

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Third Session
May 31, 2005**

The Committee on Government Affairs was called to order at 8:17 a.m., on Tuesday, May 31, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn Hettrick, Assembly District No. 39, Douglas County, Washoe (part), and Carson City (part)

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Susan Scholley, Committee Policy Analyst
Michael Shafer, Committee Attaché

OTHERS PRESENT:

Gary Wolff, Business Agent, International Brotherhood of Teamsters Local 14, Las Vegas, Nevada
Gail Tuzzolo, Legislative Advocate, representing Nevada AFL-CIO
Danny Thompson, Executive Secretary-Treasurer, Nevada AFL-CIO
Ken Lange, Executive Director, Nevada State Education Association
Jim Penrose, Lead Counsel, Nevada State Education Association
Paula Berkley, Legislative Advocate, representing the Service Employees International Union Local 1107
Susan Fisher, Legislative Advocate, representing Washoe County Employees Association

Chairman Parks:

[Meeting called to order and roll called.] We have one bill today, and I wanted to share with the Committee the various bills we have in concur and nonconcur. We will open the hearing on A.B. 568.

Assembly Bill 568: Revises provisions related to representation of bargaining unit by employee organization. (BDR 23-1476)

Assemblyman Lynn Hettrick, Assembly District No. 39, Douglas County, Washoe (part), and Carson City (part):

I am here to introduce A.B. 568. I am actually just the messenger on this bill. This bill has the opportunity to address a fair elections issue in regard to a labor representation election issue. I know it is late in the session. The people who asked me to sponsor the bill, amend the bill into something, and have a hearing on the issue did not work out. So, as the minority leader, I have two emergency bills I can use as the session winds down. I purposefully held the bill until the end because I did not know if I would have something that rose to a higher level than this issue, and it turned out that I did not. I do not want you to think I am purposefully bringing this to you as late as I can, because that is not the case. I brought it when the timing worked, in regard to the bills and the issues needing to be addressed.

[Assemblyman Hettrick, continued.] Mr. [Gary] Wolff is going to testify on this along with others. He has the details and can provide you with a better background on the bill than can I. Why the request for change? I believe this is a fair election issue. I am not aware of any other election process in this country where you have to have a majority of the registered voters plus one to win an election. Every other election is won by a majority of those people who voted plus one—50 percent plus one—and that is what the issue here is.

**Gary Wolff, Business Agent, International Brotherhood of Teamsters Local 14,
Las Vegas, Nevada:**

Contrary to what you may have heard about A.B. 568, this bill is not about taking sides. It is about the fundamental right to allow people to vote for who they choose as their representative through the normal standard of a simple majority vote. In 2001, a massive card-signing effort was undertaken and completed by Teamsters Local 14 to represent thousands of support staff employees in the Clark County School District. In 2002, based on the results of the cards received, the Nevada Local Government Employees Management Relations Board (EMRB) issued an election order for this vote. Unfortunately, the election order set a ridiculous standard on how the winner of the election would be calculated. The order stated that the challenger would need to get at least 50 percent plus one vote of the gross unit in order to prevail in the election. This order is nearly an impossible task to achieve because like any election, you cannot force people to vote. If this same order applied to a general election, very few people could ever be elected to public office.

As an example, you have 1,000 registered voters in your district. You have a large district of 60 percent of 600 voters. Of those 600, you receive 499 votes. Under the current local EMRB ruling, you would lose the election because you would need 501 votes. You win by a large margin of 83 percent of the vote, but you lose the election. Is this ridiculous? Yes, but this is the standard the local EMRB has imposed on labor unions or any other organization attempting to organize. What A.B. 568 does is to clarify language in NRS [*Nevada Revised Statutes*] 288 and to establish realistic standards as applied to labor elections.

I just want to elaborate a little bit on this. This is the second go-around for this bill. It is a shame that the opposition to this bill puts people in here in a position, stating that you are taking sides. This is not about two labor organizations fighting. This is about a board of two or three people who was elected to give this order. This order is contrary to any election run in this country, with the exception of the presidential election. Yes, the Teamsters are standing out here with this simply because we were denied what we feel is our fundamental right to organize. Organizing and labor is no different than when you are running for public office and you are campaigning. You are doing exactly the same thing.

You go out to your voters, and you tell them why you are the best candidate, and you can do the best job. Then, after the whole election process is over, somebody can say, "So, you are interfering with me because I am the incumbent. I should be able to stay here forever." Voters, the people in this country, the last I heard, should have the right to choose a representative through a normal election process.

[Gary Wolff, continued.] If you look at Section 2, it says, "The showing of interest and other questions relating to representational disputes must be determined in accordance with the National Labor Relations Board Standards, unless such standards are inconsistent with the standards set forth in this chapter." There is nothing specific that relates to elections. It just gives another board in this state a broad authority to do what they want to do unless they are challenged. I do not think you have to challenge anything on the board. I just think that you just put the standards in how the elections are running into NRS 288, and that resolves the issue because it complies with the National Labor Relations Act [of 1935].

That is all you are really doing here. You are setting up the rules in statute, how the election is going to be run, so there are no more disputes over this. The bill basically sets into motion how the election process is run. Under national standards, before you can even organize, you have to give 30 percent card signing of the body. If you have 1,000 people, you have to get 300-plus signatures before you even qualify for an election. Those are stricter standards in it than any other election, even initiative petitions. What this does is, since we have a right-to-work state, it gives the employees three choices: it allows the employee to choose their current representative if they have one, choose a new representational organization, or no representational organization at all. After the EMRB orders an election and the votes are cast and they canvas the votes, in the event none of the three get the majority of the votes, you have an election runoff. The runoff would be with next two highest, just like you would do in any election. Then, if the current organizations receive the most votes, they retain their representative duties over their organization. If they lose to the new one, they take it, and if the employees choose not to have anybody, then no one is certified as a representative.

