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Local Government Employee-
Management Relations Board

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Jun 24 2016 01:07 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

SUPREME COURT
OF THE STATE OF NEVADA

STATE OF NEVADA, LOCAL
GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD,

Appellant,

vs.

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION; INTERNATIONAL
BROTHERHOOD OF TEAMSTERS LOCAL
14; and CLARK COUNTY SCHOOL
DISTRICT,

Respondents.

SUPREME COURT CASE NO. 70586

District Court Case No. A-15-715577-J

Amended Case Appeal Statement

AMENDED CASE APPEAL STATEMENT

This Amended Case Appeal Statement clarifies (in section 4, below) which parties are parties to this appeal, and which attorneys represent those parties. Otherwise, it is no different from the Case Appeal Statement.

1. Name of appellant filing this case appeal statement:

State of Nevada, Local Government Employee-Management Relations Board.

2. Identify the judge issuing the decision, judgment, or order appealed from:

Honorable Kenneth C. Cory, of the Eight Judicial District Court, Department I, issued the order being appealed.

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant:

State of Nevada, Local Government Employee-Management Relations Board.

Counsel for Appellant:

Gregory L. Zunino

Bureau Chief

Donald J. Bordelove

Deputy Attorney General

Office of the Attorney General

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4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent: (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Education Support Employees Association

Francis C. Flaherty, Esq.

Sue S. Matuska, Esq.

Dyer, Lawrence, Flaherty, Donaldson & Prunty

2805 Mountain Street

Carson City, Nevada 89703

Telephone: (775) 885-1896

Email: fflaherty@dyerlawrence.com

International Brotherhood of Teamsters, Local 14

Kristin L. Martin, Esq.

McCracken, Stemerman & Holsberry

1630 Commerce Street, Suite A-1

Las Vegas, NV 89102

Clark County School District

Scott Greenberg, Esq.

5100 W. Sahara Avenue

Las Vegas, NV 89146

1 International Brotherhood of Teamsters, Local 14 ("Local 14") and the Clark County School
2 District were necessary parties to the Petition for Judicial Review before the Eighth Judicial District
3 Court because Local 14 and the District were a party to the administrative proceeding before the
4 EMRB. *See* NRS 233B.130(2) (petitions for judicial review must name as respondents all parties of
5 record to the administrative proceeding).

6 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not**
7 **licensed to practice law in Nevada and, if so, whether the district court granted that attorney**
8 **permission to appear under SCR 42 (attach a copy of any district court order granting such**
9 **permission):**

10 All attorneys identified above are licensed to practice law in Nevada.

11 **6. Indicate whether appellant was represented by appointed or retained counsel in the**
12 **district court:**

13 Appellant was represented by retained counsel in the district court.

14 **7. Indicate whether appellant is represented by appointed or retained counsel on**
15 **appeal:**

16 Appellant is represented by retained counsel on appeal.

17 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the**
18 **date of entry of the district court order granting such leave:**

19 Appellant was not granted leave to proceed in forma pauperis.

20 **9. Indicate the date the proceedings commenced in the district court:**

21 The initial Petition for Judicial Review was filed on March 19, 2016.

22 **10. Provide a brief description of the nature of the action and result in the district**
23 **court, including the type of judgment or order being appealed and the relief granted by the**
24 **district court:**

25 In its Petition for Judicial Review, Education Support Employees Association ("ESEA")
26 challenged an order issued by the Employee-Management Relations Board ("EMRB") on January 20,
27 2016, wherein the EMRB determined that the International Brotherhood of Teamsters, Local 14 ("Local
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1 14”) is entitled to act the exclusive bargaining agent for non-teacher support staff employed by the
2 Clark County School District (“CCSD”). ESEA had formerly acted as the exclusive bargaining agent
3 for the CCSD employees in question.

4 The issue before the court was whether, following an election pursuant to NRS 288.160 and
5 NAC 288.110(10), the EMRB was required to leave ESEA in place as the bargaining agent for CCSD
6 employees even though the election returns demonstrated overwhelming support for Local 14. ESEA
7 argued, among other things, that the election was without force and effect because the election returns
8 failed to prove with mathematical certainty that Local 14 is supported by a majority of all potential
9 voters, as opposed to a majority of those who actually cast votes in the election. The EMRB maintains
10 that the election was well attended and “demonstrates” overwhelming support for Local 14, albeit not to
11 a mathematical certainty.

