

as set forth in Section 5, below, to identify any duplicate return envelopes received from the same voter.

If the eligibility of the prospective voter is not challenged, the return envelope does not bear a "dupl." key number, and the *Excelsior* list and supplemental list do not reflect that the voter has been sent a duplicate ballot kit by the EMRB or designated as "TERMED/QUIT," Counter 1 will open the return envelope, extract the ballot envelope, and display the *unopened* ballot envelope to Counter 3 and Counter 4. Counter 1 will then drop the unopened ballot envelope into the box designated for that purpose.

If there is a ballot in the return envelope without a ballot envelope, Counter 1 will *keep the ballot folded* and place it in the box with the unopened ballot envelopes.

If there is no ballot envelope or ballot in the return envelope, Counter 3 and Counter 4 will each note that fact on his copy of the *Excelsior* list or supplemental list, as appropriate.

If a return envelope contains two or more ballot envelopes or ballots, no such ballot will be counted, but the Commissioner will preserve it for display to the parties. Counter 1 will staple both (or all) the duplicate ballots together and place them in the box designated for return envelopes with "dupl." key numbers.

The processing of the return envelopes will continue in this manner until all the return envelopes given to the team have been examined and processed. When this part of the process has been completed, the Commissioner will collect from each counting team the boxes containing the challenged return envelopes, the return envelopes bearing "dupl." key numbers and the other return envelopes received from voters who were sent a duplicate ballot kit, and all the opened and empty return envelopes. (These last will be destroyed by the Commissioner.) At this point, each counting team will have one or more boxes containing unopened ballot envelopes (and possibly one or more folded ballots for those voters who failed to use ballot envelopes). These will be processed as set forth in Section 6, below.

5. Return envelopes bearing "dupl." key numbers or returned by voters who were sent a duplicate ballot kit.

The Commissioner will examine, in the presence of a representative of each party, all the return envelopes bearing "dupl." key numbers and any other return envelope received from a voter who was sent a duplicate ballot kit. The Commissioner will sort these, by key number, to determine whether any prospective voter has returned more than one return envelope. (This would be reflected by return envelopes bearing, e.g., key number "237" and "237 (dupl.)")

If the Commissioner determines that such a prospective voter has returned only one return envelope, the Commissioner will open the return envelope, extract the ballot envelope (or ballot without a ballot envelope), and give the ballot envelope (or folded ballot) to a counting team for processing in accordance with Section 6, below.

If the Commissioner determines that a prospective voter has returned two or more return envelopes, the Commissioner will examine each return envelope to determine which one bears the earlier postmark. The return envelope with the earlier postmark will be processed as set forth in the last sentence of this paragraph, and the remaining return envelope(s) will be segregated by the Commissioner as "duplicate" and preserved, unopened, for display to the parties. If one or more of the postmarks are illegible, the return envelope with the earliest legible postmark will be processed as

set forth in the last sentence of this paragraph, and the remaining return envelope(s) will be segregated by the Commissioner as "duplicate" and preserved, unopened, for display to the parties.² The return envelope containing the presumptively valid ballot will be opened by the Commissioner, who will extract the ballot envelope (or ballot without a ballot envelope), and give the ballot envelope (or folded ballot) to a counting team for processing in accordance with Section 6, below. (Ref: EA Sec. IV(B)(3), (C); CHM § 11336.4)

When the Commissioner has completed this process, displayed to the members of the trouble-shooting team any duplicate return envelopes or duplicate ballots, and obtained each member's consent to the destruction, the Commissioner will destroy every such duplicate.

6. Opening of ballot envelopes and counting of ballots.

After it has processed the return envelopes and the Commissioner has collected and processed any "dupl.," potential duplicate or challenged return envelopes, each counting team will process its ballot envelopes in the following manner. Counter 1 will count the ballot envelopes the team has been assigned to count to determine a total number of ballot envelopes the team has been assigned to count. Counter 2 will then count the ballot envelopes. When the counting team agrees on the total number of ballot envelopes, that number will be inserted on the line following the word "Total" on tally sheet that is Exhibit 1 by an observer. Counter 1 will open each ballot envelope, one at a time, display the empty ballot envelope to Counter 2, unfold the enclosed ballot, and place the ballot on the table, face-up, in front of Counter 2. Counter 2 will announce and display to Counter 3 and Counter 4 and both observers the preference expressed on the ballot and then place the ballot, face-up, in one of three boxes sorted according to preference (i.e., a box for the Teamsters, a box for ESEA, and a box for "no union.") (Ref: CHM §§ 11340.5, 11340.6.)

