and I have certainly enjoyed it and I do thank you personally.

Mr. Dini: John, we would like to have whatever data you can get for us.

Mr. Capone: I will take care of that right after I leave here.

Mr. Jim Wittenberg: I would like to touch on a couple of questions that were asked earlier by the members of this committee. As to how the system functions to this point in time, we have had NRS-288 on the books for some twelve to fourteen years and the state has not been included in it. The reason for that, I think, is the fact that we have had a merit system which is embodied in NRS 284, which provides many of the facets that you find in collective bargaining legislation. It did not apply to local government at the time and the main impetus for 288 was from problems at the local government level so the state was not included at that time and has not been included up to this time. That mechanism in NRS-284 has worked very effectively. There is third party binding arbitration provided for in 288 in grievances. There are a lot of the provisions that are needed in a large workforce to get a reasonable and fair balance between employee and management. I think it exists. We haven't just been operating in a void for this period of time. Another question asked was: when had the administration not negotiated in good faith with employees? Bob indicated that the administration did not negotiate in good faith this year. I don't think that is an accurate representation of what happenèd at all. Negotiations began with Mr. Capone and Mr. Gagnier in August on non-economic issues and went for two or three months. We began negotiations sometime in October on economic issues and did not complete negotiations on the economic issues because of tremendous problems in forecasting revenues, income and the fiscal condition, as far as the state of Nevada was concerned. That information was gathered and pulled together very late in the process which prohibited us from going ahead. There was another issue involved, also. Mr. Gagnier came into the economic negotiations with the position of non-negotiability on one of the most important facets of his proposal. He was not willing to negotiate one very important issue and I don't think that is any way to approach good faith negotiations. Those two variables were what contributed to not completing the process, but to say that the administration did not negotiate this session is not, I think, an accurate representation to what happened at all. For the past five or six sessions, there have been good faith meet and confer sessions which have

resulted in agreement on two occasions, which is a credit to that process. That doesn't happen very offen, regardless of the kind of process or machinery that you have. It is very important when legislation like this is put on the books of the state that there is a reasonable balance between labor and the employees' interest and the public interest. It can be very costly to the taxpayer if that is not the case. I don't think that is the case in AB-525 as it is written. I don't think that it is in the public interest. Just to name two important areas - scope of negotiations is far too broad, and the one bargaining unit as a number of people have commented on is not the best approach. There are at least anywhere from three to six clear and distinct communities of interest in state government. We have some 10,000 employees and some fifty broad different occupational areas and it might well be that one organization and one unit cannot accurately and fairly represent those employees. Those employees should have that choice to make that determination. It may end up with one, but I think that it might not. There is a problem raised, in Mr. Gagnier's testimony, about supervisors.and subordinates. I think clearly if we are going to go into the formalized collective bargaining structure, all right. We will exclude managers from the process. That's the way it works in the private sector and that's the way it should work in the public sector. A cleaner exclusion of management people from the process needs to be made, without any question. I think supervisors and subordinates should not be in the same bargaining unit. Under this proposal, everybody's in one bargaining unit. Mr. Gagnier talked about a problem where they were representing employees and the supervisor of those employees was also a member of SNEA. That created a problem. That's exactly the reason you need different bargaining units. There is a clear conflict of interest in that sort of situation. These are two of the most important parts of any collective bargaining legislation. 70% of it is pretty standard. But those three or four major areas are what determine how good and how effectively any piece of collective bargaining legislation is going to be. As John said, and I reiterate, I think if we are going to have a study committee that is going to look at the personnel system and look at some areas that the past two or three studies on the system have not looked at, this would be one important area. It is a very important issue and it seems to me that it is timely that, if that committee in fact does go ahead with a study, this be one of the important things that they look at.

Mr. Craddock: Management is not excluded from negotiations, only owners.

Mr. Wittenberg: Under NRS-288, the first level of management is excluded. In my opinion they should not be in the same bargaining unit. NRS-288 has some clear exclusions of management personnel from the process.

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Mr. DuBois: I think that Mr. Dini mentioned a fiscal note of about $110,000. It calls for two administrative analysts. Why do you need two. Is it dire necessity or a convenience?

Mr. Wittenberg: No, I think it is a necessity. When such a process is put into effect and legislated, I think there is a great deal of increased demand placed on the management side without any question. It is essential, in my opinion. $110,000 is the same fiscal note that we submitted two years ago with inflationary factors. That's all, no additional staff. In my opinion, that is the staff level or the resource level necessary to do an effective job. From Bob Gagnier's standpoint, I would argue the same thing he is arguing, if I were on his side of the table. You don't need any additional resources. The fewer resources management has to deal with the formalized and legislative collective bargaining process, the less effective we are going to be in terms of the public interest. This is the thing that I am concerned with and I think needs to be looked at.

Mr. DuBois: What resources does the other side have?

Mr. Wittenberg: He has a couple of full time, what amount to staff analysts. He has someone who is responsible for public relations for newspaper input. He has additional support staff. I am not sure of the exact number. That resource can be increased at any time. It is not legislative action that controls that. SNEA, at any given time, can decide to increase dues, increase their fiscal resources and increase staff resources.