It also sets forth in the duties of NRS 288.160, and that is the only place in here that deals with the election process and what the rules are. Subsection 2, goes through the new election process. Section 2, subsection 2, line 34, on page 2 states, "If, at the election conducted pursuant to subsection 4 of NRS 288.160, the choices on the ballot receiving the highest and next highest number of valid votes cast were an employee organization and the option not to be represented..." That signifies how the election is run. There is no mystery to

this bill. This bill is straightforward. What you are doing if you pass this bill is telling people you have the right to choose your representatives.

[Gary Wolff, continued.] The end of this bill covers disputes and says that you go back to national relations standards to find a solution. The problem with what is going on now is the unions are in the courts, and it is costing the members a lot of money. The current ruling is very favorable to NEA [National Education Association] because they know this is almost an impossible task to achieve. We cannot take ballot boxes down to the school districts and have every member drop in a ballot like they used to do in the old fire department days. They could pretty well do this because firefighters could throw their ballots in a box.

We are asking you to please set this standard. This is the only way this is fair. If you support this bill, you support the election process. That is the only issue here. There is no hidden agenda. It is strictly whether you believe that people should have the right to vote, and based on the amount of votes, the majority of those voting will decide the election. You do the same in your own elections.

Assemblyman Goicoechea:

On page 2, line 20, subsection 3, Section 3 it says, "If a ballot set forth three or more choices and none of these choices received a majority of the total number of valid votes cast..." How can that be? If you have three options, clearly one is going to have the most votes. Would you clarify that for me?

Gary Wolff:

If you went back to the scenario with 1,000 votes, if nobody came up with a majority of those that are voting—and you could have 600, but no one could have the majority of the 600—it is possible that they could tie. It could be a tie of two. Two could have 250 each and one could have 100; 250 is not half of 600. So, you would need at least 300 votes out of that 600, plus one. So, it is possible for an election runoff. The 100 would be thrown out. The two people that have 250 each would have the run off.

Assemblyman Goicoechea:

So what you're saying then is if you had 600 ballots cast, of those ballots cast, you would have to have the supermajority of the ballots cast.

Gary Wolff:

Of those cast, you would still have to have the supermajority of the votes cast.

Assemblyman Goicoechea:

So, you would have to have at least 301 votes of the 600 cast.

Assemblywoman Kirkpatrick:

First, I will disclose that I do live in a union household. I am trying to understand this from a local government point of view. Can you tell me the difference between private union organizations and the public? For instance, my husband is in the Plumbers and Pipefitters Union, and they are a private group trying to organize. They have their rules they use for the National Labor Relations Board, but I am trying to understand.

Gary Wolff:

Really quick, the differences between private unions like plumbers, bus drivers, and UPS [United Parcel Service] and public employees: they have the right to strike. Public employees do not have the right to strike. Now, if you get State employees, you have no rights at all. We are still at the collective begging stage. We do not have collective bargaining. But in the public sector in this state, in which the Teamsters represent a lot of, the only difference is they do not have the right to strike.

Assemblywoman Kirkpatrick:

I was talking to my husband late yesterday trying to understand this. My husband says that it is different in terms of organizing. They can go in and organize differently. There is a provision that is a little bit different. Can you go in and change the locals? The locals were changed many years ago, but it had to be an act of Congress. If they were doing it publicly, if we change the public to follow the private rules, would they not be able to go in and do the same thing?

Gary Wolff:

Let me back up here for a minute. There are some unions that are under the umbrella of the American Federation of Labor (AFL-CIO) and in their own constitution, they have what is called a "no rate" clause. If you are an AFL-CIO union, and there is a waiting period that they have to withdraw, then they would be open to organization. If you are a non-AFL-CIO union, they could come up here. The AFT [American Federation of Teachers] is an AFL-CIO teachers' union. NEA could basically come up here and do the same thing to them to organize in America, because they are not an AFL-CIO union, and the American Federation of Teachers. So, there are different rules established, but this is a union matter. I think you brought up a good point.

All I am asking for the Legislature to do is please set the standards for the elections so there is no doubt how the elections can be run. This is a union matter, and no one from the outside should be interfering in a union fight, and that is what is going on here right now. There is a side being taken, and it is on the side of NEA. When you put these ridiculous standards in place, a side is, in

fact, taken. You are taking away the right of the other union to have an equal advantage.

Chairman Parks:

I will throw a couple of words back at you since you used the words "ridiculous standards." The Dodge Act has been in place for 36 years. It states that there are certain requirements that must be met to either create a union or create union representation, as well as if the situation requires changing that representation. These are the standards that we have worked under for 36 years. Your bill recommends changing those standards. Would you care to comment on that?

Gary Wolff:

I do not think our bill changes standards at all. We are living by the same standards under NRS 288, under the Dodge Act. This is the first time this issue has come up in an electoral process. We were just dumbfounded that this happened in the first place. Elections are run consistently by the majority of those people who are voting. This does not interfere with anything in 288, except it legislates a standard so there is no question to anyone how an election is run. We are not taking away any authority from the local EMRB to make decisions based on inconsistencies within labor. We can not stand here and allow the EMRB to set a standard that is higher than any election standard run in this nation. That is exactly what they have done here, Mr. Chairman. No one lives under that standard and it is impossible to live with a standard like that. That is all we have done in this bill.

Chairman Parks:

Could you explain Section 2? I am vague on the National Labor Relations Board's standards, so could you try to explain it?

Gary Wolff:

The National Labor Relations Act is the mother that dictates how things are run in the election process. Basically, it sets the rules and standards for our unions and labor organizations that have collective bargaining. Basically, what you are doing is if there is a dispute of anything in here, you go back to their standards, unless the State of Nevada sets a higher standard or a standard in law where it would be inconsistent with their standards. If we present this problem to the courts, it will take about ten years to rule on this issue. If you are not consistent with the standards, it does not mean they are going to come in and tell the State of Nevada they are going to change. Now we have a legal issue, and that is what the opposition has counted on. They have kept this in a legal battle forever on this thing. You can change by supporting the people's right to vote.