12 According to NAC 288.110(10), an employee organization is entitled to official recognition
13 when an election conducted by the EMRB “demonstrates” that the organization enjoys the support of a
14 majority of the members of a bargaining unit. The plain meaning of NAC 288.110(10) contemplates an
15 election at which a winner is declared in reference to the number of votes cast. As such, based on the
16 results of a second run-off election conducted by the EMRB pursuant to its statutory discretion under
17 NRS 288.160, the EMRB properly determined that Local 14 is entitled to act as the bargaining agent for
18 the bargaining unit formerly controlled by ESEA.

19 On May 17, 2016, the District Court entered an Order Granting ESEA’s Petition for Judicial
20 Review (the “Order”), thereby nullifying the results of the election at which Local 14 was chosen to
21 replace ESEA as the bargaining agent for the CCSD employees in question. A true and correct copy of
22 the Order is attached hereto as Exhibit 1 and incorporated by reference. The EMRB now appeals.

23 **11. Indicate whether the case has previously been the subject of an appeal to or**
24 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**
25 **number of the prior proceeding:**

26 This case arises from a struggle between ESEA and Local 14 for control of a bargaining unit
27 consisting of CCSD employees. The underlying dispute between ESEA and Local 14 was previously
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the subject of an appeal and writ proceeding to the Supreme Court as follows: (1) *Education Support Employees Ass'n v. State of Nevada, Local Government Employee-Management Relations Board et al.*, Docket Nos. 42315 and 42338; (2) *International Brotherhood of Teamsters, Local 14 v. Education Support Ass'n et al.*, Docket No. 51010; (3) *The State of Nevada, Local Government Employee-Management Relations Board v. The Eighth Judicial District Court of the State of Nevada et al.*, Docket No. 62719. Although this appeal concerns the conduct and outcome of an election that had not taken place when these other matters were decided, this appeal has facts in common with the other matters.

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This case involves statutory interpretation, and therefore, it does not appear that there is a possibility of settlement.

DATED this 24th day of June, 2016

ADAM PAUL LAXALT
Attorney General

By: /s/ Donald J. Bordelove
Gregory L. Zunino
Bureau Chief
Donald J. Bordelove
Deputy Attorney General
*Attorneys for the State of Nevada,
Local Government Employee-Management
Relations Board*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General and that on the 24th day of June, 2016 I served the foregoing Amended Case Appeal Statement, via US Mail addressed as follows:

Francis C. Flaherty, Esq.
Sue Matuska, Esq.
Dyer Lawrence Flaherty Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703

Scott Greenberg, Esq.
Clark County School District
5100 W. Sahara Avenue
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Kristin Martin, Esq.
McCracken Stemmerman & Hoslberry
1630 S. Commerce St., Suite A-1
Las Vegas, Nevada 89102

/s/ Marilyn Millam
An Employee of the Attorney General's Office

EXHIBIT 1

EXHIBIT 1

1 NOE
2 FRANCIS C. FLAHERTY
3 Nevada Bar No. 5303
4 SUE S. MATUSKA
5 Nevada Bar No. 6051
6 DYER, LAWRENCE, FLAHERTY,
7 DONALDSON & PRUNTY
8 2805 Mountain Street
9 Carson City, Nevada 89703
10 (775) 885-1896 telephone
11 (775) 885-8728 facsimile
12 fflaherty@dyerlawrence.com

13 Attorneys for Petitioner

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 EDUCATION SUPPORT
17 EMPLOYEES ASSOCIATION,
18 an employee organization

Case No. A-15-715577-J

19 Petitioner,

Dept. No. I

20 vs.

21 STATE OF NEVADA, LOCAL GOVERNMENT
22 EMPLOYEE-MANAGEMENT RELATIONS BOARD,
23 an agency of the State of Nevada;
24 INTERNATIONAL BROTHERHOOD OF
25 TEAMSTERS LOCAL 14, an employee organization; and
26 CLARK COUNTY SCHOOL DISTRICT,
27 a county school district,

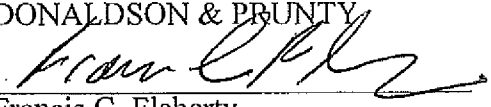
28 Respondents.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on May 17, 2016, the Court in the above-entitled matter entered its Order Granting Petition for Judicial Review. A true and correct copy of the Order is attached hereto as Exhibit 1 and incorporated herein by reference.