Mr. DuBois: On the administrative judge, how do you visualize this happening? Would he be appointed? At what point in time and how long would he be serving in his negotiated capacity?

Mr. Capone: If I could answer that, Mr. Chairman, the administrative judge would serve for a term of one year, according to the bill, at which time both sides would review his progress and if there were no unusual problems with him continuing, he could be reappointed, or if there was a dispute over his effectiveness or he was unable to continue in his service, then they select through the selection process a replacement for the position. But, as I pointed earlier, I think the initial point of his appointment is that whenever a negotiating situation develops, in other words, a unit determination is made and the need for an administrative judge is found, then he is appointed. If a new unit develops, then we are in the same kind of process because I think it would be very difficult for one administrative judge to be ruling on what is right or necessary or what the needs are of two differing employee units. And so on down the line. So, I think if we get into multiple units at some point, as I believe we would, you are going to see more and more involvement of more and more administrative judges in the process.

Mr. DuBois: If he were appointed to handle a case, how long would he be serving on that case on the average.

Mr. Capone: I would assume he would, depending on what the need was for him to intervene in a particular unit's negotiations or grievance process, be involved with that unit for as long as he was appointed, for that year, if there were on-going needs for him to serve. You see, it is not the kind of a thing where he would decide to step in at some point or another. It is a question of his being available to resolve dispute as they may arise during his term of office. So, it would be hard to say how much time he would spend in any one unit. If you had a large unit, if you had few problems in a unit, if you had a lot of problems in a unit, all of those factors would dictate how much time he would actually spend. If you are concerned about what we are paying him for, it would vary, I think, if you get into multiple unit kinds of situations.

Mr. DuBois: If this was set up, it would greatly enhance and increase the chances that you would really have to finally have to select an administrative judge. I think it would come to that.

Mr. Capone: Well, I think you have seen through sitting on hearings in other parts of the local government issues on other bills, primarily NRS-288, that there is perhaps a tendency or at least a temptation, rather than really sitting down and ironing something out between the parties, to possibly go to that last final arbiter and have him make the decision. I can't say for a fact that would happen, but I think the experiences that you have heard in testimony in other hearings would indicate there is a risk or chance of that.

Mr. Craddock: Is there any recent development in the community of interest in collective bargaining?

Mr. Capone: I don't have anything specific on that but I will be more than happy to do some research on it for you and see if I can find something out. But one of the things that you will see evolve as formalized collective bargaining processes develop in any state, you are going to see more and more a tendency to trim down definitions to get them almost to a finite point, and, unfortunately, as the legal profession gets more and more involved in representing various sides of these matters, there is that tendency to be finite in your definitions and fine tune these things. Anybody who has worked with the process in the old days, doesn't like to see that trimming down. They would rather have it open, the handshake across the table kind of thing. Unfortunately, it is getting very technical now and that is one of the areas where it is becoming technical.

Mr. Schofield: In your past experience, how much of it relates to multi-unit cases?

Mr. Capone: My experience stems from my involvement with the Local Government Employee Relations Board in Las Vegas. That was primarily dealing with school districts, counties, cities, that kind of governmental entity and their employees. Multiple units are those where you have blue collar, white collar, teachers, non-teachers, there is multiple representation. School administrators are excluded from bargaining with teachers. They have to have their own unit, so you need representation that way. In the private sector, there various delineations of employees: clerical versus blue collar, etc. Plumbers versus electricians. You see this on an on-going basis that each group has its own interest. They feel they have their own concerns to protect and they don't like to be included, necessarily, with one massive group. It is more than one community of interest, as Mr. Craddock said. That's the usual definition.

Dr. Al Stoess, an employee in the Chancellor's Office of the University of Nevada System, and representing the Board of Regents: The basic position of the University has generally been to support the State of Nevada's position in regard to the collective bargaining bill. There are, however, four specific points that I would like to make in regard to this bill and the concerns of the Board of Regents: (1) It does take the Board of Regents out of the process of classified employees and that it would provide for bargaining with the Governor only. In looking over my notes and testimony from previous sessions, I see that the position of the University has always been that if there is to be a Governor's negotiating team, the University has always asked for representation on such a bargaining team. That would be our position today. (2) We are troubled by the one negotiating unit provision. Again, talking about the community of interest considerations, it would put the University in this one large bargaining unit and the University would be opposed to that. (3) Another problem that the University has with this bill is with the subjects of mandatory bargaining. Basically, it is an employees' bill and includes a number of matters that Mr. Capone correctly referred to as management perogatives and the University would support that. I believe that someone mentioned that this, of course, would make SNEA the bargaining agent and this is the fourth point I would like to make in regard to the recognition process. The position of the University has always been, and this is different somewhat from the state administration's, that we have always favored an election process for recognition.

This concluded the testimony on AB-525.

Mr. Dini asked the committee to consider AB-58. This was the original bill on the Consumer Advocate. There is a bill now in the Senate that will make this one unnecessary. Mr. Schofield moved for INDEFINITE POSTPONEMENT. Seconded by Mr. May. Motion carried.

