

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE 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,

Respondent.

SUPREME COURT CASE NO. 70586

Electronically Filed
Jul 06 2016 02:01 p.m.
District Court Case No. A-15-715577-J
Tracie K. Lindeman
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

COMES NOW, Appellant, State of Nevada, Local Government Employee-Management Relations Board, by and through its attorney, Adam Paul Laxalt, Attorney General, Gregory L. Zunino, Bureau Chief, and Donald J. Bordelove, Deputy Attorney General, and submits as follows:

1. **Judicial District: 8th Jud. Dist. Department: I County: Clark**
Judge: Kenneth C. Cory District Court Docket No.: A-15-715577-J

2. **Attorneys filing this docketing statement:**

Adam Paul Laxalt, Attorney General
Office of the Attorney General

Gregory L. Zunino, Bureau Chief
Donald J. Bordelove, Deputy Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3094

Client: State of Nevada, Local Government Employee-Management Relations Board, an agency of the State of Nevada

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the name of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

N/A

3. **Attorneys representing respondent:**

Francis C. Flaherty, Esq.
Sue S. Matuska, Esq.

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
Telephone: (775) 885-1896

Client: Education Support Employees Association, an employee organization

4. **Nature of disposition below (check all that apply):**

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant/Denial of injunction |
| <input type="checkbox"/> Summary Judgment | <input type="checkbox"/> Grant/Denial of declaratory relief |
| <input type="checkbox"/> Default Judgment | <input type="checkbox"/> Review of agency determination |
| <input type="checkbox"/> Dismissal | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Lack of jurisdiction | <input type="checkbox"/> original <input type="checkbox"/> modification |
| <input type="checkbox"/> Failure to state a claim | <input checked="" type="checkbox"/> Other disposition (specify): <i>entry</i> |
| <input type="checkbox"/> Failure to prosecute | <i>of Order granting Petition for Judicial</i> |
| <input type="checkbox"/> Other (specify) | <i>Review</i> |

5. **Does this appeal raise issues concerning any of the following:** No.

- ☐ Child custody
- ☐ Venue
- ☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

This case arises from a struggle between Education Support Employees Association ("ESEA") ESEA and the International Brotherhood of Teamsters, Local 14 ("Local 14") for control of a bargaining unit consisting of Clark County School District ("CCSD") employees. The underlying dispute between ESEA and Local 14 was previously 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.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A.

8. **Nature of the action.** Briefly describe the nature of the action, and the result below:

In its Petition for Judicial Review, ESEA challenged an order issued by the Employee-Management Relations Board ("EMRB") on January 20, 2016, wherein the EMRB determined that Local 14 is entitled to act the exclusive bargaining agent for non-teacher support staff employed by the CCSD. ESEA had formerly acted as the exclusive bargaining agent for the CCSD employees in question.

On May 17, 2016, the District Court entered an Order Granting ESEA's Petition for Judicial Review (the "Order"), thereby nullifying the results of the election at which Local 14 was chosen to replace ESEA as the bargaining agent for the CCSD employees in question.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

Whether, following an election pursuant to NRS 288.160 and NAC 288.110(10), the EMRB was required to leave ESEA in place as the bargaining agent for CCSD employees even though the election returns demonstrated overwhelming support for Local 14.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

N/A. Counsel is not aware of any such proceedings presently pending before this court.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A.

12. **Other issues.** Does this appeal involve any of the following issues?
☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
☐ An issue arising under the United States and/or Nevada Constitutions
☒ A substantial issue of first-impression
☒ An issue of public policy
☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
☐ A ballot question

If so, explain:

This matter involves a substantial issue of first impression because this court has not been asked before to address the practical implications of election results produced pursuant NRS 288.160 and NAC 288.110(10). ESEA argued, among other things, that the election was without force and effect because the election returns failed to prove with mathematical certainty that Local 14 is supported by a majority of all potential voters, as opposed to a majority of those who actually cast votes in the election. The EMRB maintains that the election was well attended and "demonstrates" overwhelming support for Local 14, albeit not to a mathematical certainty.

According to NAC 288.110(10), an employee organization is entitled to official recognition when an election conducted by the EMRB "demonstrates" that the organization enjoys the support of a majority of the members of a bargaining unit. The plain meaning of NAC 288.110(10) contemplates an election at which a winner is declared in reference to the number of votes cast. As such, based on the results of a second run-off election conducted by the EMRB pursuant to its statutory discretion under

NRS 288.160, the EMRB properly determined that Local 14 is entitled to act as the bargaining agent for the bargaining unit formerly controlled by ESEA.