Chairman Parks:

As I read this, and maybe I am not seeing the whole picture, I am sensing that if we were to enact this into statute, there could be continual pursuit for representation and ballot questions for groups seeking representation all the time. I guess I am not disagreeing that the current standards are too high. I am just looking at this and asking if this might put the standards too low. If they are too low, you keep your bargaining units in constant disarray with continual challenges for who represents whom?

Gary Wolff:

I think what you have to understand is that in the union business, it is no different than any other business. First of all, we did not go to these people. They came to us. Union organizations are usually looking in groups that need to be organized. It is usually not our position to take one group away from someone else. Most people come to us and say, "We've had enough! We're not being treated right! We would like to have somebody else represent us." That triggers this entire process of meetings with these people. You do not take two or three people because they are unhappy and start a multi-thousand dollar organizing campaign. These are enormously expensive for us to conduct. Afterwards, you must have 30 percent of the entire unit initiate on a card-signing campaign. These are enormous standards put on us. Only after that are you certified to run the election.

We are fine with all of that. That is in the National Labor Relations Act. All we are asking is that the majority of those people voting will set who is going to be their representative. This is no different than when you or anybody else runs for office. We could apply the same standard to everybody in this room. The reason people voted you in is because they were dissatisfied with who was there before. It may have had an open election, and if you did, the next go-around, if you have not done a good job for your constituents, certainly there is somebody waiting in the wings and will be campaigning. Campaigning is organization by unions. It is the same difference. All we are asking you to do is set a standard for the elections.

Chairman Parks:

My last question is in Section 6, and it makes this a bill retroactive to January 31, 2003. Any decision, and I guess we are talking about a pending law case, I believe is probably in front of the Supreme Court, would set aside any decision or settlement on that case. Could you comment on that?

Gary Wolff:

The reason it is in here is because this was the original card-signing campaign. I am not sure of the numbers, but they were close in the 4,000 signature range

of people who signed to force this election. From that point on, after the standard was set by the local EMRB, it was futile to run the election because it was not going to happen. Then the court action started, and we have been before the EMRB and everything else.

Chairman Parks:

Could you tell us the basis for that court action?

Gary Wolff:

The basis of the court action was to file an appeal on the EMRB ruling. We felt this to have a mini supermajority was wrong. That is why they want to make it retroactive in order to run their election, which they should have been able to do back in 2003. That is the only reason this is in there.

Assemblyman Atkinson:

You said this in litigation, and if it is going to be resolved there, why are we doing this?

Gary Wolff:

It is in litigation. We could be in litigation on this for years. This could go all the way to the United States Supreme Court. This is costing our members a fortune. This Body has the opportunity to set a very fundamental issue straight. This is not about anything but allowing people the choice to vote. If you believe that the majority of those people that voted for you are why you are here, and if you put the same standard to your election as they put on us, you could not be elected.

Assemblyman Atkinson:

I am not going to compare your elections to ours because they are drastically different. What happens to the litigation if we do pass this bill?

Gary Wolff:

The legislation, unless they appeal this bill, the litigation would go away unless NEA appealed the law that is passed through here.

Assemblyman Atkinson:

I am sure they would.

Gary Wolff:

They might. I am not saying that they would not.

Chairman Parks:

You previously made a reference to “no more disputes.” How many disputes have there been? The Dodge Act has been around for 36 years. Have there been numerous previous disputes, or is this an isolated or single incident?

Gary Wolff:

As far as the elections go, I believe that this is the only dispute I have ever heard over an election. Now, there are several labor disputes, but Danny Thompson is the AFL-CIO leader, and they support this bill also. He could probably answer any questions in regard to other disputes. I am sure there are a number of labor disputes that are handled before the EMRB, but as far as elections go, I have never heard of any.

Gail Tuzzolo, Legislative Advocate, representing Nevada AFL-CIO:

The Nevada State AFL-CIO is in favor of this legislation.

Assemblyman Hardy:

Have we had a state statute anywhere else that has dealt with this election law? We have not been told that there is a problem anywhere else, but is there a law that has been addressing this in any way?

Gail Tuzzolo:

Not that I am aware of.

Chairman Parks:

Over the years that the Dodge Act has been in place, has there been a need to change the statute as has been requested here? Has that come forward? I know that we had A.B. 545 of the 72nd Legislative Session, and now we are seeing this bill at the end of this session. Except for Section 2, which was added to the bill, it is the same bill from the previous session.

Gail Tuzzolo:

I can answer that question from what I know, which is certainly not the extent of what Danny Thompson can tell you. I do believe that there have been disputes, and the standards, as Mr. Wolff declared them, have been applied in the past with other labor unions. I recall one in particular that happened in another state very recently, and they basically sort of live with that standard. I guess the Teamsters organization has attempted to change that standard and to effect from then on how the unions work in those disputes.

Danny Thompson, Executive Secretary-Treasurer, Nevada AFL-CIO:

Notwithstanding the issue between the Teamsters and the NEA—because I think that is a well-documented issue that Mr. Wolff spoke of, it is currently in

court, and I really do not know the status of that issue—the Nevada State AFL-CIO supports this bill because we think it sets a fairer standard in an election when workers choose whether or not to be represented by a union. Now, it just so happens that a dispute between the Teamsters and the NEA is between an affiliate and a non-affiliate of mine. The Teamsters are affiliated with the Nevada State AFL-CIO. If there were—and the question is what would happen if there were two unions—there is a process in our constitution where if there is a dispute, then there is an article in our constitution that deals with that. Those problems are worked out in that manner.

[Danny Thompson, continued.] Notwithstanding that dispute, we think that it is a fairer standard to provide that workers can choose a union based on a majority of the people who show up and vote. That is a fair standard. The standard that was given back as a decision in that particular case, we believe, is not a fair one. If all of you had to meet that standard, I do not believe any of you would be here. When you have a 60 percent turnout, then it is pretty easy math, and for that reason, we support this bill.