On SB-194: The Sister McCarran bill has apparently not done for her what she wanted it to and has not come forward to testify. Mr. Craddock moved for INDEFINITE POSTPONEMENT. Seconded by Mr. Schofield. Motion carried.

On AB-260: This is Mr. Prengaman's bill. Dr. Sanford wrote a letter to the committee. The text follows: Dear Mr. Dini: I hope you will put up with what may seem like excessive aggressiveness on my part pushing for AB-260, whose primary purpose is to put the state in the lead in solar space energy. I do hope that you will consider the following explanation of why my bill, AB-260, is certainly different from AB-48. (AB-48 was signed by the Governor). AB-260 compares only state-financed buildings. AB-48 is concerned with public buildings in general, including cities and counties. AB-260 deals with all sizes of buildings, small and large; AB-48 is concerned with buildings over 20,000 square feet. AB-260 encourages solar as a major source of heating for a building, while AB-48 does not. AB-260 eliminates the requirement for 100% backup for solar - AB-48 does not. AB-260 permits exceptions for higher bids for solar. The present rules of the Government Works Board makes no provision for this. AB-260 implies that this can be done. I believe that AB-48 is a good bill and encourages the use of renewable resources. AB-260 supplements it by exercising a more general availability of sun rather than other sources, such as geothermal and wind. I am leaving the Public Works Board this June and feel that this is my last opportunity to push for the sun as our best ally. Respectfully submitted, Irving Sanford.

Mr. Dini continued: At the time Mr. Griffin appeared in opposition to AB-260, he did not have the permission of the Public Works Board.

After further discussion of the bill by the committee, Mr. Prengaman stated: Mr. Chairman, it is my bill, but I have to look to you for direction. Would you like me to try and work with the Department of Energy and the Public Works Board to see if there is anything in here which could be salvaged.

Mr. Dini: Yes, why don't you do that.

There being no further business, Mr. Dini adjourned the meeting at 10:20 A.M.

Respectfully submitted,

Lucille Hill
Assembly Attache

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ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

GUEST LIST

Date May 1, 1981

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PLEASE PRINT YOUR NAME	PLEASE PRINT REPRESENTING:		I WISH TO SPEAK FOR	AGAINST	BILL NO.
BOB GAGNIER	SNEA		✓		525
" "	"			✓	524
Glenn DuBois	MGMT TASK FORCE		✓		524

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classified employees, including an agreement to arbitrate or to accept the terms of an arbitration award where previously the parties have agreed to accept the award as final and binding.

6. Violate the provisions of section 2 of article X.

SEC. 3.

Any employee who is aggrieved by a violation of any prohibited practice set forth in sections 1 and 2 may present his grievance to the employee relations officer, and may appeal from a determination of that officer to the administrative judge, as provided in article V.

ARTICLE VIII - RIGHTS OF EMPLOYEES

SEC. 1.

State employees may form, join and participate in the activities of employee organizations, for the purpose of securing effective representation on matters of employee-management relations.

SEC. 2.

State employees may refuse to join or participate in any employee organization and may represent themselves individually in their employment relations with the state if the results of such representation will not violate the terms of any existing memorandum of understanding.

ARTICLE IX -- MEETING AND CONFERRING

SEC. 1. Meeting and Conferring.

1. The recognized employee organization is the exclusive agent for the employees within the appropriate unit for the purpose of meeting and conferring with the state and its agencies.

2. The state and the recognized employee organization shall, on the request of either party, but not later than the first day of July, of each even-numbered year, meet and confer in good faith with a view to reaching agreement regarding wages, hours and other terms and conditions of employment. The scope of the negotiations must not include any consideration of the right of the state:

(a) To determine the merits or organization of, or the necessity for, any service or activity established by law or executive order;

Exhibit A

(b) To determine the mission or the priority of the missions of its departments, divisions, agencies, boards and commissions;

(c) To set standards for service, and determine staff workloads;

(d) To set standards and methodology for employment and classification of employees;

(e) To direct its employees;

(f) To take disciplinary action;

(g) To lay off its employees because of lack of work or funds;

(h) To maintain the efficiency of governmental operations;

(i) To determine the methods, means and personnel by which government operations are to be conducted;

(j) To take all necessary actions to carry out its mission in emergencies; or

(k) To exercise complete control and discretion over its organization and the technology of performing its work.

However, nothing in this subsection precludes an employee or employee organization from filing a petition for relief of a grievance (under existing grievance adjustment procedures) which has occurred in the state's exercise of these rights or from appealing to the administrative judge for an interpretation of these rights.

3. The state will be represented in its employment relations with the recognized employee organization by the governor's designee and such other state officials as the governor deems appropriate. This subsection does not preclude the employee relations officer from contracting with or employing a person or firm which is competent in labor relations.

SEC. 2.

1. The recognized employee organization may also meet and confer with a state agency on employment practices peculiar to that agency for the purpose of reaching a supplemental agreement if the recognized employee organization represents a majority of the employees of the agency who are in the appropriate unit. The agency shall not meet and confer with any employee organization other than the recognized employee organization. A meeting and