Moreover, and as a matter of public policy, the practical application of the majority-of-employees-in-the-unit standard advanced by ESEA produces an unworkable result. In both the first election and the runoff election that standard failed to come close to resolving the EMRB's good faith doubt. The majority-of-the-vote standard provides a realistic approach to conducting an election and provides for just resolution under NRS 288.160(4) and NAC 288.110(10).

13. **Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(3) because it regards a case involving election questions. This matter is also presumptively retained by the Supreme Court pursuant to NRAP 17(a)(14) because it involves a question of statewide importance. The purpose and intent of NRS 288.160 and NAC 288.110 is to assist in the determination of which employee organization will be considered the exclusive bargaining agent for employees within a bargaining unit. As such, the ruling in this case will have statewide public policy implications, and the Supreme Court should retain assignment of this case.

14. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

15. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from:**

The Order and Judgment was entered on May 17, 2016.

17. **Date written notice of entry of judgment or order served:**

Notice of Entry of Order and Judgment was served on May 17, 2016 by means of electronic service.

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59), specify:**

N/A.

19. **Date notice of appeal was filed:**

The Notice of Appeal was filed June 6, 2016.

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal.

N/A

20. **Specify statute or rule governing the time limit for filing the notice of appeal:**

NRAP 4(a)(1) governs the time limit for filing the Notice of Appeal.

SUBSTANTIVE APPEALABILITY

21. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

NRAP 3A(b)(1) and NRS 233B.150 grants this court jurisdiction to review the Order and Judgment.

Explanation: NRAP 3A(a) and (b) allows an appeal by an aggrieved party from an appealable or order of a district court to the Supreme Court. Appellant is an aggrieved party in the district court action, and the order of the district court is final. NRAP3A(b)(1). Additionally, NRS 233B.150 provides that “[a]n aggrieved party may obtain a review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution.”

22. **List all parties involved in the action in the district court:**

(a) Parties:

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

Education Support Employees Association;

International Brotherhood of Teamsters, Local 14; and

Clark County School District.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

All parties are parties to this appeal.

23. **Give a brief description (3 to 5 words) of each party’s separate claims, counterclaims, cross-claims or third-party claims, and the trial court’s disposition of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.**

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

24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

Yes.

25. **If you answered "No" to question 24, complete the following:**

- (a) Specify the claims remaining pending: N/A
- (b) Specify the parties remaining: N/A
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)? N/A
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment? N/A

26. **If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

N/A

27. **Attach file-stamped copies of the following documents:**

- the latest-filed complaint, counterclaims, cross-claims, and third-party claims
- any tolling motion(s) and order(s) resolving the tolling motion(s)
- orders of NRCP 41 (a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- any other order challenged on appeal
- notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

STATE OF NEVADA, LOCAL GOVERNEMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

Name of appellant

7/5/16
Date

Clark County,
.....Nevada.....
State and county where signed

Donald J. Bordelove, Dep. Attorney General

Name of counsel of record

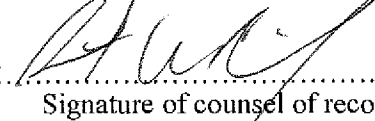
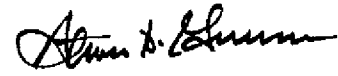
by 
Signature of counsel of record

EXHIBIT 1

ORDER

EXHIBIT 1

ORDER


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,
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
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. I

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

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.

8
9 
10 DISTRICT COURT JUDGE

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

14 By: /s/ Francis C. Flaherty
15 Francis C. Flaherty
16 Nevada Bar No. 5303
17 Sue S. Matuska
18 Nevada Bar No. 6051
19 Attorneys for Petitioner
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PETITION FOR JUDICIAL REVIEW

PETITION FOR JUDICIAL REVIEW

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada
Case No. A-15-715577-J Dept I
(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <u>Education Support Employees Association, 3505 East Flamingo, Suite 2, Las Vegas, Nevada 89121 (702) 794-2537</u>	Defendant(s) (name/address/phone): <u>State of Nevada, Local Government Employee-Management Relations Board, International Brotherhood of Teamsters Local 14, Clark County School District</u>
Attorney (name/address/phone): <u>Francis C. Flaherty & Sue M. Matuska Dyer, Lawrence, Flaherty, Donaldson & Prunty, 2805 Mountain Street, Carson City, Nevada 89703 (775) 885-1896</u>	Attorney (name/address/phone):

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort		
Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input checked="" type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal		
Civil Writ <table style="width: 100%;"> <tr> <td style="width: 50%;"> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant </td> <td style="width: 50%;"> <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ </td> </tr> </table>		<input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters
<input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ			

Business Court filings should be filed using the Business Court civil coversheet.

