

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-15-716 Electronically Filed

Jul 08 2016 10:57 a.m.

Tracie K. Lindeman
Clerk of Supreme Court

13 **AMENDED OPPOSITION TO INTERNATIONAL BROTHERHOOD**
14 **OF 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.

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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: 

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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 AMENDED 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:

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Debora McEachin

EXHIBIT “A”

EXHIBIT “A”

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

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

VS.

Respondents.

On June 9, 2016, Appellant, State of Nevada, Local Government Employee-Management Relations Board (“the Board”) filed its Notice of Appeal and Case Appeal Statement in the Eighth Judicial District Court and served it on ESEA. The Board’s Case Appeal Statement described the nature of the action, setting forth that: (1) the Board had issued an order, which had determined that Local 14 was entitled to replace ESEA as the exclusive bargaining agent for the support staff employees of the Clark County School District (“the District”) based on the Board’s interpretation of and then its 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

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."¹

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25 ¹ 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.² 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.³

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 ² 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 ³ 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

11 By: 

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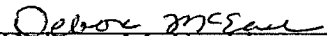
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