# DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

TESTIMONY OF LARRY O'LEARY
Assembly Commerce & Labor Committee
March 14, 2003

Good afternoon.

My name is Larry O'Leary and I am the secretary-treasurer of Bricklayers & Allied Craftworkers Local 13. I'm here today to testify in support of AB 182, which would amend NRS Chapter 613 to allow unions and employers in Nevada to enter into fair share fee agreements. First, I'd like to explain to you why we believe the current law needs to be changed, and then I will explain what AB 182 does and does not do. Then I will be happy to answer any questions.

Unions in Nevada represent not only our members, we also represent workers who have chosen not to become members of the union. Those workers work side-by-side with union members, earn exactly the same wages and benefits, and enjoy exactly the same working conditions as union members — all of which are negotiated by the union with the employer.

Why do we represent workers who don't choose to become members of our unions? No worker can be forced to join a labor union if he or she does not want to. However, a labor union is the exclusive bargaining representative of all the workers who are covered by its collective bargaining agreements with employers, whether they choose to join the union or not. So every union is required, under federal law, to represent every worker covered by the union's collective bargaining agreements fairly and even-handedly, regardless of union membership. This is what is meant by the duty of fair representation. Even though some workers don't choose to join our union, we are still required to provide those workers with the same services that we provide to our members, and we can't treat any worker covered by an agreement in a manner that is

arbitrary, discriminatory or in bad faith.

Here's what this means in practice. Our union negotiating teams negotiate collective bargaining agreements that set wages, hours, and other terms and conditions of employment for all of an employer's employees who work in our craft, whether or not they are union members. Our union business agents adjust grievances for members and non-members alike who are disciplined or fired unfairly. That means that they help workers get their jobs back, get back pay and benefits they are entitled to, and remove the effects of unfair discipline. Our union officers, staff, and committeemen are required to provide these services to members of the union and non-members alike. Union members pay dues to support these services, which can be very costly to provide. But here in Nevada, non-members of the union don't pay anything at all.

Let me give you a concrete example of the services a union provides to its members, to give you an idea of what is involved. Take a hotel housekeeper in Las Vegas. She gets fired, because another employee accused her of stealing – but it isn't true. There is a collective bargaining agreement at the hotel that includes a grievance procedure that applies to her situation. The housekeeper files a grievance against hotel management. First, a union official conducts an investigation and concludes that the housekeeper was fired unfairly. Then the union's representatives meet with management to try to settle the grievance and get the housekeeper her job back, with back pay. Management refuses to settle. So the union's representatives pursue the housekeeper's grievance through the next steps of the grievance procedure. They research the facts, interview witnesses, maybe refer the case to the union's attorney for further analysis, and they decide that this is a case that should be taken to arbitration as provided for in the collective bargaining agreement. The union demands arbitration, the union and hotel management choose



E 2 of 3

an arbitrator, and the union's lawyer spends many hours preparing the case for arbitration. The union and hotel management split the arbitrator's fees, but the union picks up all the rest of the expense of handling the grievance and preparing the housekeeper's case for arbitration – the lawyer's fees, everything. Most grievances are resolved short of arbitration, but those that go to arbitration can be very expensive for the union.

If this housekeeper was a member of the union at her hotel, then she was paying union dues. Her dues money, together with that of all the other union members, helped pay for investigating her case, handling her grievance through the steps of the grievance procedure, paying the union's lawyers, and so forth. If she chose not to join the union, the union would still have done all of those things for her. But under current Nevada law, the housekeeper wouldn't have paid anything at all for everything the union did on her behalf. Instead, the dues-paying union members would have picked up all of the expenses incurred by the union in handling the housekeeper's case, while the housekeeper had a free ride.

The current law in Nevada isn't fair to the union members who have to shoulder the costs of their union's representation of non-members. People don't mind paying their fair share, as long as everyone else is paying too. But no one likes to be taken advantage of, and that is what is happening now to union members in Nevada. There's little incentive for workers covered by a collective bargaining agreement to become union members if they can enjoy all the benefits of union representation for free. But the union's obligation to represent all of the workers in the bargaining unit is not at all diminished because some workers do not pay for the union's services. So the result is, with fewer people supporting the union's efforts to negotiate and enforce contracts and to handle employees' grievances, it's much harder for the union to represent all the



E 3813

workers in the bargaining unit effectively.