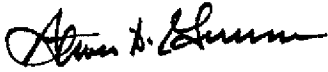
3/19/15

Date



Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

PTJR
FRANCIS C. FLAHERTY
Nevada Bar No. 5303
SUE S. MATUSKA
Nevada Bar No. 6051
DYER, LAWRENCE, FLAHERTY,
DONALDSON & PRUNTY
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896 telephone
(775) 885-8728 facsimile
fflaherty@dyerlawrence.com

Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

EDUCATION SUPPORT
EMPLOYEES ASSOCIATION,
an employee organization

A-15-715577-J
Case No.

Petitioner;

Dept. No. I

vs.

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

Respondents.

PETITION FOR JUDICIAL REVIEW

COMES NOW Petitioner, EDUCATION SUPPORT EMPLOYEES ASSOCIATION
("ESEA"), by and through its undersigned counsel, and hereby petitions this Court for judicial
review of the ORDER on Certification of Election Results and Implications of Election Results (the
"Order"), issued on February 17, 2015, by Respondent NEVADA, LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD ("the EMRB"). A copy of the Order is
attached hereto as Exhibit 1, and incorporated herein by reference.¹ In support of this Petition,

¹ Apparently based on concerns that its February 17, 2015, actions went beyond simply
certifying the results of the election and thus violated the Nevada Open Meeting Law, the EMRB
re-affirmed the order of the second, discretionary runoff election ordered in the Order in a special
meeting on March 12, 2015. A true and correct copy of the Agenda for such Special Meeting is

Petitioner alleges as follows:

1. This Petition is filed pursuant to NRS 233B.130 *et seq.*

2. Venue is proper in this Court under the provisions of NRS 233B.130(2)(b).

3. The Order is a final decision reviewable by the Court pursuant to NRS 233B.130(1).

4. The Order is the final decision in EMRB Case No. A1-045735, in which, initially, INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 14 ("Local 14") was the petitioner and CLARK COUNTY SCHOOL DISTRICT ("the District") and ESEA were respondents, and, subsequently, ESEA was the counter claimant and Local 14 and the District were the counter-respondents. Thus, Petitioner ESEA is identified as a party of record in the Order. Respondent Local 14 and Respondent District are also identified as parties of record in the same proceeding.

5. Petitioner is aggrieved by the Order, and substantial rights of Petitioner have been prejudiced because the Order is: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the EMRB; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and/or (f) arbitrary or capricious or characterized by abuse of discretion. NRS 233B.130(1), NRS 233B.135(3).

6. Petitioner requests that the Court receive the record of the administrative proceeding in accordance with NRS 233B.133, and thereafter conduct its review of the Order based upon that record.

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attached hereto and incorporated herein as Exhibit 2. Petitioner has not received another order that reflects this March 12, 2015, action and is unsure whether the Board intends to issue another Order and, thus, is treating the February 17, 2015, as the "final decision."

1 WHEREFORE, Petitioner prays for judgment as follows:

- 2 1. For an order setting aside the Order;
- 3 2. For an award of attorney's fees and costs incurred by Petitioner in this proceeding; and,
- 4 3. For such other and further relief as the Court deems just and proper.

5 Dated this 19th day of March, 2015.

6 DYER, LAWRENCE, FLAHERTY,
7 DONALDSON & PRUNTY

8 By: 

9 Francis C. Flaherty
10 Nevada Bar No. 5303
11 Sue S. Matuska
12 Nevada Bar No. 6051
13 Attorneys for Petitioner
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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document filed in this case:

X Document does not contain the social security number of any person

-OR-

___ Document contains the social security number of a person as required by:

___ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

___ For the administration of a public program

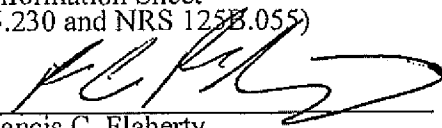
-or-

___ For an application for a federal or state grant

-or-

___ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: March 19, 2015



Francis C. Flaherty
Attorney for Petitioners

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

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 19th day of March, 2015, I caused a true and correct copy of the foregoing 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
Las Vegas, Nevada 89104

emrb@business.nevada.gov
Bsnyder@business.nevada.gov

Kristin L. Martin, Esq.
McCracken, Stemerman, Bowen & Holsberry
1630 Commerce Street, Suite A-1
Las Vegas, NV 89102

klm@dcbsf.com

S. Scott Greenberg, Esq.
Office of General Counsel
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146

sgreenberg@interact.ccsd.net

Scott R. Davis, Esq.
Deputy Attorney General
Attorney General's Office
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101-1068

sdavis@ag.nvgov


Debora McEachin

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

Exhibit Index

<u>Exhibit No.</u>	<u>Exhibit Name</u>	<u>Number of Pages</u>
1	EMRB's February 17, 2015 Order	10
2	EMRB's March 12, 2015 Special Meeting Agenda	2

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

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EXHIBIT 1

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STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 14, AFL-CIO,)	
Petitioner,)	CASE NO. A1-045735
)	
vs.)	<u>ORDER</u>
)	
CLARK COUNTY SCHOOL DISTRICT, and)	ITEM NO. 520Q
EDUCATION SUPPORT EMPLOYEES ASSOCIATION,)	
Respondents.)	
<hr/>		
EDUCATION SUPPORT EMPLOYEES ASSOCIATION,)	
Counter Claimant,)	
)	
vs.)	
)	
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 14, AFL-CIO, and)	
CLARK COUNTY SCHOOL DISTRICT,)	
Counter Respondents.)	

On February 11 and 12, 2015, this matter came on before the State of Nevada, Local Government Employee Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act") and NAC Chapter 288.

Certification of Runoff Election Results

The Commissioner has conducted the runoff election in this matter. The election was conducted by secret ballot as required by NRS 288.160(4). The ballots were mailed to eligible employees in the Clark County School District support staff bargaining unit on January 5, 2015. The ballots were retrieved and counted on February 3, 2015. No party has filed an objection to the conduct of the election or to conduct affecting the results of the election. See NAC 288.110(8).

1 The Board reviewed the Tally of Ballots prepared by the Commissioner, which is
2 attached hereto. No timely objections having being filed, the Board will certify the results of the
3 election as reported on the Tally of Ballots.

4 Implications of Runoff Election Results

5 Having certified the results of the runoff election, the Board looks to the implications of
6 this runoff election. This runoff election was mandated by an order of the Nevada Supreme Court
7 entered on December 21, 2009. That order concluded that this runoff election was subject to a
8 majority vote requirement such that in order to prevail an employee organization needed "to
9 obtain support from a majority of all of the members of the bargaining unit and not just a
10 majority of those who vote." This order, in turn, referred to a prior decision from the Nevada
11 Supreme Court that had affirmed this Board's decision in Item No. 520F that interpreted our own
12 election regulation as requiring this standard.

13 The bargaining unit, as reported by the Commissioner, included a total of 11,114
14 employees. The Tally of Ballots indicates that neither the Education Support Employees (ESEA)
15 nor the International Brotherhood of Teamsters, Local 14 (Local 14) received the requisite
16 number of votes required to achieve a majority of members of the bargaining unit under this
17 standard. The Tally of Ballots shows that only 5,255 ballots were cast. Of those ballots, 3,692
18 were cast in favor of Local 14 and 1,498 were cast in favor of ESEA. In the same 2009 order, the
19 Nevada Supreme Court stated that election results are inconclusive where the "majority of the
20 unit" standard is not met. ESEA is the incumbent bargaining agent and has remained as such for
21 the duration of this election process. The results of this runoff election do not justify removing
22 ESEA in favor of Local 14 under the majority vote requirement imposed in the Supreme Court's
23 2009 order. As such ESEA will continue as the recognized bargaining agent.

24 As with the original vote, the results of the runoff election do not provide a conclusive
25 result, neither organization having received the required majority of the bargaining unit. NAC
26 288.110(7) does not require that additional runoff elections be held until the "majority of the
27 unit" standard is met. The Board specifically interprets NAC 288.110(7) as mandating only a
28 single runoff election when the results of a first election are inconclusive, and we emphatically

1 reject any interpretation to the contrary. This Board adopted NAC 288.110(7) and in doing so
2 selected language that states that "if the results [of an election] are inconclusive, the Board will
3 conduct *a* runoff election." NAC 288.110(7) (emphasis added). The Supreme Court's 2009
4 order also used similar language: "[w]e conclude that based upon the plain and unambiguous
5 language of NAC 288.110(7) the EMRB must conduct *a* runoff election. We further conclude
6 that NRS 288.160(4) and NAC 288.110(10)(d)'s majority vote requirement is equally applicable
7 to *the* runoff election." (emphasis added). Had the Board intended through NAC 288.110(7) to
8 self-impose a requirement for an endless cycle of runoff elections, we would have said so. We
9 did not.

