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.

Ph: (702) 873-0332 BAC. LOCAL 13 NV. FAX.(702)873-0809
3640 S. HIGHLAND DR.
LAS VEGAS, NV 89103

Raymond Keen, President; Larry O'Leary, Secretary/Treasurer; Charles McCracken, Vice-Chairman; Carlos Aquin, Vice-Chairman; Robert M. Blake, Vice-Chairman

04/12/03

The Following Information is Provided by Larry O'Leary

A.B. 182: Fair Share Fees are Constitutional and Fair

A.B. 182 would permit public- and private-sector employers in Nevada to enter into fair share fee arrangements with labor organizations. These arrangements allow a labor organization to assess nonunion employees who are covered by a collective bargaining agreement for their share of the costs the organization incurs in representing them. Because a labor organization must represent every employee in a bargaining unit fairly *regardless of his or her union membership*, it is only fair that each employee contribute his or her share of the costs of that representation.

A.B. 182 is consistent with the rulings of the United States Supreme Court. The Supreme Court has repeatedly approved fair share fee arrangements between employers and labor organizations in both private and public-sector employment because they fairly allocate the costs of union representation to all the employees who benefit from it. Even in the public sector, fair share fee arrangements that only allow the union to assess nonunion employees for their share of the costs incurred relating to the union's representational functions do not raise First Amendment concerns. Moreover, the Supreme Court has established procedures that safeguard nonunion employees against inappropriate assessments that could infringe on their legal rights.

- *International Association of Machinists v. Street*, 367 U.S. 740 (1961)

The United States Supreme Court first addressed fair share fees in the context of the Railway Labor Act ("RLA"), which governs labor relations in the railroad and airline industries. In *Street*, the Court recognized that "Congress has given unions a clearly defined and delineated role to play in effectuating the basis congressional policy of stabilizing labor relations." 367 U.S. at 760. This role necessarily entails "a process of permanent conference and negotiation between the carriers on one hand and the employees through their unions on the other. . . . Performance of these functions entails the expenditure of considerable funds." *Id.* at 760-61.

As the Court concluded, Congress intended to permit labor organizations to charge both union and nonunion members for the cost of these representational activities, because it wanted to eliminate the problem of "free riders," i.e., those who would otherwise enjoy the benefits of union representation without paying their fair share of the cost of obtaining those benefits:

> Benefits resulting from collective bargaining may not be withheld from employees because they are not members of the union. . . . Nonunion members, nevertheless, share in the benefits derived from collective agreements negotiated by the railway labor unions but bear no share of the cost of obtaining such benefits.

367 U.S. at 762 (quoting H.R. Rep. No. 2811, 81st Cong., 2d Sess. at 4). The Court emphasized that Congress' decision to permit union security agreements that require nonunion members to "share the costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes" does not raise First Amendment concerns. 367 U.S. at 763.

- *Abood v. Detroit Board of Education*, 431 U.S. 209 (1976)

In *Abood*, the U.S. Supreme Court extended these principles to public-sector employees:

> The designation of a union as exclusive bargaining representative carries with it great responsibilities. The tasks of negotiating and administering a collective bargaining agreement and representing the interests of employees in settling disputes and processing grievances are continuing and difficult ones. They often entail expenditure of much time and money. The services of lawyers, expert negotiators, economists, and a research staff, as well as general administrative personnel, may be required. Moreover, in carrying out these duties, the union is obliged fairly and equitably to represent all employees, union and nonunion, within the relevant unit. **A union-shop arrangement has been thought to distribute fairly the cost of these activities among those who benefit, and it counteracts the incentive that employees might otherwise have to become "free riders" — to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees.**

431 U.S. at 221-22 (citations omitted) (emphasis added). The Supreme Court explained that "the desirability of labor peace is no less important in the public sector, nor is the risk of 'free riders' any smaller." *Id.* at 224. Therefore, fair share fee arrangements are permitted in public-sector employment and do not raise any greater First Amendment concerns than they do under the Railway Labor Act. *Id.* at 232.

- *Communication Workers of America v. Beck*, 487 U.S. 735 (1988)

In *Beck*, the Supreme Court held that fair share fee arrangements are similarly lawful in private-sector employment covered by the National Labor Relations Act ("NLRA"), so long as the union only requires non-members whom it represents to pay their share of the costs incurred in "performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." 487 U.S. at 762-63. The NLRA governs most private-sector employment outside the railroad and airline industries and agriculture.

- *Chicago Teachers Union Local No. 1 v. Hudson*, 475 U.S. 292 (1986)

In *Hudson*, the Supreme Court again confirmed that fair share fee arrangements are permitted in public employment. 475 U.S. at 301-02. Acknowledging that such fee arrangements could infringe on nonunion public-sector employees' First Amendment rights if unions could require nonmembers to pay for activities **not related** to the union's representational functions, the Supreme Court set forth several procedural rules designed to protect such employees' First Amendment rights.

First, *Hudson* requires public-sector labor organizations with fair share fee agreements to provide nonunion employees covered by the agreement with an adequate explanation of the basis of the fair share fee, including the union's calculation of the amount of the fee. Second, the union

must provide nonunion employees with an opportunity to object to paying any fee in excess of the amount related to the union's representational activities, and with a reasonably prompt decision by an impartial decisionmaker on any challenge that the nonunion employees bring as to the union's calculation of the amount of the fee. 475 U.S. at 309. Third, pending resolution of any such challenge, the union must escrow the portion of the fee that is reasonably in dispute, thereby insuring that no part of the fee is used, even temporarily, for non-representational purposes against the employee's wishes. *Id.* at 310. Comparable protections are required in the private sector.