Chairman Parks:

You have been involved in labor for about 36 years with the establishment of the Dodge Act. Have there been numerous situations similar to the ESEA [Education Support Employees Association] / Local 14 dispute, or is this an isolated situation? What is your experience in that?

Danny Thompson:

To my knowledge, this particular dispute is the only one that I was involved in. I am sure that there may have been others, but I am unaware of those.

Chairman Parks:

The Dodge Act has been around for 36 years. Is not changing this trying to address that? Is not A.B. 568 not trying to address a single situation, as opposed to general situations overall?

Danny Thompson:

I think this bill is in response to what happened there between the NEA and the Teamsters. I think that is the standard now that the EMRB has made that ruling based on that standard. It would be changing that standard.

Assemblyman Claborn:

I would like to talk to Mr. Wolff a little more. For over 24 years I organized the Operating Engineers, and everything you are stating is correct. My problem is that I can not understand how you got into this situation with three people wanting to represent the bargaining unit that did not want to be represented by

the NEA? I organized over 400 contractors in my days, and it was on a one-to-one basis. I would never take on any authorization cards unless there was a deleted or demitted, or whatever. So, could you tell me how this thing came about, because it confuses me that you have three people that want to represent this one bargaining unit? I need to know how this took place.

Gary Wolff:

The three people I mentioned were the two or three people on the local board that made this decision. We had hundreds and hundreds of people sitting in our union halls that were wearing T-shirts, that had come to the Teamsters requesting that we organize those folks, and that is what happened.

Assemblyman Claborn:

That is not my question. I will rephrase the question. Was it just Local 14 and NEA that voted against that when you got down to authorization cards into your voting time? Where did the third party come from that you were related to? Normally, if I had 30 percent of 50 percent plus one, then it went to the NLRB [National Labor Relations Board] and we started negotiating. I cannot understand this scenario. You have the 600. There must have been three different people trying to represent the one bargaining unit of three organizations. Or was it just two? Where did the third party that wanted to be representing the other one to be getting the scenario that you gave us?

Gary Wolff:

The third party was not involved in the dispute. We put the third party with no representation because of the right-to-work status of this state. We had the cards to satisfy the local EMRB for an election. That was not the issue. We could run the election. The problem was when they set the standard of the 50 plus one vote of the entire unit. So, they have 9,000. So, you would have had to have 4,500 plus one to satisfy the EMRB to be successful as a representative in this election.

Assemblyman Claborn:

So, it is only Local 14 wanting to represent that?

Gary Wolff:

That is correct; that is all it was.

Assemblyman Claborn:

That is confusing to me because I have been listening to this for a couple of years. Whenever I had my percentage, I won my elections and we proceeded to go onto negotiations. Yes, it is a little unfair.

Assemblyman McCleary:

You are here representing hundreds of people that are unhappy with their present situation. Where are they? How come there is nobody here? Can you answer that?

Gary Wolff:

No, sir, I cannot answer that. I have represented people my entire adult life. Very few people actually show up for hearings. They are at work. We have the cards. I think the cards speak for themselves. We pulled out the cards. If you want to come down to the Local 14 office, I am sure that Teamsters will show you the signature cards, and that should tell you. That should be sufficient that they want to force an election to have another representative for them. I cannot answer that question. I would love to see 4,000 people sitting here also.

Chairman Parks:

We are in day 114, and we have six days to go. This is obviously a last-minute bill in front of us, and I think there are a lot of complications that could come out of acting on a bill without imperative deliberation on it. I wish you would have proceeded forward earlier and asked the Committee to undertake this. I know I would have been very supportive at looking at revisiting the Dodge Act. Given the lateness of the session, I think it is a big request to put in front of us at this point.

Ken Lange, Executive Director, Nevada State Education Association:

With me today is Jim Penrose, who is a member of our legal firm. He has done substantial work on this case over the last five or six years, as it relates to the bill before you. I would also like to offer that I have been a part of this case from the very beginning as well. I have extensive representation and election experience through the years, have actually conducted campaigns, and understand, I hope, some of the nuances that are before you.

There are two points I would like to point out before turning it over to Mr. Penrose. One is this bill represents a spinoff on a unique situation at a unique point in time. The events surrounding the ESEA/Teamsters case are unique. They are involved in a point/counterpoint with the EMRB. We are quite comfortable with the fact that this now sits before the Supreme Court for a decision on this particular juxtaposition of facts around the case.

Chairman Parks:

Can you tell us the status of that case and when it is planned to be heard and when you might expect a resolution?

Jim Penrose, Lead Counsel, Nevada State Education Association:

That case is currently set for oral argument before the Supreme Court on June 15. There are actually two appeals pending, as I will explain in more detail. One is by Local 14, and one by our affiliate, ESEA. That oral argument is likely to be continued because of a medical situation involving one of the attorneys, but I would expect that it would be heard sometime in September or October at the latest.

Ken Lange:

The second point I would like to respond to is assailing a piece to the puzzle that has not been referenced in previous testimony, and that is the signature cards. However many there may be, we have never been seen or have been shown by either the NSEA, its representatives, or by the EMRB. So, we do not know, other than the EMRB accepted Local 14's assertion that we no longer had the support of the majority of our members or the members of the bargaining unit, that those cards do in fact exist. That is an important feature of this.

Also, we have maintained between 53 and 58 percent membership in that bargaining unit throughout the course of the last five years, despite the best efforts of Local 14 to take us down below 50 percent.

Chairman Parks:

You said that you maintained somewhere around 58 percent membership in ESEA's unit?

Ken Lange:

We have hovered in that range within that period of time. One of the challenges in the labor environment in Nevada, especially Clark County, is that our bargaining unit keeps growing. As we get reports back that we have jumped 200 or 300 members, we have gone out and collected a few more to maintain our percentage, but we have always been above the 50 percent plus one threshold required for active certification and recognition by both the board and the school district.

Assemblyman Claborn:

Mr. Lange, what you saying essentially is that you had 58 percent, so there is no way the Teamsters could have had 51 percent of the authorization cards to file for election?

Ken Lange:

We have our doubts.