10 Further, it appears based upon the Supreme Court's 2009 order that an additional runoff
11 election made mandatory under this subsection would be subject to the "majority of the unit"
12 standard, which has failed twice now to resolve our good faith doubt as to majority support in
13 this bargaining unit. An interpretation of NAC 288.110(7) as requiring additional mandatory
14 elections would entail the same majority vote counting standards be used and would lock this
15 Board into a potentially perpetual cycle of runoff elections with no end in sight. The concept of
16 stability in labor relations, which is a fundamental objective of the Act, cannot be reconciled
17 with an open-ended process of this sort. Existing doubt as to majority support is not conducive
18 to stability in labor relations and thus the basic premises of the election process are that the
19 election process will have a conclusion, that it will supply an answer to our good faith doubt and
20 that elections can be conducted in a relatively expeditious manner. None of those objectives can
21 be achieved under the "majority of the unit" standard. The employees and employers subject to
22 the Act should not be left under a perpetual cloud of unresolved questions about which
23 organization will actually represent a bargaining unit. The legislature has decreed that they
24 deserve better when it adopted a mechanism for questions of majority support to be definitively
25 resolved by this Board. NRS 288.160(4).

26 NAC 288.110(7)'s requirement for a single runoff election is premised upon the
27 understanding that a singular runoff election should, ordinarily, supply an effective answer to the
28 Board's good faith doubt in those circumstances where the original election does not do so, and

1 thus its requirement is only for a single runoff election. We also note that an interpretation of
2 our own regulation as requiring never-ending runoff elections would effectively impose an
3 unfunded mandate on this Board that was never intended. Accordingly, we interpret NAC
4 288.110(7) as requiring only a single runoff election where the results of a first election are
5 inconclusive. Having now met that requirement in this case, and having complied with the
6 Supreme Court's order, the Board is not obligated to conduct another runoff election. Doing so
7 under the obligations of the Supreme Court's 2009 order would only repeat the runoff election
8 that has failed to produce a meaningful result in resolving this dispute.

9 It is obvious that the "majority of the unit" standard is incapable of answering our good
10 faith doubt whether any organization enjoys majority support in this case. At this juncture, the
11 Board is faced with two options: either the Board concedes that its good faith doubt can never be
12 resolved and closes this case, leaving that doubt forever unanswered; or else the Board excises
13 the cause of the futility in this case and proceeds under something different than the "majority of
14 the unit" standard. The first option is not a viable option. This Board was created and charged by
15 the legislature with the duty to carry out representation elections and to determine majority
16 support. To walk away from that process at this point after more than a decade of proceedings
17 and two elections without any answer to our good faith doubt would be an affront to our
18 statutory charge under NRS 288.160 and the underlying purposes of the Act. The second option
19 to proceed under a different standard is the only viable option. We find that the ability to hold an
20 election under a standard that will actually produce a meaningful result is essential to carry out
21 our statutory duty to hold elections and to resolve our good faith doubts.

22 Although the Board is not obligated by NAC 288.110(7) to conduct yet another runoff
23 election, it remains within the Board's discretionary authority, as well as implied authority, to do
24 so. While NAC 288.110(7) does not mandate another runoff, neither does that section preclude
25 the exercise of Board discretion to conduct a discretionary second runoff election. A
26 discretionary second runoff election is warranted if it is conducted under a standard that is likely
27 to produce meaningful results. Thus, where it appears that a discretionary runoff election will
28 produce meaningful results that will resolve this Board's good faith doubt, it is within our

1 authority under both NRS 288.160(4) and NAC 288.110(7), as well as our implied authority, to
2 conduct a discretionary second runoff election.