A ballot is invalid and subject to challenge if it:

- (a) Is one of two or more ballots contained in a ballot envelope;
- (b) Is signed by the voter;
- (c) Bears the voter's name or key number or any other means of identifying the voter;
- (d) Is blank or otherwise fails to reflect a vote for any of the choices on the ballot; or
- (e) Denotes a vote for more than one of the choices on the ballot. (CHM § 11340.7.)

As each ballot is called and displayed to Counter 3, Counter 4 and the observers, either observer may challenge the validity of the ballot on any ground set forth above. *If no challenge to a ballot is asserted at that time, it is deemed waived.* If the validity of a ballot is challenged on any ground set forth in paragraph (b) through (e), inclusive, of the preceding paragraph, it will be tallied as a challenged ballot. Counter 2 will write "challenged" on the face of the ballot and place it in a box designated for challenged ballots. If a ballot envelope contains two or more ballots, Counter 2 will staple both (or all) the duplicate ballots together and segregate them for delivery to the Commissioner. Any such duplicate ballots will not be tallied as challenged ballots and will not be counted under any circumstances.

After all the ballot envelopes have been opened and sorted in the manner described above, a counter will count or recount the number of ballots in each box in the view of both observers until both observers agree on the number of challenged ballots and the number of votes cast for the Teamsters or ESEA. As each total is agreed upon, an observer will enter the total on a tally sheet, in the form

² If none of the return envelopes received from such a voter bears a legible postmark, *all* of the return envelopes from that voter will be attached together, segregated by the Commissioner as "duplicate" and preserved for display to the parties. None of these envelopes will be opened.

set forth as Exhibit 1. Each tally sheet must be completed legibly in green ink, and must be signed by both observers. If any alterations are made to a tally sheet, both observers must initial the change.

When each counting team has completed the processing of ballot envelopes and the tally sheets have been completed and signed, it will deliver to the Commissioner the challenged ballots, the completed and signed tally sheets, and the opened and empty ballot envelopes. (These last will be destroyed by the Commissioner.) The remaining ballots (i.e., the ballots counted by each counting team) will be maintained at the counting table, sealed with tape in their respective boxes, until any requested recount (see Section 9, below) has been completed. (Ref: CHM § 11340.6.)

7. Commissioner to resolve impasse.

In the event of an impasse among the members of a counting team relating to any aspect of the foregoing process, the Commissioner will resolve the impasse, subject to whatever challenge may be asserted relating to the eligibility of a voter or the validity of a ballot.

8. Commissioner's preliminary tally of ballots.

When all the completed tally sheets have been delivered to the Commissioner by each counting team, the Commissioner will tally the total number of challenged ballots and the total number of votes cast for the Teamsters and the ESEA.

Each challenged ballot will be given a unique identifying number by the Commissioner and will, after examination, be kept segregated by the Commissioner. If it becomes necessary thereafter for any person, including the Commissioner or any member or employee of the EMRB, to examine any challenged ballot, the parties will be given prior notice of the examination and an opportunity to be present while the examination is conducted. (Ref: CHM §§ 11340.7(a); EA Sec. V(D).)

After identifying each challenged ballot as described above, the Commissioner will determine the validity or invalidity of any ballot that has been challenged on a ground *other than* the asserted ineligibility of the voter. Any such ballot that is determined to be valid by the Commissioner will be counted by him as a vote for the Teamsters or ESEA, as the case may be, and added to the total number of votes cast for that choice. After determining that a challenged ballot is valid or invalid, the Commissioner will note "challenge overruled" or "challenge sustained," as appropriate, and initial the ballot. Any ballot that clearly reflects the intention of the voter, as determined by the Commissioner in the sole exercise of his discretion, will be deemed to be valid notwithstanding the presence of any erasure or unorthodox marking of the ballot. (Ref: CHM § 11340.7; EA Sec. V(D).)