Assemblyman Christensen:

I am just trying to understand one of your last comments. You mentioned that you have been around 58 percent. So at a minimum, you have had 50 percent plus one to maintain your status. I am trying to understand. I am thinking that of all the potential people that could be members, you have more than 50 percent. Is that how that works? Of all the people out there that could be members of your organization, if you only have 40 percent or 35 or any number below 50, then your status would be affected how?

Ken Lange:

If you drop below 50 percent, you are in jeopardy of losing your recognition by the school district. You also can legitimately be challenged by another bargaining agent, or the school district can say, "You no longer have the support of 50 percent of the bargaining unit, and we don't need to recognize you." That all happens within prescribed periods of time in which that can happen. So, it is very important to reach that threshold of 50 percent plus 1.

Mr. Penrose will explain better than I can that the current standard for submitting cards in Nevada, or authorization signatures, is actually 50 percent plus one. In our reading of the law, Local 14 would have had to submit a membership list of 50 percent plus one person of the bargaining unit in order to get an election in the first place. It is a very high standard. It is higher than the Union Aid Relations Board, which is 30 percent. I think the reason for that is the Dodge Act anticipated and desired to support labor stability and not a back-and-forth, switching bargaining units whenever you got dissatisfied or ran into difficulties for a variety of reasons. I think it has stood us well.

In my previous experience in Florida, we went back and forth, and back and forth and nobody wins. Management does not because they do not have the stability of recognized personalities and individuals and relationships. Also, union membership just tends to fizzle away because at some point people say, "We don't like this." So, this has been very important to the history of labor in this state.

Assemblyman Hardy:

The issue then is not so much the concept of having the election that we see described in this bill, as the contestation of what happened: "Did they have enough to call for an election?" In other words, do you like the concept of the elections as described in the bill? Or do you not like the concept of the elections described in the bill, because it got the nexus with what happened or did not happen or could have happened?

Ken Lange:

That is a really difficult question. I think it cuts to the core of this particular issue. The two at this point are inextricably linked. I do not think we have the time to fully explore the dynamics around the differences between the 50 percent of those voting and the 50 percent of the bargaining. We have stipulated in a more recent election to 50 percent of the bargaining unit. I think the easiest way to answer that question is that this is just responding to a very unique situation.

Assemblyman Munford:

I just want to direct a question to Mr. Lange. You said you are not representing the teachers, just the classified people?

Ken Lange:

In Clark County, we represent two distinct bargaining units. The first is the Clark County Education Association, which represents the teachers. The second is the Education Support Employees Association, which is a bargaining unit of roughly 9,500 employees, of which we have about 5,600 members.

Assemblyman Munford:

So basically, you do bargain and deal with the teachers in the sense of negotiations for salary increases and things of this nature. Is that correct?

Ken Lange:

The Clark County Education Association is a local affiliate of the Nevada State Education Association. They are the bargaining agent, but they are a part of our organization. So, we represent all of those organizations—for example, CCCTA [Clark County Classroom Teachers Association].

Assemblyman Munford:

CCCTA? All of them? They are all under your umbrella.

Ken Lange:

Yes, sir.

Assemblyman Munford:

So, the dispute is that the Teamsters now want to be the representative of that same body or organization that you now oversee. Is that correct?

Ken Lange:

The Teamsters wish to represent the local bargaining unit called the Education Support Employees Association, which is a part of our umbrella.

Assemblyman Munford:

And this is where the dispute is?

Ken Lange:

You are correct, sir.

Assemblyman Claborn:

I think the thing we boil down to here is that the core of this thing would be who voted on that particular day for recognition. When I ran all of my elections in the construction industry—which is different, I understand—I took 51 percent who voted. That would give me my certification to be elected so I could start negotiations. Here, if the other unit in the bargaining did not want to vote, we did not count them. We only counted the ones who voted. If there were any discrepancies, then that was a fair way to do that. I had three people one time at election, and they all told me they were going to vote in favor. When I got out there, I had one that voted for it and two who voted against it.

So, I just wanted to clarify this a little bit. In the construction industry, when you have your election, you take 51 percent of the people that show up to cast a vote. If there are 100 votes, one of them gets 60 for your unit, and the other one gets 40, then you win, the EMRB certifies your election, and then you go in and you start negotiating. So, I did that many times, but there is a little thorn in this thing. I just hope I cleared a little bit of this up.

Jim Penrose:

As Mr. Lange indicated, this case has been pending for quite a number of years. In fact, in this binder that I have with me is a copy of each of the briefs that have been filed with the Nevada Supreme Court and the two appeals that are currently pending. As you can see, there is quite a bit to talk about. I could probably talk to you all day about the issues that are presented by this bill.

There are a lot of questions raised about the components of this bill and how as drafted, does not answer. Let me begin by just outlining the history of the litigation that has been ongoing between ESEA and Local 14. The time period we are talking about is the fall of 2001. At that time, the EMRB found that ESEA actually had 68 percent of the bargaining unit as dues-paying members of ESEA. In November of 2001, a representative of Teamsters Local 14 wrote to the district—did not copy ESEA, but wrote to the district—and said, “We are applying for recognition. Here are the materials required by NRS 288.160, part of which appears in the bill. We have authorization cards that we have obtained. We would like to set up a time for you meet with you and review those cards to set up an election.”

[Jim Penrose, continued.] It wasn't until January of 2002 that the Local 14 commenced a proceeding before the EMRB and asked the EMRB, in effect, to order an election. As it happened, the authorization cards that you have heard reference to were never provided to the district. They were never provided to the EMRB. They have never been seen by anybody before today outside of Local 14. That is why I was astonished when Mr. Wolff offered to let Mr. McCleary come and look at the cards. He will be the first person who has ever seen them. What the EMRB did in this case was allow a representative of Local 14 to testify.