3 But as we stated above, a second runoff election conducted under the same "majority of
4 the unit" standard will not lead to meaningful results, as the repeated failure of that standard in
5 this case plainly indicates. We note that prior to this case, this Board had, from its very
6 origination in 1969, conducted its elections under a simple "majority of votes cast" standard.
7 See; e.g., Laborers' Int'l Union, Local 169 v. Washoe Medical Center, Item No. 1., EMRB Case
8 No. 1 (1970); Stationary Engineers, Local 39 v. Airport Authority of Washoe County, Item No.
9 133, EMRB Case No. A1-045349 (July 12, 1982); Elko General Hospital v. Elko County
10 Employees Association, Item No. 312, EMRB Case No. A1-045537 (April 1, 1993); City of
11 Mesquite & Teamsters, Local 14, Item No. 434, EMRB Case No. A1-045644 (Sept. 10, 1998);
12 International Union of Operating Engineers, Local No. 3 v. Mount Grant General Hospital, Item
13 No. 473, EMRB Case No. A1-045683 (Sept. 20, 2000). This list of prior election decisions by
14 this Board, which is by no means exhaustive, stands in stark contrast to the experience of this
15 case. These decisions that applied the simple "majority of votes cast" standard demonstrate that
16 under that standard, not only was it possible for Board elections to actually produce meaningful
17 results, but that Board elections did so much more expeditiously than we have experienced thus
18 far in this proceeding.

19 NAC 288.110(10)(d) states that the Board will deem an organization to be the exclusive
20 bargaining agent if the election demonstrates that the organization is "...supported by a majority
21 of employees within the particular bargaining unit." We now interpret this subsection as
22 permitting the Board to infer majority support of the unit as a whole based upon a majority of
23 votes cast in accord with the well-recognized principle "that those not participating in the
24 election must be presumed to assent to the expressed will of the majority of those voting, so that
25 such majority determines the choice." N.L.R.B. v. Deutsch Co., 265 F.2d 473, 479 (9th Cir.
26 1959). Following the "majority of votes cast" standard will not only bring the Board in line with
27 the prevailing standard in labor law, as stated in Deutsch Co., it will also bring the Board in line
28 with Nevada's prevailing standard for elections in general, which bases election results on the

1 number of votes cast. See Nev. Const. Art. 5 § 4. To the extent that our interpretation of NAC
2 288.110(10)(d) conflicts with our prior order in this case at Item No. 520F, we overrule that
3 portion of our prior order. While the Supreme Court's 2009 order does not allow the Board to
4 apply this principle to the mandated runoff election that was just conducted, that order speaks to
5 a single and mandatory runoff election; it does not foreclose application of the principle to a
6 second runoff election conducted entirely at the Board's discretion.

7 As an alternative grounds, even if our interpretation of NAC 288.110(10)(d) is found to
8 be incorrect, the Board also has implied authority, separate and apart from NAC 288.110, to
9 follow the simple "majority of votes cast" standard where the "majority of the unit" standard
10 proves to be inadequate, as it clearly has in this case.

11 The history of this case shows that the "majority of the unit" standard is a failed
12 experiment incapable of any meaningful practical application. A discretionary second runoff
13 election in this case is warranted, but only if it is conducted under the same "majority of votes
14 cast" standard that this Board had used prior to this case. We find that this discretionary second
15 runoff election under the simple "majority of votes cast" standard is calculated to lead to
16 meaningful results, to bring an end to this election process and to finally provide the definitive
17 answer to the question of our good faith doubt that the School District, ESEA, Local 14 and the
18 employees in the bargaining unit all deserve.

19 Based upon the foregoing, and good cause appearing therefore,

20 IT IS HEREBY ORDERED that the results of the runoff election reflected in the Tally of
21 Ballots is certified, as set forth above;

22 IT IS FURTHER ORDERED that the Commissioner shall conduct the discretionary
23 second runoff election as soon as practicable, and as allowed by the budget constraints of the

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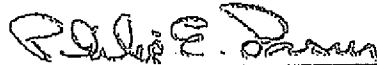
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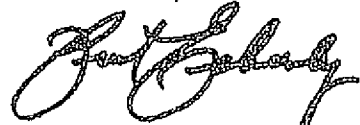
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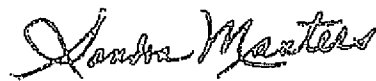
1 EMRB. The winner of the discretionary second runoff election shall be determined by the
2 majority of votes cast.

3 DATED the 17th day of February, 2015.

4 LOCAL GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6 BY: 
7 PHILIP E. LARSON, Chairman

8 BY: 
9 BRENT C. ECKERSLEY, ESQ.,
10 Vice-Chairman

11 BY: 
12 SANDRA MASTERS, Board Member
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NEVADA LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

International Brotherhood of Teamsters,
Local 14, AFL-CIO,

Petitioner,

vs.