Any remaining challenged ballots will be those challenged on the ground of voter ineligibility. The Commissioner will not attempt to determine the validity or invalidity of any such ballot.

9. Recount.

After the Commissioner has made a preliminary tally of the ballots and (if required and authorized) ruled on the validity or invalidity of any challenged ballots in accordance with Section 8, above, either the Teamsters or ESEA may request that some or all of the ballots be recounted. If any discrepancy in the ballot count appears to involve only the ballots counted by certain counting teams, the party demanding a recount may request that only those ballots be recounted, but the other party may demand that the ballots counted by all the counting teams be recounted.

If a recount is demanded, it will be conducted by the Commissioner and whatever additional persons he may direct to assist him. Authorized representatives of the parties will be entitled to observe the recount.

10. Commissioner's final tally of ballots.

After making his preliminary tally, the Commissioner will prepare a written report of his final tally in the form attached as Exhibit 2. A copy of the report will be given to representatives of the Teamsters, ESEA and the Clark County School District. Each representative will sign the original of the report to acknowledge the party's receipt of a copy. (Ref: NAC 288.110(4); CHM § 11340.8.)

11. Meal and rest breaks; security of ballot-counting room.

The process of counting and tallying ballots will continue on March 5, 2013 until 7:30 pm Pacific Standard Time (or until such later time as may be mutually agreed by the parties and the Commissioner), and from day to day thereafter until the process has been completed and the final tally has been certified by the Commissioner.

From time to time during the process of counting and tallying ballots, and in any case at least once at or about mid-morning and again at or about mid-afternoon, the Commissioner may announce a rest break of not less than 15 minutes to allow members of the counting teams a rest period. The Commissioner shall also allow members of the counting teams a meal period of not less than 80 minutes at or about mid-day unless all parties and the Commissioner mutually agree to dispense with or delay the meal period. Any counter or observer needing to take a break at any other time may do so if an alternate who has been trained by the Commissioner in accordance with Section 1 of this Procedure is available to take his place.

During any rest period, the area of the counting room containing the counting tables ("the counting area") will be vacated and no person, other than the Commissioner or any person accompanying him, will approach any counting table or any area where ballots are being kept until the Commissioner announces that the rest period has ended. The counting area will be segregated from the rest of the counting room with a rope or some similar line of demarcation.

During any meal period, the counting room will be closed and locked for the duration of the period and security officer will remain present to ensure that no person enters the counting room until the Commissioner returns and announces that the meal period has ended.

Any person entering or exiting the counting room while it is open, other than employees of the Sawyer Building, will be required to sign in and out, giving his name and the time of his entry or exit to the security guard monitoring the door. Any such person must use the door nearest the registration desk to enter or exit the room. Any attorney for the parties and any person acting as an observer, counter or alternate will be issued a name badge by the Commissioner, and will be required to wear the badge while in the counting room. Any person without a name badge will not be permitted in the counting area, but may observe the proceedings from outside the counting area so long as he does not disrupt the counting process. The parties will arrange for the presence of security personnel in the counting room, and any person who disrupts the counting process or otherwise behaves in a discourteous or unprofessional manner may be removed from the counting room at the request of the Commissioner.

Although coffee and water are expected to be available in the counting room outside the counting area, no food or drink of any kind will be allowed in the counting area itself. No bags,

purses, pens (other than the green pens issued by the Commissioner) or markers will be permitted in the counting area.

In the event of a bomb threat, fire alarm or other emergency occurring during the counting process that requires that the counting room be vacated, the members of the counting team shall exit in an orderly fashion and shall leave the ballots and counting materials in the counting room. The Commissioner shall have authority to order that any additional security precautions be taken.