There were over 4,000 of authorization cards signed by members of the bargaining unit. They compared tabulations by job description showing the number of people within each job family—for example, bus drivers and janitorial staff—who had supposedly signed authorization cards. However, the cards themselves were never produced to the EMRB. The local representative of Local 14 admitted before EMRB that he had never compared the names on the authorization cards with the roster of employees provided by the district to see he had cards from people who were in the bargaining unit. He had never reviewed the cards to exclude duplicate cards. Nobody ever went through that process. When the EMRB was asked to undertake that process, it said, "We do not have the time or the staff." They refused to do it. On the basis of this record, the EMRB ordered, notwithstanding all of these problems, an election be held between Local 14, ESEA, and the no union option.

We immediately filed a petition for duties for review in the district court. We obtained a stay of the election, and ultimately, Local 14 stipulated to continue that stay in effect. The EMRB continued its proceedings, and ultimately entered the order that Local 14 objects to here. It said, "Well, we did not require you to produce the cards." They entered it as a separate part of their last order. They said, "We are not going to require if you prevailed in the election by whatever standard applies. We are never going to require that you submit membership cards to the Clark County School District. We will—and I am reading between the lines here because the EMRB did not explain all of this—require you obtain the votes of 50 percent plus one of the total bargaining unit."

My reading of the EMRB order, pragmatically, is that this was a way for the EMRB to ensure through some means that Local 14 actually represented a majority of the bargaining unit. It totally disregarded the processes set forth in statute. It is not even consistent with the National Labor Relations Act and the standards under the National Labor Relations Board. Under those standards, there is a process whereby the cards are submitted to an agent of the EMRB who reviews them and compares them to an employee roster to make sure

some threshold is met. He makes sure there are, in fact, cards signed by the people in the unit. That did not happen here.

[Jim Penrose, continued.] So, the basis for our appeal to the Supreme Court is ultimately the decision of the EMRB to order an election. Local 14 filed its own petition for judicial review within the district court. Like ours, it was unsuccessful at the district court level over the 50 percent plus one of the bargaining issues. So, it too, has filed a petition to the Supreme Court. Both of these deals are scheduled to be heard on June 15.

While I have the utmost respect for Mr. Wolff, when he says this bill is not about taking sides, this bill is all about taking sides. That is, as Chairman Parks pointed out, the whole purpose of the retroactivity provision. The provision is intended to make it explicit, if it were not otherwise clear, that these changes are intended to affect the charges now pending before the Nevada Supreme Court. Even if you eliminate that provision and pass the rest of the bill, I know very well what we are going to hear on June 15 or whenever this case is argued. It will say that the Legislature's passage of this bill is Legislative repudiation of the standards the EMRB has adopted.

Now, let me give you a little more context. I will proceed to the problems I see with the rest of the bill. The fact is, there have been cases where situations like this have arisen in the past. Look at page 3 of the bill, where it sets forth the existing language of NRS 288.160. That statute sets forth the process that an employee organization has to follow to obtain recognition as the bargaining agent for employees in a school district or any other local government employer. As you will see in subsections 1 and 2 of that statute, such an organization is required to submit a copy of its constitutional bylaws, a no-strike pledge, a roster of its officers, and a verified membership list. There is no provision in statute currently for the submission of authorization cards. Under the statutes as they stand today, an employer of this position is required to submit a list of members. Those people, until the organization is recognized, may or may not be paying dues, but they have to be members of that organization. The EMRB had held at least two cases before this one in which a rival union, like Local 14, which was carrying on a raid, needed to submit a membership list, and nothing but a membership list, to the employer in order to be entitled to recognition from the employer or a representation election. That process was totally disregarded in this case.

With that as background, I would like to go back to 2003. As Mr. Parks observed, this bill is a redraft of the bill that was introduced in 2003. At that time, we said, that we did not have any objections of the concept of having these elections decided by 50 percent plus one of the votes cast. There is

nothing wrong with that as far as it goes, but the bill did not talk at all about how you get to an election. The analogy used in testifying in support of the bill was a little like the situation that was presented here. If I claim to have a recall petition signed by thousands of voters in my district, but I will not file or allow that petition to be reviewed by anyone, yet simply claim these signatures in order to qualify for the ballot, and someone orders an election be held between you as the incumbent and me as the circulator of the recall petition, all without any evidence ever been presented to anyone, I have qualified for the ballot.

[Jim Penrose, continued.] So, the 2003 version of this bill totally disregarded everything that happened before you got to an election. It totally disregarded the process to follow before an election can be held. As Chairman Parks observed, without that kind of process in place, what you have is not democracy, but anarchy. You have a series of ongoing raids involving thousands of public employees that affect not only the work that they do, but the work that the public employer does. So, it is an invitation to chaos, in my opinion. In an effort to address those concerns, this version of the bill adds Section 2, which simply incorporates something called "the National Labor Relations Board Standards." Well, in the first place, there is no such document. The suggestion is that there is a booklet out there called "The National Labor Relations Board Standards." Their standards somehow can be applied directly to this process without any problem, but that is not the case. There is the National Labor Relations Act. There are regulations adopted under that act by the National Labor Relations Board. There is a case-handling manual that has been adopted by the NLRB dealing with representation elections. I believe even that part of the manual that deals with representation elections is 50 pages in length. It is a complicated process, and it conflicts with the process that is currently set forth in Chapter 288.

So, if you want to talk about ending litigation and avoiding these kinds of disputes in the future, Section 2 does anything but that. It is an invitation, in my view, to years of litigation about whether or not what the provisions of the case headline manual mean. There is considerable dispute about that, even among attorneys who regulate and practice in this area. Once you figure that out, is there a conflict between that manual and what is in NRS 288? I can tell you there is going to be a lot of litigation if this passes before the EMRB, before the district courts, and ultimately before the Supreme Court, in an attempt to determine exactly what this bill means.

Assemblyman Goicoechea:

Under Section 4, subsection 3(c), how would you define "the local government unit does not have the support of the local government employees"? They seem

to have that number, which we are addressing here in 3(c). How are we supposed to get there? What would you propose?