Twenty-eight states have gone another way. In those states, unions can enter into agreements with employers that require non-members — workers who are covered by a collective bargaining agreement, but who choose not to join the union — to pay the union their fair share of the costs it incurs in representing them. Everybody chips in to pay for negotiating and enforcing the contracts that govern wages, benefits, hours, and other working conditions. Those 28 states recognize that the services the union provides to the workers it represents don't come for free, and it's only fair that everyone who benefits from those services pay his or her share of the costs. Union members in those states don't have to pick up the costs of representing the non-members out of their own pockets.

I'm here today to ask you to support an amendment that will make sure every worker pays his or her fair share. AB 182 provides that employers and unions are free to enter into agreements where, as a condition of employment, all employees covered by a union contract are required to pay the union a service fee equal to their pro-rated share of the costs of the union's representation, regardless of union membership. As Section 6 of the bill says, any such service fee is limited to "the employee's proportional share of the cost incurred by the labor organization for collective bargaining, the administration of contracts and the adjustment of grievances."

That's all the bill does. Here is what it does not do:

- It does not force any worker to join a union if he or she doesn't want to.
- It does not force any employer to fire a worker because that worker chooses not to join a union.
- It does not force any employer to enter into a fair share fee agreement.

- This bill prohibits a union from charging any non-member any amount in fair share fees that is greater than the amount it requires its members to pay in dues.
- Finally, Section 8 of AB 182 specifically prohibits unions from charging any service fee to non-members that includes any share of a union's political contributions. Moreover, the union's ability to assess fair share fees is also limited by federal law. Federal law limits the amount of the fair share fee to the worker's share of the union's expenses incurred in activities that are "germane to collective bargaining." That generally means negotiations, contract administration and enforcement, grievance handling, and related activities; Section 6 of AB 182 provides that it is appropriate for a labor organization to assess non-members a service fee for these same activities. Non-members who object to supporting other union activities that are not related to collective bargaining cannot be required to pay any amount for those activities. Nothing in this bill would limit a non-member's right not to support union activities that are not related to collective bargaining.

In other words, the bill does nothing to infringe on the rights of individual workers to freely choose whether or not to join a labor union. It simply permits unions in Nevada to do what unions in 28 other states can do: enter into agreements with employers that ensure that every worker who is covered by a collective bargaining agreement contributes his or her fair share to the union's costs of collective bargaining, contract administration, and grievance handling.

The United States Supreme Court has repeatedly recognized that fair share fee arrangements are lawful. And, what is perhaps just as important, the Supreme Court has repeatedly recognized that these arrangements are fair. [Communication Workers of America v.



E 5813

Beck, 487 U.S. 735 (1988); NLRB v. General Motors Corp., 373 U.S. 734 (1963).] In fact, in 2000, our Nevada Supreme Court ruled in Cone v. SEIU Local 1107, that it was fair for a public employees' union to require a non-member to pay the union a one-time fee for handling his or her grievance. [Cone v. Nevada Service Employees Union/SEIU Local 1107, 116 Nev. 473, 998 P.2d 1178 (2000).] The state Supreme Court made much the same point that I'm making here: because the union has a duty to fairly represent everyone in the bargaining unit regardless of union membership, the employee "has a corresponding obligation, if permissible under the collective bargaining agreement and required by the union's policy, to share in defraying the costs of collective bargaining services from which he or she directly benefits." [Cone, at page 1183.] The court went on to say that letting non-members have a free ride is not fair to the union members who have to shoulder the costs for the non-members' representation. [*Id.*]

The Cone case applied only to public employees, and only endorsed a single "user fee" system, not fair share fee agreements. I'm here today asking for your support for AB 182 because we need a more comprehensive solution to the free rider problem I have just outlined. Back in 1974, in the Independent Guard Association v. Wackenhut Services, the Nevada Supreme Court interpreted the Nevada Right-to-Work statute as prohibiting fair share fee agreements. [90 Nev. 198, 522 P.2d 1010 (1974).] That case still governs employers in Nevada, as the state Supreme Court recognized in the Cone case. [Cone, 998 P.2d at 1182.] But nothing about the current statute is set in stone. The legislature is free to overrule the Wackenhut case by amending the statute to clarify that fair share fees are lawful in Nevada. Moreover, AB 182 clarifies that the State of Nevada and local governments are also free to enter into fair share fee agreements. So public sector unions would not be limited to the "user fee" approach that the Nevada Supreme



E 6 of 13

Court endorsed in the Cone case, but they too could require all represented employees to pay their fair share of the union's overall costs of representation.