Case No. A1-045735

Clark County School District and Education
Support Employees Association,

Respondents.

And related counter-claim

FILED

FEB 05 2015

STATE OF NEVADA
E.M.R.B.

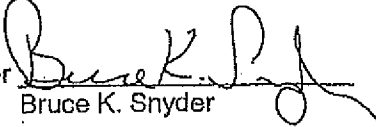
TALLY OF BALLOTS

As Commissioner of the Nevada Local Government Employee-Management Relations Board, I hereby certify that the results of the tabulation of ballots cast in the election held in the above-captioned matter, and concluded on the date set forth below, were as follows:

- | | |
|--|------|
| 1. Number of ballots cast: | 5255 |
| 2. Number of void ballots cast: | 26 |
| 3. Number of ballots challenged based on alleged defect in ballot: | 38 |
| 3(a). Number of challenges sustained: | 18 |
| 3(b). Number of challenges overruled (include in 4 or 5, as appropriate): | 20 |
| 4. Number of valid votes cast for Teamsters Local 14: | 3692 |
| 5. Number of valid votes cast for Education Support Employees Association: | 1498 |
| 6. Total number of valid votes counted (sum of 4 and 5): | 5190 |
| 7. Number of ballots challenged based on alleged ineligibility of voter: | 21 |

Dated: February 3, 2015.

By the Commissioner


Bruce K. Snyder

We acknowledge receipt of a copy of this tally:

Teamsters Local 14

Clark County School District

Education Support
Employees Association

By 

By 

By  esq.

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

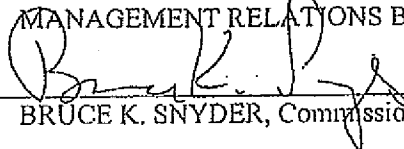
INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, LOCAL 14, AFL-CIO,) CASE NO. A1-045735
Petitioner,)
vs.) NOTICE OF ENTRY OF ORDER
CLARK COUNTY SCHOOL DISTRICT, and)
EDUCATION SUPPORT EMPLOYEES)
ASSOCIATION,)
Respondents.)
EDUCATION SUPPORT EMPLOYEES)
ASSOCIATION,)
Counter Claimant,)
vs.)
INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, LOCAL 14, AFL-CIO, and)
CLARK COUNTY SCHOOL DISTRICT,)
Counter Respondents.)

To: Education Support Employees Association and their attorneys Michael W. Dyer, Esq., Frank Flaherty, Esq. and Dyer, Lawrence, Flaherty, Donaldson & Prunty
To: International Brotherhood of Teamsters, Local 14 and their attorneys Kristin L. Martin, Esq. and Davis, Cowell & Bowe. LLP
To: Clark County School District and their attorneys Carlos L. McDade, Esq., Office of the General Counsel for the Clark County School District

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on February 17, 2015. A copy of said order is attached hereto.

DATED this 17th day of February, 2015.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
BRUCE K. SNYDER, Commissioner

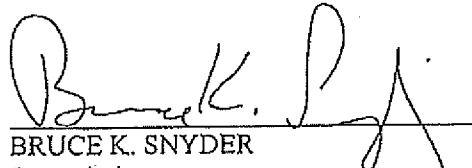
CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 17th day of February, 2015, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Michael W. Dyer, Esq.
Frank Flaherty, Esq.
Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, NV 89703

Kristin L. Martin, Esq.
Davis, Cowell & Bowe, LLP
595 Market Street, Suite 1400
San Francisco, CA 94105

Carlos L. McDade, Esq.
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146


BRUCE K. SNYDER
Commissioner

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

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EXHIBIT 2

STATE OF NEVADA

BRIAN SANDOVAL
Governor

Members of the Board

PHILIP E. LARSON, Chairman
BRENT C. ECKERSLEY, ESQ., Vice-Chairman
SANDRA MASTERS, Board Member



BRUCE BRESLOW
Director

BRUCE K. SNYDER
Commissioner

MARISU ROMUALDEZ ABELLAR
Executive Assistant

DEPARTMENT OF BUSINESS AND INDUSTRY
**LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD**

2501 E. Sahara Avenue, Suite 203, Las Vegas, Nevada 89104
(702) 486-4504 • Fax (702) 486-4355
www.emrb.nv.gov

March 6, 2015

PUBLIC NOTICE OF OPEN MEETING

Pursuant to Nevada's Open Meeting Law, notice is hereby given that the Local Government Employee-Management Relations Board will hold a meeting on:

**Thursday, March 12, 2015, at 8:00 a.m. at the Local Government
Employee-Management Relations Board, 2501 E. Sahara Avenue, Room
203, Las Vegas, Nevada 89104.**

THE AGENDA

Note: The Board may take possible action on any item on this agenda unless that item is marked as "Information Only". Items marked as "Information Only" may be discussed by the Board after any presentation is made but no action may be taken on that particular item. The Board may take items out of order, may combine two or more agenda items for consideration, may remove items from the agenda or may delay discussion of any item at any time.