DATED this 17th day of May, 2016.

DYER, LAWRENCE, FLAHERTY
DONALDSON & PRUNTY


Francis C. Flaherty
Nevada Bar No. 5303
Sue S. Matuska
Nevada Bar No. 6051
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify pursuant to NRCP 5(b) that I am an employee of DYER, LAWRENCE, FLAHERTY, DONALDSON AND PRUNTY and that on the 17th day of May, 2016, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW** to be deposited in the U.S. Mail, first-class postage prepaid and to be sent electronically to each of the following:

EMRB
2501 East Sahara Avenue, Suite 203
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emrb@business.nevada.gov
Bsnyder@business.nevada.gov

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S. Scott Greenberg, Esq.
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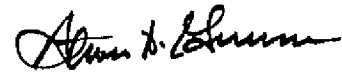
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Debora McEachin

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EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

1 ORDR
2 FRANCIS C. FLAHERTY
3 Nevada Bar No. 5303
4 SUE S. MATUSKA
5 Nevada Bar No. 6051
6 DYER, LAWRENCE, FLAHERTY,
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13 Attorneys for Petitioner

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15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 EDUCATION SUPPORT
18 EMPLOYEES ASSOCIATION,
19 an employee organization

Case No. A-15-715577-J

20 Petitioner;

Dept. No. 1

21 vs.

22 STATE OF NEVADA, LOCAL GOVERNMENT
23 EMPLOYEE-MANAGEMENT RELATIONS BOARD,
24 an agency of the State of Nevada;
25 INTERNATIONAL BROTHERHOOD OF
26 TEAMSTERS LOCAL 14, an employee organization; and
27 CLARK COUNTY SCHOOL DISTRICT,
28 a county school district,

Respondents.

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

Petitioner Education Support Employees Association's ("ESEA") Petition for Judicial Review, filed January 20, 2016, came before the Court on April 20, 2016. Respondent State of Nevada, Local Government Employee-Management Relations Board ("the Board") and the International Brotherhood of Teamsters, Local 14 ("Local 14") filed separate oppositions. ESEA was represented by Francis C. Flaherty, Esq., who appeared before the Court. Local 14 was represented by Kristin L. Martin, Esq. and Thomas Pitaro, Esq., and the Board was represented by Gregory Zunino, Esq., Bureau Chief of the Office of Attorney General, who all appeared before the

1 Court. The Clark County School District ("the District") is represented by S. Scott Greenberg, Esq.,
2 who did not file a responsive pleading or appear before the Court at this particular hearing.

3 The Petition for Judicial Review challenged the Board's 2016 Board Order wherein the
4 Board certified the results of a second runoff representation election between ESEA and Local 14
5 based on a majority-of-the-votes-cast standard and declared that Local 14 would become the
6 recognized bargaining agent of the support staff employees of the District. ESEA argued that the
7 Board had no authority to hold such second runoff election to be determined by a majority of the
8 votes cast because of two prior Nevada Supreme Court Orders in this case.¹ Local 14 and the Board
9 argued that the Supreme Court orders are not controlling, do not limit the EMRB's discretion to
10 resolve the good-faith doubt about whether ESEA or Local 14 has majority support that caused the
11 EMRB to order an election, and that exceptions, including for "manifest injustice", to the law of the
12 case doctrine apply.

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27 ¹ See *Education Support Employees Ass'n. v. Employee-Management Relations Board*,
28 Docket Nos. 42315/42338 (December 21, 2005) ("2005 Order"); *International Brotherhood of Teamsters, Local 14 v. Education Support Employees Ass'n.*, Docket No. 51010 (December 21, 2009) ("2009 Order").

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2835 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1 Having considered the pleadings and arguments of counsel presented at the April 20, 2016,
2 hearing, IT IS HEREBY ORDERED:

3 1. The Petition for Judicial Review is GRANTED, and the 2016 Board Order is
4 VACATED.

5 2. The matter is remanded to the Board to make the determination as to what, if any,
6 further action is appropriate.

7 DATED this 4 day of May, 2016.

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10 
DISTRICT COURT JUDGE

11 Submitted by:
12 DYER, LAWRENCE, FLAHERTY,
DONALDSON & PRUNTY

13 By: /s/ Francis C. Flaherty

14 Francis C. Flaherty
15 Nevada Bar No. 5303
16 Sue S. Matuska
Nevada Bar No. 6051
Attorneys for Petitioner