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,

Respondents.
_____/

Supreme Court No. 70586

District Court Case No. A-15-715571-J

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Tracie K. Lindeman
Clerk of Supreme Court

RESPONSE TO STATE OF NEVADA LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD's DOCKETING STATEMENT

COMES NOW Respondent Education Support Employees Association ("ESEA"), by and through its attorneys and files its Response to the State of Nevada, Local Government Employee-Management Relation Board's ("the Board's") Docketing Statement. This Response is based on Nevada Rule of Appellate Procedure ("NRAP") 14(f) as ESEA strongly disagrees with appellant's statement of the case and issues on appeal.

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To comply with NRAP 14(f), ESEA attaches hereto, as Exhibit A, a one page document, in the format of this Court's docketing statement, that includes only the items to which ESEA responds.

DATED this 15 day of July, 2016

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CERTIFICATE OF SERVICE

This is to certify that pursuant to NRAP 25(b) and (c) on the 15th day of July, 2016, the undersigned, an employee of Dyer, Lawrence, Flaherty, Donaldson & Prunty, electronically filed the foregoing RESPONSE TO DOCKETING STATEMENT with the Supreme Court of the State of Nevada, and a copy was served by the following method of service:

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EXHIBIT "A"

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6. Pending and prior proceedings in this court.

The Board states that this appeal concerns an election that occurred after the prior proceedings which it lists, but it fails to point out that, in those prior proceedings, this Court interpreted the very same sections of NRS and NAC that are at issue in this appeal. In *Education Support Employees Ass'n v. State of Nevada, Local Government Employee-Management Relations Board et al.*, Docket Nos. 42315 and 42338 (December 21, 2005) this Court stated that "the statute *and* administrative code plainly and unambiguously state that to win an election, the employee organization must have 'a majority of the employees within the particular bargaining unit.'" (Emphasis added). Then, in *International Brotherhood of Teamsters, Local 14 v. Education Support Ass'n et al.*, Docket No. 51010 (December 21, 2009) this Court repeated:

> [T]he language of NRS 288.160 *and* NAC 288.110 are plain and unambiguous and require an employee organization to obtain support from a majority of all of the members of the bargaining unit *and not just a majority of those who vote.*

(Emphasis added). Further, this Court stated that "NRS 288.160(4)'s and NAC 288.110(10(d)'s majority-vote requirement is equally applicable to the runoff election." *Id.* Thus, these prior proceedings have already interpreted NRS 288.160 *and* NAC 288.110.

8. Nature of the action.

Contrary to the Board's assertion that ESEA formerly was the recognized bargaining agent, ESEA is currently and always has been the recognized, exclusive bargaining agent of the support staff employees of the Clark County School District. After correctly applying this Court's prior holdings to a 2006 representation election and to a 2015 runoff election between ESEA and Local 14 (which had the effect of continuing ESEA's status), the Board departed from these holdings to hold a second runoff election between the same parties and apply a lower standard of "*just a majority of those who voted.*" ESEA challenged the Board's action by filing a petition for judicial review, and the District Court agreed with ESEA, resulting in ESEA's continued status as the exclusive bargaining agent.

9. Issues on appeal.

After holding a representation election between ESEA and Local 14 and a runoff election, also between ESEA and Local 14, and applying the correct majority-of-the-bargaining unit standard, did the Board have authority to hold a second runoff election between the same parties to apply the different election standard of "*just a majority of those who voted*?"

12. Other issues.

This matter is <u>not</u> an issue of first-impression. As explained above, this Court has twice addressed the exact issue in this matter. The Board's "accusation" that this Court did not consider the "practical implications" when it made such holdings does not convert this into a matter of first-impression. Nor do its characterizations of this Court's prior holdings as being "unworkable" or "unrealistic" transform this appeal into a new matter for this Court. There is nothing unworkable or unrealistic about requiring a state agency to apply the orders of the supreme court of the State. Nor is it unworkable or unrealistic to require a rival employee organization to show that it has the support of a majority of all the employees in the bargaining unit when that is the standard that the incumbent employee organization had to meet in order to gain initial recognition.

13. Assignment to the Court of Appeals or retention in the Supreme Court.

This is an appeal of an administrative agency's decision and NRAP 17(b)(4) states that "[a]dministrative agency appeals" are presumptively assigned to the Court of Appeals. Although ESEA does not disagree that this appeal deals with an important issue of public policy, it is not aware, nor does the Board aver that there are pending matters that would make this a statewide issue at this time such that NRAP 17(a)(14) would apply. ESEA also asserts that NRAP 17(a)(3) refers to the statewide or local primary and general elections and not elections governed by NRS chapter 288.