Jim Penrose:

What we have proposed—and there is a dispute about exactly that, and it is at heart of the litigation—is that a rival union in this situation needs to comply with the existing recognition process and come up with a verified membership list. It may be before the EMRB that some doubt develops over whether or not particular people ought to be on that list or the exact number of members you have.

Assemblyman Goicoechea:

Where in this legislation or existing statute does it say that is how you do it?

Jim Penrose:

It is in NRS 288.160. What we have said in our arguments is that you have to read the statute as a whole, and if you comply with that recognition process and the board still has some doubt about whether or not the incumbent or the rival union is represented or supported by a majority of the employees, it is appropriate to call an election. If the district comes in and says, "We have dues checked off and signed by only 48 percent of the bargaining unit; we have reason to believe that there is no longer majority support," in that situation, it is appropriate for the board to say, "We have good faith doubt" and order an election be held. But, it is not appropriate for the board in the basis of our view—of hearsay and speculation—to say we have good faith doubt and order an election to hold among these 9,000 people.

Assemblyman Goicoechea:

Assemblyman Claborn spoke about these cards. Are these things that have been done a lot? Are you allowed to circulate the cards and then at the point you have these cards in hand, you can use that as verification? Is that how you see it? Apparently, that is not in NRS 288.160.

Jim Penrose:

That is not currently provided for, and it may be at some point if we get a bill early on in session to allow the parties to consider these issues. If the legislature allows, it may be appropriate to provide for the use of authorization cards. Currently, under the National Labor Relations Act, there is, as I indicated, a process of verification that currently as followed, and it was not used here.

Assemblyman Goicoechea:

It would appear to me that someone could be a dues-paying member and not really be satisfied with where it is going. Then, they sign one of these

authorization cards to just bring one of these things to a focus and see if there was the opportunity to make a change. So, I can see how that could happen. You would have over 50 percent of the unit be paying dues, but maybe some of them were disgruntled and were willing to sign an authorization card. So I am just looking for that verification.

Assemblyman Grady:

Mr. Penrose, is it fair to say that your real problem with this is the way that the board handled this and not so much the way the other union handled it? Do I understand that correctly?

Jim Penrose:

It is a combination of the two. We believe that Local 14 was required under existing statute to prepare and submit to the Clark County School District a list of its members. They did not do that. As a fallback, our argument is at the very least, they should have submitted to somebody their authorization cards they supposedly had. I do not know if Mr. Wolff is familiar with these facts, but at one point, there was an agreement with the district to do what was called a "casino count" of the cards. They were going to take a stack of cards they knew had 20 cards in it and take all the other cards to the Local 14. They would add them in and simply compare them to their stack. The idea was to have a representative of the district do this. He would be in a position to report to the trustees on the number of cards Local 14 supposedly had. There was an agreement at one point to do that. The meeting was held, the attorney for the district was there, and he said, "We think you need to go file a proceeding with the EMRB in order for this election to proceed. We are not going to get in the middle of this," and that count never occurred. The cards were literally carried into his office and remained in boxes during the whole meeting and they were carried out when the meeting was over. Nevertheless, that fact was one of those that the EMRB relied upon in concluding there was a good faith doubt, and therefore, an election ought to be held.

Assemblyman Grady:

I guess, then, the cards do exist. Everyone is saying the cards never existed. I guess at that point in time, the school district saw them, if nobody else saw them. The school district must have been satisfied that those cards did exist. Is that a fair statement?

Jim Penrose:

The testimony was that the cards were white pieces of paper. The cards were never examined. Something—alleged to be cards—was stacked in boxes. These cards were carried into the office and were placed on the desk while the discussion took place among the attorneys. After the discussion, the boxes of

cards were picked up and carried out. The count was never carried out. The cards were never reviewed by any representative of the district.

Assemblyman Grady:

But they were made available.

Jim Penrose:

They were made available in the context I described.

Assemblyman Claborn:

It is kind of confusing to me. That would be the EMRB's only way to go if you could prove you had representation by showing those authorization cards. That authorization card for anybody who is organizing is the best tool you could have. It is a simple fact: when you get an EMRB ruling to go ahead and organize, you can file for the employee list. You would then get your authorization cards and match your authorization cards with your list of employees. You can even go back, in some cases, a year and get authorization cards from the ones that had been temporarily laid off, fired, or whatever. So, those cards are the most important thing. I do not see how EMRB could miss those procedures. Someone dropped those procedures, because I could never do that. If I did not follow procedures, they threw me out the door. Those cards were very important, and I just do not know how they got this election on to begin with without going through proper procedures. I blame the EMRB for what has happened. I have not heard of such a thing in my 24 years of doing this, and it is ridiculous.

Jim Penrose:

If you would like to come on June 15 and help us out with the oral argument, we would appreciate it.

Assemblyman Claborn:

This is mind-boggling to me.

Assemblywoman Kirkpatrick:

From my perspective, I feel like we are the jury on trial for the June 15 thing. This bill affects the entire public sector of the other unions, I would like to hear from the other unions on how it is going to affect them. We know that NSEA and the Teamsters are going to have their day in court on June 15, but we are not addressing the other unions that potentially could be affected by this. Now you know why we hear some other testimony. It could potentially be damaging for other local unions. Do the firefighters then become involved because they are public employees?

[Assemblywoman Kirkpatrick, continued.] I think that Mr. Wolff made a great case and NSEA made a great case, but because this is a statewide mandate and it is affecting other unions, maybe we need to hear from them, because so far we have only heard from the private sector unions. I think there are other public unions that need to have their say.

Chairman Parks:

Yes, I think we need to be mindful of the fact that the rules are somewhat different for both public and private labor negotiation processes.

Assemblyman Hardy:

Mr. Penrose, you do not have an objection to having a 50 percent plus one election process, as described in this bill. The process of how we get there seems to be the issue. If we put in place a means to call for the election and the process of verification of the cards and changed the effective date to October 1, 2005, or July 1, 2006, you would not have a problem?