If the process of counting and tallying ballots cannot be completed on March 5, 2013, the process will resume the following day and each day thereafter, at such time and place as the Commissioner designates in consultation with the parties. During each hiatus, the Commissioner will take such action as is necessary to secure the ballots, the tally sheets and any related records (e.g., the copies of the *Excelsior* list and supplemental list) at the offices of the EMRB or at some other secure and "neutral" location designated by the Commissioner. To the extent practicable, the ballots and records being counted and tallied by each counting team will be segregated from the ballots and records of every other team, so that the accuracy of each counting team's tally is maintained and the team can resume its work after the hiatus without undue delay or confusion. Any expense associated with the transportation and safeguarding of ballots and records will be borne equally by the parties. A representative of each party may accompany the ballots and records while they are being transported to a secure location.

Upon the conclusion of the counting process, the Commissioner will arrange for the transportation and secure storage of the ballots and related documents, until such time as the EMRB or a court of competent jurisdiction orders the destruction of these materials. The Teamsters and ESEA will share equally in any cost associated with such transportation and storage.

The End

NEVADA LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

Counting Team No. _____
Case No. A1-045735

Important: This form must be completed legibly, in green ink, and any changes must be initialed by both observers who sign the form. Return this form to the Commissioner when the process of counting ballots has been completed.

We hereby certify that the number of challenged ballots identified by the above-referenced counting team, and the number of votes counted by the team and cast for Teamsters Local 14 or ESEA, are as follows:

| | Number |
|--------------------|--------|
| Challenged ballots | |
| Teamsters Local 14 | |
| ESEA | |

Total _____

Date: March _____, 2013.

ESEA Observer _____
Print Name

Signature

Teamsters Observer _____
Print Name

Signature

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

_____ /

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: | _____ |
| 2. Number of void ballots cast: | _____ |
| 3. Number of ballots challenged based on alleged defect in ballot: | _____ |
| 3(a). Number of challenges sustained: | _____ |
| 3(b). Number of challenges overruled (include in 5, 6 or 7, as appropriate): | _____ |
| 4. Number of valid votes cast for Teamsters Local 14: | _____ |
| 5. Number of valid votes cast for Education Support Employees Association: | _____ |
| 6. Number of valid votes cast for No Union: | _____ |
| 7. Total number of valid votes counted (sum of 4, 5 and 6): | _____ |
| 8. Number of ballots challenged based on alleged ineligibility of voter: | _____ |

Dated: _____, 2013.

By the Commissioner _____
Brian Scroggins

We acknowledge receipt of a copy of this tally:

Teamsters Local 14

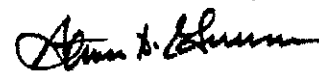
Clark County School District

Education Support
Employees Association

By _____

By _____

By _____



CLERK OF THE COURT

1 **NEOJ**
2 Kristin L. Martin, SBN 7807
3 Andrew J. Kahn, SBN 3751
4 **McCRACKEN, STEMERMAN & HOLSBERY**
5 1630 S. Commerce Street
6 Las Vegas, NV 89102
7 Tel: (702) 386-5107
8 Fax: (702) 386-9848
9 klm@dcbsf.com
10 ajk@dcbsf.com

11 Attorneys for International Brotherhood of
12 Teamsters Local 14

13 **EIGHTH JUDICIAL DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 **INTERNATIONAL BROTHERHOOD OF**
16 **TEAMSTERS LOCAL 14, an employee**
17 **organization,**

18 **Petitioner,**

19 **v.**

20 **EDUCATION SUPPORT EMPLOYEES**
21 **ASSOCIATION, a Nevada nonprofit**
22 **corporation; STATE OF NEVADA, LOCAL**
23 **GOVERNMENT EMPLOYEE-**
24 **MANAGEMENT RELATIONS BOARD, an**
25 **agency of the State of Nevada; and CLARK**
26 **COUNTY SCHOOL DISTRICT, a county**
27 **school district,**

28 **Respondents.**

CASE NO.: 06A528346

NOTICE OF ENTRY OF ORDER
GRANTING PETITION FOR
JUDICIAL REVIEW

NOTICE OF ENTRY OF ORDER
GRANTING PETITION FOR JUDICIAL REVIEW

Case No.: A528346

1 PLEASE TAKE NOTICE that on January 26, 2007, the attached order was
2 entered by the Court.

3
4 Dated: February 4, 2013

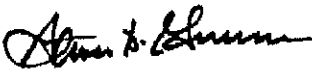
Respectfully submitted,

5 **McCRACKEN, STEMERMAN & HOLSBERY**

6
7 /s/ Kristin L. Martin

8 KRISTIN L. MARTIN

9 Attorneys for International Brotherhood of Teamsters
10 Local 14
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27
28


