

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-15-1133 Electronically Filed

Jul 08 2016 10:02 a.m.

Tracie K. Lindeman  
Clerk of Supreme Court

13                   **OBJECTION TO MODIFICATION OF CAPTION**

14           COMES NOW Respondent, Education Support Employees Association  
15           (“ESEA”) by and through its attorneys and hereby objects to the Court’s Notice  
16           of Modification of Caption. ESEA objects to the modification of caption  
17           because it does not accurately reflect the status of the parties to this matter  
18           because International Brotherhood of Teamsters, Local 14 (“Local 14”) is  
19           neither an appellant nor a respondent.

20           On June 9, 2016, Appellant, State of Nevada, Local Government  
21           Employee-Management Relations Board (“the Board”) filed its Notice of  
22           Appeal and Case Appeal Statement in the Eighth Judicial District Court and  
23           served it on ESEA. The Board’s Case Appeal Statement described the nature  
24           of the action, setting forth that: (1) the Board had issued an order, which had  
25           determined that Local 14 was entitled to replace ESEA as the exclusive  
26           bargaining agent for the support staff employees of the Clark County School  
27           District (“the District”) based on the Board’s interpretation of and then its  
28           application of NRS 288.160 and NAC 288.110(10) to the results of a second  
                runoff election between ESEA and Local 14; (2) ESEA had challenged that  
                order; and (3) the District Court disagreed with the Board’s interpretation and

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1 application of NRS 288.160 and NAC 288.110(10) and, therefore, vacated the  
2 Board's order.

3 As a governmental entity whose actions have been reversed by a district  
4 court order, the Board is an aggrieved party. *See Local Gov't Emp. v. General*  
5 *Sales Drivers*, 98 Nev. 94 (1982), 641 P.2d 478; *City of Reno v. Harris*, 111  
6 Nev. 672, 676, 895 P.2d 663, 666 (1995) (municipality has vested interest in  
7 requiring compliance with its decisions). Local 14 may have also been  
8 aggrieved by the District Court's order but Local 14 did not file a timely notice  
9 of appeal, nor did it file a joint notice of appeal with the Board. *See* NRAP  
10 3(b)(1). Because neither of these occurred, and a timely notice of appeal is  
11 jurisdictional, Local 14 is not an appellant in this matter. *Zugel v. Miller*, 99  
12 Nev. 100, 101, 659 P.2d 296, 297 (1983); *Mahaffey v. Investor's Nat'l Security*  
13 *Co.*, 102 Nev. 462, 464, 725 P.2d 1218, 1219 (1986). If not an "appellant," the  
14 only other designation for a party to an appellate action would be that of  
15 "respondent."

16 In appellate practice, a respondent is the "party who contends against an  
17 appeal." Black's Law Dictionary (4th ed. 1968) at 1476. However, Local 14  
18 does not "contend against the appeal." The appeal seeks a reversal of the  
19 District Court's order, which would have the effect of reinstating the Board's  
20 order, meaning that Local 14 would replace ESEA as the exclusive bargaining  
21 agent, *which is the result that Local 14 desires*. Thus, Local 14 is not a  
22 "respondent."<sup>1</sup>

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25 <sup>1</sup> Local 14 was an appropriate "respondent" in the district court action because  
26 NRS 233B.130(2)(a) requires a petitioner filing a petition for judicial review to name  
27 all parties of record to the administrative hearing, and, in this particular case, Local  
28 14, along with the Board, was adverse to ESEA's position, so "respondent" was  
clearly the appropriate title.

1 The Board appropriately recognized this in its Case Appeal Statement  
2 when, in response to NRAP 3(f)(3)(D), it did not list Local 14 or the District  
3 as respondents; rather it listed only ESEA.<sup>2</sup> Although the Board subsequently  
4 filed an Amended Case Appeal Statement, which added Local 14 and the  
5 District to its list of respondents, this new filing does not have the effect of  
6 changing the status of these parties. The Amended Case Appeal Statement  
7 notwithstanding, Local 14 (as well as, presumably, the District) still does not  
8 “contend against” the Board’s appeal.<sup>3</sup>

9 Similarly, Local 14's subsequent filing of a Motion for Leave to File  
10 Opening and Reply Briefs does not give it status as a party to this matter.  
11 Indeed, it reveals its attempt to make an end run around the Nevada Rules of  
12 Appellate Procedure and this Court’s rulings. *See* ESEA’s Opposition to Local  
13 14's Motion for Leave to File Opening and Reply Briefs at 2 which is filed  
14 concurrently herewith. This Court simply has no jurisdiction to hear Local 14's  
15 case as an appellant, and it is not a respondent.

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22 <sup>2</sup> The District, as a local government employer governed by NRS chapter 288,  
23 must negotiate and deal with whichever employee organization (ESEA or Local 14)  
24 is ultimately declared to be the exclusive bargaining agent. To date, the District has  
25 not stated whether it has any personal rights that have been or will be injuriously  
26 affected, or whether it has any need to “contend against the appeal.”

27 <sup>3</sup> Indeed, on June 29, 2016, Local 14 filed with this Court a motion to allow it  
28 to file an opening brief as if it were an appellant in this matter, an acknowledgment  
that it is not a respondent in this matter.

1           RESPECTFULLY, therefore, ESEA:

2           1.       Notifies the Court that the modified caption, which resulted from  
3 the Board's Amended Case Appeal Statement, does not accurately reflect the  
4 status of the parties to this matter, and ESEA objects to the Modification of  
5 Caption.

6           2.       Urges the Court to modify the caption to remove Local 14 and the  
7 District as respondents.

8           DATED this 8th day of July, 2016

9                           DYER, LAWRENCE, FLAHERTY,  
10                           DONALDSON & PRUNTY

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**CERTIFICATE OF SERVICE**

This is to certify that pursuant to NRAP 25(b) and (c) on the 8<sup>th</sup> day of July, 2016, the undersigned, an employee of Dyer, Lawrence, Flaherty, Donaldson & Prunty, electronically filed the foregoing OBJECTION TO MODIFICATION OF CAPTION with the Supreme Court of the State of Nevada, and a copy was served by the following method of service:

\_X\_ BY MAIL

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\_X\_ BY E-MAIL

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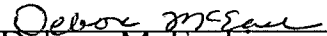
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