Jim Penrose:

That is correct. As long as it was clear that the process was laid out and would have to provide some means of independent verification and showing of support. It would have to be clear that it applies prospectively only. Saying all that, I think your statement is correct.

Paula Berkley, Legislative Advocate, representing the Service Employees International Union Local 1107:

[Submitted [Exhibit B](#).] My client has advised me that this bill is very, very specific, as we have heard today, between two organizations. Hopefully, this will be resolved in June, and maybe we will have some direction based on that to discuss this next session. We do not feel that with six days left in the session, we have had half the time to analyze this and understand the ramifications. Assemblyman Parks offered to revisit the Dodge Act for an overall policy evaluation. That is one thing that possibly needs to be done but with six days left this session, we do not think it is appropriate. We are also very concerned that this bill links national, private law with public law, with regard to unions. We think those are apples and oranges. When you throw those together—again, in the lateness of the session—you can very easily come up with unintended consequences. So, we are very concerned about that. For those reasons, we oppose the bill.

Chairman Parks:

We have heard from opponents and proponents of [A.B. 568](#) and have heard from everyone who had a desire to speak. What I would like to do at this time is

ask the proponent, Mr. Wolff, if he would like to come to the table and make any closing remarks on A.B. 568.

Gary Wolff:

I just want to reiterate, thank you so much for this bill. As Assemblyman Hettrick stated, we did try to bring this bill in earlier in the session as an amendment on another bill. We are just very passionate on this. As an American citizen, I believe it is my right, as well as all of your rights through our *Constitution*, to vote on who our representatives are. If I vote for you; vote for the union; or, when I was in high school, I voted for a class president; all those votes were conducted for a simple majority of people voting. That is what this bill is about.

Look at the reality of what this bill says. This bill does not interfere with the Dodge Act. We have signed these cards for years. The cards were presented. The EMRB elected not to count the cards, even though they were presented. I can assure you, Teamsters Local 14 is not going to go into a court without the cards. I know there is some controversy over this, but here is the problem: it may have started out as a fight between two unions, but now it is the law of Nevada under the EMRB. This is how elections have to be conducted until this is changed. With that, thank you again, and I would appreciate your support on this. I have seen bills fly through here in two days.

Susan Fisher, Legislative Advocate, representing Washoe County Employees Association:

I received a phone call 15 seconds ago saying, "Please go on the record in full support of this bill as introduced." At the current time, a non-vote equals a no vote. We oppose that. I probably would not be able to answer and questions, but I would certainly try.

Chairman Parks:

The hearing on A.B. 568 is closed.

Assemblyman McCleary:

This is a very complex issue. We only have six days left in this Legislature, and I do not think we will be able to resolve this now. However, there was a bill that was very important and dear to my heart, and it passed out of this Committee unanimously, and that was our workplace relations bill, A.B. 484. If you would be willing to accept this motion, I would move that we amend the bill as a whole and put that language in A.B. 484 and take another stab at that.

Chairman Parks:

Yes. Assembly Bill 484 not only passed unanimously out of this Committee, but it passed unanimously out of the Assembly.

ASSEMBLYMAN McCLEARY MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 568, DELETING THE ENTIRETY OF THE BILL AND
REPLACING IT WITH THE TEXT FROM ASSEMBLY BILL 484.

ASSEMBLYWOMAN PIERCE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Parks:

What I would like to do at this point is give you an update on our bills. As you are well aware, there are a number of bills that we needed to concur or recede on with regard to bills that were passed out of Senate committees. We did have a meeting yesterday afternoon with the Senate Committee on Government Affairs, and we went through the various bills that they had and the bills that we had. Thirteen of the twenty bills we had sent to the Senate—and a number of those bills did get amended—in discussions with the authors of those bills, the majority of them seemed to be bills that the author of the Assembly bill has agreed to concur with the changes made by the Senate. There were a couple that we are looking at not concurring on.

The first on is A.B. 210. That was Assemblyman Hogan's labor statistics bill. It was reduced to a study instead of a request. We think that going to a conference committee would be the proper way to see, if they cannot get them to recede, to at least get the Senate to look at some agreeable language through a conference committee. With regard to several other bills that the Senate Committee on Government Affairs acted on yesterday, they do not concur on S.B. 20 based on the amendment from Mr. Atkinson. The other bill was S.B. 302, regarding to the Reno/Sparks Convention and Visitors Authority. A consensus amendment has been floated around, and I did get a chance to see it yesterday.

Another bill with wide differences is S.B. 526. That bill originated with the Senate Government Affairs Committee and dealt with the audit subcommittee. We added A.B. 304 with three or four different amendments. The third amendment is the one they are hung up on. We will obviously end up in a conference committee relative to that bill. The final bill that I have on my list is S.B. 467, which is also a Senate Government Affairs bill. It was a design/built overall, and I understand there is some further discussion on that bill. So, at the

moment, it appears to be a nonconcur bill. So, I think I pretty well covered those bills.

[Chairman Parks, continued.] Ms. [Susan] Scholley has informed me that the Senate concurred on S.B. 122, the Raggio/Manendo PERS [Public Employees' Retirement System] military credit bill. The changes that we made were accepted. I think that we have done fairly well. I am quite impressed that the Senate Government Affairs did support most of the amendments that we placed on their Senate-originating bills. I do not know if anyone has any questions or comments. We will probably have a few people on those conference committees.

Anything further to come before the Committee? We did post an agenda for tomorrow, but at this point, it does not appear that we have reason to hold a Committee. We will go ahead and cancel tomorrow's Assembly Government Affairs Committee meeting. With that, we are adjourned [at 10:16 a.m.].

RESPECTFULLY SUBMITTED:

Paul Partida
Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: May 31, 2005

Time of Meeting: 8:17 a.m.

Bill	Exhibit	Witness / Agency	Description
N/A	A	*****	Agenda
<u>A.B.</u> <u>568</u>	B	Paula Berkley / Legislative Advocate, representing Service Employees International Union Local 1107	Letter to Chairman Parks in Opposition to <u>A.B. 568</u>