CLERK OF THE COURT

ORDER

Kristin L. Martin, SBN 7807
Andrew J. Kahn, SBN 3751
McCRACKEN, STEMERMAN & HOLSBERRY
1630 S. Commerce Street
Las Vegas, NV 89102
Tel: (702) 386-5107
Fax: (702) 386-9848
klm@dcbsf.com
ajk@dcbsf.com

Attorneys for International Brotherhood of Teamsters
Local 14

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 14, an employee organization,

Petitioner,

v.

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION, a Nevada nonprofit corporation;
STATE OF NEVADA, LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS
BOARD, an agency of the State of Nevada; and
CLARK COUNTY SCHOOL DISTRICT, a county
school district,

Respondents.

CASE NO.: 06A528346

ORDER

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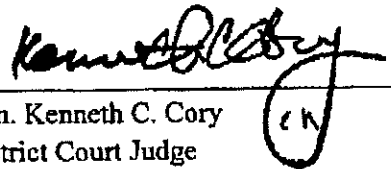
| | | | |
|---|--|---|--|
| <input type="checkbox"/> Stip Dis | <input type="checkbox"/> Stip Jdgmt | <input checked="" type="checkbox"/> Sum Jdgmt | FINAL DISPOSITIONS |
| <input type="checkbox"/> Summary Trial Jdgmt | <input type="checkbox"/> Stip Jdgmt | <input type="checkbox"/> Non-Jury Trial | <input type="checkbox"/> Time Limit Expired |
| <input type="checkbox"/> Judgment on Arb Award | <input type="checkbox"/> Default Jdgmt | <input type="checkbox"/> Jury Trial | <input type="checkbox"/> Dismissed (with or without prejudice) |
| <input type="checkbox"/> Judgment Dis (by deft) | <input type="checkbox"/> Transferred | | <input type="checkbox"/> Judgment Satisfied/Paid in full |

1 Petitioner International Brotherhood of Teamsters Local 14's Second Supplemental Petition
2 for Judicial Review came for hearing in Department 1 of this Court at 10:00 a.m. on January 8, 2013.
3 Appearing for Petitioner International Brotherhood of Teamsters Local 14 ("Local 14") was Kristin
4 L. Martin of McCracken, Stemerman & Holsberry. Appearing for Respondent State of Nevada Local
5 Government Employee-Management Relations Board ("EMRB") was Nevada Attorney General by
6 Deputy Attorney General Scott Davis. Appearing for Respondent Education Support Employees
7 Association ("ESEA") was Michael Dyer of Dyer, Lawrence, Penrose, Flaherty & Donaldson.

8 The Petition for Judicial Review is GRANTED. This matter is remanded to the EMRB to
9 adopt an election plan for the runoff election between Local 14 and ESEA that is reasonably
10 calculated to produce a definitive result.
11

12 IT IS SO ORDERED.

13 Dated this 31 day of January, 2013.

14
15 
16 Hon. Kenneth C. Cory
17 District Court Judge
18
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26

1 **CERTIFICATE OF SERVICE**

2
3 The undersigned hereby certifies that on February 4, 2013, the foregoing NOTICE OF
4 ENTRY OF ORDER GRANTING PETITION FOR JUDICIAL REVIEW in Case No.:
5 A528346 has been filed through the Wiz-Net Electronic filing system of the Eighth Judicial
6 District Court, Clark County, Nevada. The foregoing will be sent via U.S. First Class Mail to
7 the interested parties in this action as follows:

8
9 Via First Class Mail:

10 Donna Mendoza-Mitchell, Esq.
11 Carlos McDade, Esq.
12 Scott D. Greenburg, Esq.
13 Office of General Counsel
14 Clark County School District
15 5100 W. Sahara Avenue
16 Las Vegas, NV 89146