1. Call to Order

Information Only

2. Public Comment

Information Only

Public comment must be limited to matters relevant to or within the authority of the Local Government Employee-Management Relations Board. No subject may be acted upon by the Board unless that subject is on the agenda and is scheduled for possible action. If you wish to be heard, please raise your hand and the Chairman will recognize you. The amount of discussion on any single subject, as well as the amount of time any single speaker is allowed, may be limited. The Board will not restrict public comment based upon viewpoint. However, the Board may refuse to consider public comment prior to the commencement and/or conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual. See NRS 233B.126.

3. **Case A1-045735** *For Possible Action*
International Brotherhood of Teamsters, Local 14, AFL-CIO v. Clark County School District and Education Support Employees Association
Deliberation and possible decision on holding a second discretionary runoff election under a majority of the vote standard and approval of Item No. 520Q previously entered in this case.
4. **Additional Period of Public Comment** *Information Only*
Please refer to agenda item 2 for any rules or restrictions on public comment.

Posting

This meeting has been posted at the following locations and websites at least three days prior to the scheduled date of this meeting, in accordance with NRS 241.020(2):

Bradley Building, 2501 E. Sahara Avenue, Las Vegas, Nevada
Clark County Personnel, 500 S. Grand Central Parkway, Las Vegas, Nevada
Department of Business & Industry, 1830 College Parkway, Ste. 100, Carson City, Nevada
Department of Business & Industry, 555 E. Washington Ave., Ste. 4900, Las Vegas, Nevada
Nevada State Library, 100 N. Stewart, Carson City, Nevada
Supreme Court Library, 201 S. Carson Street #100, Carson City, Nevada
Department of Administration Public Meeting Notice Web Site: <http://notice.nv.gov/>
Employee-Management Relations Board Web Site: <http://emrb.state.nv.us>

Special Accommodations

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the EMRB at the address or telephone number above. Please notify us as soon as possible to allow time to secure any necessary equipment or provisions prior to the meeting.

Inquiries and Supporting Materials

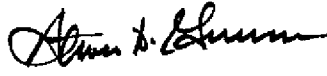
You may obtain copies of any supporting materials by contacting the Board Secretary, Marisu Romualdez Abellar at the address above or by calling 702-486-4505.

Closed Session

The Board may go into closed session pursuant to NRS 288.220 for consideration/discussion of any complaint, petition or appeal herein noticed. The Board will return to open session for final adjudication.

NOTICE OF ENTRY OF ORDER

NOTICE OF ENTRY OF ORDER


CLERK OF THE COURT

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,

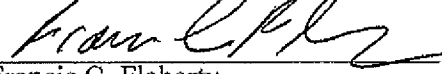
28 Respondents.

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

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

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
Las Vegas, Nevada 89104

emrb@business.nevada.gov
Bsnyder@business.nevada.gov

Kristin L. Martin, Esq.
McCracken, Stemerma, Bowen & Holsberry
1630 Commerce Street, Suite A-1
Las Vegas, NV 89102

klm@dcbsf.com

S. Scott Greenberg, Esq.
Office of General Counsel
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146

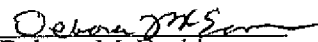
sgreenberg@interact.ccsd.net

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Bureau Chief
Attorney General's Office
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Carson City, Nevada 89701

gzunino@ag.hv.gov

Donald J. Bordelove
Deputy Attorney General
Attorney General's Office
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101-1068

dbordelove@ag.ng.gov

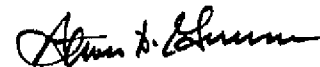

Debora McEachin

Dyer, Lawrence, Flaherty, Donaldson & Prunty
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Carson City, Nevada 89703
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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,
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
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. I

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

Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

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").


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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 14 day of May, 2016.

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DISTRICT COURT JUDGE

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

13 By: /s/ Francis C. Flaherty

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