

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 THE STATE OF NEVADA, LOCAL
3 GOVERNMENT EMPLOYEE-
4 MANAGEMENT RELATIONS BOARD,

5 Appellant,

6 vs.

7 EDUCATION SUPPORT EMPLOYEES
8 ASSOCIATION, INTERNATIONAL
9 BROTHERHOOD OF TEAMSTERS,
10 LOCAL 14 and CLARK COUNTY
11 SCHOOL DISTRICT,

12 Respondents.

Supreme Court No. 70586

District Court Case No.
A-15-15570 Electronically Filed

Jul 08 2016 10:00 a.m.

Tracie K. Lindeman
Clerk of Supreme Court

13 **OPPOSITION TO INTERNATIONAL BROTHERHOOD OF**
14 **TEAMSTERS, LOCAL 14'S MOTION FOR LEAVE TO FILE**
15 **OPENING AND REPLY BRIEFS**

16 COMES NOW Respondent Education Support Employees Association
17 ("ESEA"), by and through its attorneys and files its Opposition to International
18 Brotherhood of Teamsters, Local 14's ("Local 14") Motion for Leave to File
19 Opening and Reply Briefs. This Opposition is based on Nevada Rule of
20 Appellate Procedure ("NRAP") 27(a)(3), the legal argument contained herein,
21 the exhibit attached hereto, and the pleadings on file in this matter.

22 As set forth in ESEA's Objection to Modification of Caption, filed
23 concurrently herewith and attached hereto as Exhibit A and incorporated herein
24 by reference, Local 14 is neither an "appellant" nor a "respondent" in this
25 matter. It is not an appellant because it did not file a timely notice of appeal.
26 It is not a respondent because it does not "contend against the appeal." See
27 Black's Law Dictionary (4th ed. 1968) at 1476. It was a respondent in the
28 district court action below because NRS 233B.130(2)(a) requires a petitioner
 filing a petition for judicial review to name all parties of record to the
 administrative hearing. ESEA was the petitioner in the matter below and
 because Local 14 was adverse to ESEA's position, ESEA was required to name

1 it as a respondent. Simply because Local 14 was a respondent below, however,
2 does not mean that it is a respondent in this appeal. Further, the fact that the
3 Board filed an Amended Case Appeal Statement that purported to add Local
4 14 as a respondent does not affect its status in this case. Local 14 does not
5 “contend against the appeal;” it contends in support of the appeal. Therefore,
6 it is not a respondent.

7 In this appeal, Local 14's interests are not adverse to the interests of the
8 Appellant. The appeal seeks a reversal of the District Court’s order, which
9 would have the effect of reinstating the Board’s order, meaning that Local 14
10 would replace ESEA as the exclusive bargaining agent, *which is the result that*
11 *Local 14 desires*. If Local 14 were a party to this appeal it would have been as
12 an appellant. It could have filed its own notice of appeal. Also, with the
13 Board’s agreement, Local 14 could have filed a joint notice of appeal with the
14 Board, proceeding as a single appellant, *see* NRAP 3(b)(1). If either of these
15 had occurred, Local 14 would have been entitled to file an opening and reply
16 brief. However, neither of these occurred. A timely notice of appeal is
17 jurisdictional. *Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983);
18 *Mahaffey v. Investor’s Nat’l Security Co.*, 102 Nev. 462, 464, 725 P.2d 1218,
19 1219 (1986). Local 14 is attempting to make an end run around the Nevada
20 Rules of Appellate procedure and the cited caselaw. Because Local 14 failed
21 to file a timely notice of appeal, not to mention pay the required fees, Local 14
22 is not an appellant and has no right to file an opening or reply brief in this
23 matter.

24 ///

25 ///

26 ///

27 ///

1 RESPECTFULLY, therefore, ESEA moves the Court to:

2 1. If the Court agrees with ESEA's Objection to Modification of
3 Caption resulting in Local 14's removal from the caption as a respondent, deny
4 Local 14's motion for leave to file Opening and Reply briefs as moot on the
5 basis that Local 14 is not a party to this action; or

6 2. If the Court rejects ESEA's Objection to Modification of Caption
7 resulting in Local 14's status as a respondent in this matter, deny Local 14's
8 Motion for Leave to File Opening and Reply briefs and order a briefing
9 schedule that allows Local 14 to file a single brief and that allows ESEA to
10 respond to that brief.

11 DATED this 8th day of July, 2016

12 DYER, LAWRENCE, FLAHERTY,
13 DONALDSON & PRUNTY

14 By: 

15 Francis C. Flaherty
16 Nevada Bar No. 5303
Sue S. Matuska
Nevada Bar No. 6051

17 2805 Mountain Street
18 Carson City, Nevada 89703
19 (775) 885-1896 telephone
20 (775) 885-8728 facsimile
21 falaherty@dyerlawrence.com

22 Attorneys for ESEA
23
24
25
26
27
28

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

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

CERTIFICATE OF SERVICE

This is to certify that pursuant to NRAP 25(b) and (c) on the 8th day of July, 2016, the undersigned, an employee of Dyer, Lawrence, Flaherty, Donaldson & Prunty, electronically filed the foregoing OPPOSITION TO INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 14's MOTION FOR LEAVE TO FILE OPENING AND REPLY BRIEFS with the Supreme Court of the State of Nevada, and a copy was served by the following method of service:

X BY MAIL

___ BY PERSONAL SERVICE

X BY E-MAIL

___ BY FACSIMILE

___ BY MESSENGER SERVICE

to 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

///


///

1 Gregory L. Zunino, Esq.
2 Bureau Chief
3 Attorney General's Office
4 100 N. Carson Street
5 Carson City, Nevada 89701

6 gzunino@ag.nv.gov

7 Donald J. Bordelove
8 Deputy Attorney General
9 Attorney General's Office
10 555 E. Washington Avenue, Suite 3900
11 Las Vegas, NV 89101-1068

12 dbordelove@ag.ng.gov

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Debora McEachin