17 Michael Dyer, Esq.
18 James W. Penrose, Esq.
19 Todd E. Reese, Esq.
20 Dyer, Lawrence, Penrose, Flaherty
21 Donaldson & Prunty
22 2805 Mountain Street
23 Carson City, NV 89703

24 Catherine Cortez Masto, Esq.
25 Nevada Attorney General
26 Scott Davis, Esq. Deputy Attorney General
27 555 E. Washington Avenue #3900
28 Las Vegas, NV 89101

Dated: February 4, 2013

/s/ Dinh Luong
Dinh Luong

CERTIFICATE OF SERVICE

Case No.: A528346

000126

1 CATHERINE CORTEZ MASTO
Attorney General
2 Scott Davis, #10019
Deputy Attorney General
3 555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
4 (702) 486-3894
(702) 486-3416 (fax)
5 sdavis@ag.nv.gov
Attorneys for Petitioner
6

Electronically Filed
Mar 01 2013 04:27 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

7 IN THE SUPREME COURT OF THE STATE OF NEVADA

8 STATE OF NEVADA, LOCAL
9 GOVERNMENT-EMPLOYEE
MANAGEMENT RELATIONS
10 BOARD,

11 Petitioner,

12 vs.

13 THE EIGHTH JUDICIAL DISTRICT
COURT of the State of Nevada, in and
14 for the County of Clark and THE
HONORABLE KENNETH CORY,
District Judge,

15 Respondents

16 and

17 INTERNATIONAL
18 BROTHERHOOD OF TEAMSTERS,
LOCAL 14; EDUCATION SUPPORT
19 EMPLOYEES ASSOCIATION; and
CLARK COUNTY SCHOOL
20 DISTRICT,

21 Real Parties in Interest

SUPREME COURT CASE NO.:

District Court Case No. 06-A-
528346

22 **NOTICE OF PETITION FOR WRIT OF MANDAMUS OR**
23 **IN THE ALTERNATIVE FOR WRIT OF CERTIORARI**

24 **TO: HONORABLE KENNETH CORY, DISTRICT COURT JUDGE;**

25 **TO: INTERNATIONAL BROTHERHOOD OF TEAMSTERS,**
26 **LOCAL 14 by and through its attorney KRISTIN L. MARTIN,**
27 **ESQ.;**
28

1 **TO: EDUCATION SUPPORT EMPLOYEES ASSOCIATION by and**
2 **through its attorney MICHAEL DYER, ESQ.; and**

3 **TO: CLARK COUNTY SCHOOL DISTRICT by and through its**
4 **attorney CARLOS L. McDADE, ESQ.**

5 Please take notice, pursuant to NRAP 21(a)(1) that Petitioner the
6 STATE OF NEVADA, LOCAL GOVERNMENT EMPLOYEE-
7 MANAGEMENT RELATIONS BOARD has filed a Petition for Writ of
8 Mandamus or in the Alternative For a Writ of Certiorari on this 1st day of
9 March, 2013.

10 DATED this 01 day of March, 2013.

11
12 CATHERINE CORTEZ MASTO
13 ATTORNEY GENERAL

14
15 BY: 

16 SCOTT DAVIS, #10019
17 Deputy Attorney General
18 555 E. Washington Avenue, Suite 3900
19 Las Vegas, NV 89101
20 Attorneys for LOCAL GOVERNMENT
21 EMPLOYEE-MANAGEMENT
22 RELATIONS BOARD
23
24
25
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27
28

CERTIFICATE OF SERVICE

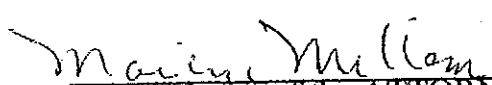
I hereby certify that I am an employee of the Office of the Attorney General and that on the 1st day of March, 2013, pursuant to NRAP 25(c)(1)(B), I caused the foregoing NOTICE OF PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE FOR WRIT OF CERTIORARI to be served by mail on the parties listed below:

The Honorable Kenneth C. Cory
Eighth Judicial District Court
Department I
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

Kristin L. Martin, Esq.
McCracken, Stemerman & Holsberry
1630 S. Commerce St.
Las Vegas, NV 89012
*Attorneys for International
Brotherhood of Teamsters, Local 14*