All we're asking is that the legislature clarify that it's fair for every worker to pay their share of the costs the union incurs in representing them, regardless of union membership, and that unions and employers both in the private sector and in the public sector can enter into agreements that require fair share fees. That is all this bill would do, and I respectfully ask for your support.



E 7013

## POTENTIAL QUESTIONS

**Doesn't this bill gut Nevada's Right-to-Work law?**

No. The Right to Work law (NRS § 631.250) provides that a union can't enforce a collective bargaining agreement to have a worker fired because he or she is not a union member. This bill doesn't change that. The bill simply says that a union and an employer can enter into a collective bargaining agreement where every worker covered by the agreement is required to pay his or her fair share of the costs of union representation, even if they choose not to join the union. But the union can't ask the employer to fire any worker because he or she chooses not to join the union.

**Could a worker be fired for refusing to pay the fair share fee?**

The bill permits a union and an employer to enter into an agreement where paying the fair share fee is a condition of employment for covered employees who choose not to join the union. That means that a worker who does not join the union and who refuses to pay the fair share fee could be fired, but only if the contract between the union and the employer is written to require that. Under this bill, the union and the employer are free to negotiate any kind of fair share fee agreement they see fit, including one that does not require the employer to terminate a worker who refuses to pay the fair share fee.

**What about workers' First Amendment rights?**

The United States Supreme Court has ruled that fair share fee agreements are lawful because they fairly distribute the burden of paying for the union's representation to all workers who enjoy the benefits of that representation. Communication Workers of America v. Beck, 487 U.S. 735 (1988); NLRB v. General Motors Corp., 373 U.S. 734 (1963). Non-members' First Amendment rights are not affected by this bill for two reasons. First, under the bill's express

E 8 of 13

terms, none of the service fee charged to non-members can be spent on union political contributions. So non-members whose political views are not in step with the union's positions will not be forced to spend their money in support of the union's positions for or against candidates or ballot measures. Second, under federal law, non-members cannot be required to pay for the union's costs incurred for activities that are not germane to collective bargaining. That means that no non-member can be required to support causes that he or she disagrees with. Moreover, the union is required to inform non-members about its budget, so that workers can knowledgeably object to paying more than their fair share of the costs of the union's activities that are germane to collective bargaining, and to contest the union's calculation of the fair share fee. The Supreme Court has said that this adequately protects non-members' First Amendment rights.

**Will these fair share fees automatically go into effect at workplaces with union contracts?**

No. If this bill passes, then it will permit public and private sector employers in Nevada to negotiate agreements with unions that allow for fair share fees. The bill would not change any existing collective bargaining agreements.

**Why can't unions just charge non-members for the costs of services they use, like if a non-member has a grievance that goes to arbitration?**

Private sector employers are covered by the National Labor Relations Act, which has been held to prohibit charging "user fees" to non-members for one-time use of the union's services, such as for handling a grievance. International Association of Machinists, Local Union No. 697 (Canfield Rubber Co.), 223 NLRB 832 (1976). Therefore, the solution that the Nevada Supreme Court approved in the Cone case, where it held that a public sector union could charge a non-member a one-time user fee for handling her grievance, could not be applied to a union representing workers in the private sector. Cone v. Nevada Service Employees Union/SEIU

E 9013

Local 1107, 116 Nev. 473, 998 P.2d 1178 (2000). Moreover, every worker in a bargaining unit benefits from the union's negotiation and enforcement of a collective bargaining agreement, because the agreement establishes their wages, hours, benefits and other terms and conditions of work. So it is fair to ask every worker to pay their pro-rated share of those negotiation and enforcement activities, not just to pay for grievance handling on a single-use basis. What's more, AB182's more comprehensive solution to the free rider problem is appropriate in public sector also. The user-fee approach endorsed in the Cone case is too limited to fairly spread the costs of union representation among all the workers who benefit from it.

**What if a non-member doesn't want to take advantage of any of the union's services?**

It's a simple matter of majority rule. Under federal law, a majority of workers in a bargaining unit can select union representation. The union then represents all of the workers in that bargaining unit, including the ones who did not want union representation. Because the union is required to represent all of those workers fairly and even-handedly, it is only fair that all of the workers in the bargaining unit contribute to the costs the union incurs in doing so. What's more, the contract the union negotiates covers wages, hours, and other terms and conditions of employment, like benefits, pensions, job security, just-cause discipline, and so forth. Those contracts benefit everyone, including the non-members, and it's fair to ask the non-members to contribute to the union's efforts in negotiating and enforcing them.