Michael W. Dyer, Esq.
Dyer, Lawrence, Penrose, Flaherty,
Donaldson & Prunty
2805 Mountain St.
Carson City, NV 89703
*Attorneys for Education Support
Employees Association*

Carlos McDade, Esq.
Donna Mendoza-Mitchell, Esq.
Office of General Counsel
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146
Attorney for Clark County School District


An Employee of the ATTORNEY
GENERAL'S OFFICE

1 CATHERINE CORTEZ MASTO
Attorney General
2 Scott Davis, #10019
Deputy Attorney General
3 555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
4 (702) 486-3894
(702) 486-3416 (fax)
5 sdavis@ag.nv.gov
Attorneys for Petitioner

Electronically Filed
Mar 01 2013 04:25 p.m.
Tracie K. Linderman
Clerk of Supreme Court

6
7 IN THE SUPREME COURT OF THE STATE OF NEVADA

8 STATE OF NEVADA, LOCAL
9 GOVERNMENT-EMPLOYEE
MANAGEMENT RELATIONS
10 BOARD,

SUPREME COURT CASE NO.:

11 Petitioner,
12 vs.

District Court Case No. 06-A-
528346

13 THE EIGHTH JUDICIAL DISTRICT
COURT of the State of Nevada, in and
14 for the County of Clark and THE
HONORABLE KENNETH CORY,
District Judge,

15 Respondents

16 and

17 INTERNATIONAL
18 BROTHERHOOD OF TEAMSTERS,
LOCAL 14; EDUCATION SUPPORT
19 EMPLOYEES ASSOCIATION; and
20 CLARK COUNTY SCHOOL
DISTRICT,

21 Real Parties in Interest

22
23 **PETITION FOR WRIT OF MANDAMUS OR**
24 **IN THE ALTERNATIVE FOR WRIT OF CERTIORARI**

25 **I. PETITION AND RELIEF SOUGHT**

26 The STATE OF NEVADA, LOCAL GOVERNMENT EMPLOYEE-
27 MANAGEMENT RELATIONS BOARD ("EMRB"), by and through
28

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

1 counsel CATHERINE CORTEZ MASTO, Attorney General for the State of
2 Nevada and Scott Davis, Deputy Attorney General, respectfully petitions this
3 Court for the issuance of a writ of mandate or in the alternative a writ of
4 certiorari against the Honorable Kenneth Cory, Judge of the Eighth Judicial
5 District Court, State of Nevada directing said Judge and Court to deny the
6 petition for judicial review filed by International Brotherhood of Teamsters,
7 Local 14 ("Local 14") in District Court Case No. 06-A-528346, and to refrain
8 and desist from any further judicial review over representative election
9 proceedings before the EMRB until after the conclusion of any such election
10 or alternatively declaring the portion of District Court's order dated January
11 21, 2013 and entered on February 1, 2013 which grants Local 14's petition
12 for judicial review to be annulled, void and of no effect.

13 The EMRB asserts that NRS 288.160(4), the Local Government
14 Employee-Management Relations Act - NRS Chapter 288 ("EMRA") and
15 principles of administrative law eliminate the availability of judicial review of
16 any pre-election order or decision of the EMRB during a representative
17 election being conducted pursuant to NRS 288.160(4). A district court cannot
18 acquire jurisdiction to conduct a judicial review over such an election
19 proceeding until after the election has been conducted and the EMRB makes a
20 final decision pertaining to the recognition of a bargaining agent by a local
21 government employer. Specifically the EMRB contends that the District
22 Court lacked jurisdiction to entertain and subsequently grant the petition for
23 judicial review filed by Local 14.

24 The EMRB has no plain, speedy or adequate remedy by appeal for the
25 reason that the District Court ordered the matter remanded to the EMRB,
26 which is not an appealable order under *State Taxicab Authority v. Greenspun*,
27 109 Nev. 1022, 862 P.2d 423 (1993).
28

1 WHEREFORE the EMRB prays for relief as follows:

2 1. That a writ of mandamus be issued by this Court directing
3 Respondent District Court and the Honorable Judge thereof to dismiss and
4 deny the petition for judicial review in Case No. 06-A-528346 because the
5 District Court lacks jurisdiction to conduct a pre-election petition for judicial
6 review; or

7 2. That a writ of certiorari be issued by this Court annulling that the
8 portion of the District Court's order dated February 1, 2013 which grants
9 Local 14's petition for judicial review and declaring that said order is void and
10 is of no effect whatsoever; and

11 3. For such further relief as this Court deems proper.