## POTENTIAL QUESTIONS

**Doesn't this bill gut Nevada's Right-to-Work law?**

No. The Right to Work law (NRS § 631.250) provides that a union can't enforce a collective bargaining agreement to have a worker fired because he or she is not a union member. This bill doesn't change that. The bill simply says that a union and an employer can enter into a collective bargaining agreement where every worker covered by the agreement is required to pay his or her fair share of the costs of union representation, even if they choose not to join the union. But the union can't ask the employer to fire any worker because he or she chooses not to join the union.

**Could a worker be fired for refusing to pay the fair share fee?**

The bill permits a union and an employer to enter into an agreement where paying the fair share fee is a condition of employment for covered employees who choose not to join the union. That means that a worker who does not join the union and who refuses to pay the fair share fee could be fired, but only if the contract between the union and the employer is written to require that. Under this bill, the union and the employer are free to negotiate any kind of fair share fee agreement they see fit, including one that does not require the employer to terminate a worker who refuses to pay the fair share fee.

**What about workers' First Amendment rights?**

The United States Supreme Court has ruled that fair share fee agreements are lawful because they fairly distribute the burden of paying for the union's representation to all workers who enjoy the benefits of that representation. Communication Workers of America v. Beck, 487 U.S. 735 (1988); NLRB v. General Motors Corp., 373 U.S. 734 (1963). Non-members' First Amendment rights are not affected by this bill for two reasons. First, under the bill's express

terms, none of the service fee charged to non-members can be spent on union political contributions. So non-members whose political views are not in step with the union's positions will not be forced to spend their money in support of the union's positions for or against candidates or ballot measures. Second, under federal law, non-members cannot be required to pay for the union's costs incurred for activities that are not germane to collective bargaining. That means that no non-member can be required to support causes that he or she disagrees with. Moreover, the union is required to inform non-members about its budget, so that workers can knowledgeably object to paying more than their fair share of the costs of the union's activities that are germane to collective bargaining, and to contest the union's calculation of the fair share fee. The Supreme Court has said that this adequately protects non-members' First Amendment rights.

**Will these fair share fees automatically go into effect at workplaces with union contracts?**

No. If this bill passes, then it will permit public and private sector employers in Nevada to negotiate agreements with unions that allow for fair share fees. The bill would not change any existing collective bargaining agreements.

**Why can't unions just charge non-members for the costs of services they use, like if a non-member has a grievance that goes to arbitration?**

Private sector employers are covered by the National Labor Relations Act, which has been held to prohibit charging "user fees" to non-members for one-time use of the union's services, such as for handling a grievance. International Association of Machinists, Local Union No. 697 (Canfield Rubber Co.), 223 NLRB 832 (1976). Therefore, the solution that the Nevada Supreme Court approved in the Cone case, where it held that a public sector union could charge a non-member a one-time user fee for handling her grievance, could not be applied to a union

E 12 of 13

representing workers in the private sector. Cone v. Nevada Service Employees Union/SEIU Local 1107, 116 Nev. 473, 998 P.2d 1178 (2000). Moreover, every worker in a bargaining unit benefits from the union's negotiation and enforcement of a collective bargaining agreement, because the agreement establishes their wages, hours, benefits and other terms and conditions of work. So it is fair to ask every worker to pay their pro-rated share of those negotiation and enforcement activities, not just to pay for grievance handling on a single-use basis. What's more, AB182's more comprehensive solution to the free rider problem is appropriate in public sector also. The user-fee approach endorsed in the Cone case is too limited to fairly spread the costs of union representation among all the workers who benefit from it.

**What if a non-member doesn't want to take advantage of any of the union's services?**

It's a simple matter of majority rule. Under federal law, a majority of workers in a bargaining unit can select union representation. The union then represents all of the workers in that bargaining unit, including the ones who did not want union representation. Because the union is required to represent all of those workers fairly and even-handedly, it is only fair that all of the workers in the bargaining unit contribute to the costs the union incurs in doing so. What's more, the contract the union negotiates covers wages, hours, and other terms and conditions of employment, like benefits, pensions, job security, just-cause discipline, and so forth. Those contracts benefit everyone, including the non-members, and it's fair to ask the non-members to contribute to the union's efforts in negotiating and enforcing them.

E 13 of 13