12 DATED this 01 day of March, 2013.

13
14 CATHERINE CORTEZ MASTO
15 ATTORNEY GENERAL

16
17 BY: 

18 SCOTT DAVIS, #10019

19 Deputy Attorney General

20 555 E. Washington Avenue, Suite 3900

21 Las Vegas, NV 89101

22 Attorneys for LOCAL GOVERNMENT

23 EMPLOYEE-MANAGEMENT

24 RELATIONS BOARD
25
26
27
28

**AFFIDAVIT OF PARTY BENEFICIALLY INTERESTED IN
SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR IN THE
ALTERNATIVE WRIT OF CERTIORARI**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRIAN SCROGGINS, do hereby declare that:

1. I am the duly appointed Commissioner of the Nevada Local Government Employee-Management Relations Board ("EMRB") a Respondent in the underlying action and petitioner in this matter before the Nevada Supreme Court.

2. I am familiar with the operations and activities of the EMRB.

3. The EMRB affects 160 local government employers and 214 employee associations or unions representing approximately 80,000 local government employees throughout Nevada

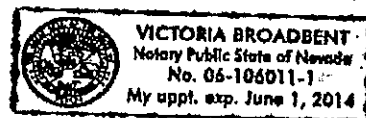
4. In my capacity as Commissioner of the EMRB, I have read the foregoing Petition for Writ of Mandamus or the Alternative for Writ of Certiorari and know the contents thereof, and that the pleading is true of my own knowledge except as to those matters stated on information and belief, and that to such matters I have believe them to be true..

FURTHER AFFIANT SAYETH NAUGHT


BRIAN SCROGGINS

SUBSCRIBED AND SWORN to before
Me this 26 day of February, 2013


Notary Public



1 **II. ISSUE PRESENTED**

2 Whether NRS 288.160(4) grants jurisdiction to a district court to
3 conduct a pre-election judicial review of an interlocutory order that
4 establishes the procedure for conducting a representative election.

5 **III. STATEMENT OF FACTS**

6 In 2002 Real Party in Interest International Brotherhood of Teamsters,
7 Local 14 petitioned the EMRB to be recognized as the bargaining agent for
8 the bargaining unit of non-certified employees employed by the Clark County
9 School District. (Appx. 001-007). This group of employees is currently
10 represented by Real Party in Interest Education Support Employees
11 Association ("ESEA"). On September 24, 2002 the EMRB decided that a
12 representative election was necessary to ascertain whether Local 14 or ESEA
13 had the majority of support of employees in the bargaining unit. (Appx. 008-
14 016). Due to a pre-election judicial review and appeal to this Court the actual
15 election was not conducted until 2006. (Appx. 034-035). The EMRB
16 determined that no organization received majority support in that election.
17 (Appx. 034-035).

18 A second petition for judicial review followed and under a former
19 version of NAC 288.110(7)¹ the District Court and then this Court held that a
20 runoff election must be conducted. (Appx. 035-036; 037-042). This Court's
21 decision was issued in December of 2009. (Appx. 037-042). After then
22 allowing Local 14 and ESEA an opportunity to reach a consent agreement on
23 the procedure to be used when conducting the runoff election, the EMRB
24 attempted to move forward and conduct the runoff election when no

25
26 ¹ See LCB File No. T001-12A. Pursuant to NRS 233B.063(3) the change to NAC
27 288.110(7) is currently a temporary change and cannot be converted into a permanent
28 change until after July 1, 2013.

1 agreement was forthcoming from Local 14 and ESEA. (Appx. 043-058).
2 Local 14 submitted a motion to the EMRB seeking approval of its own
3 proposed election plan which the EMRB denied as the plan had not been
4 agreed upon by all parties. (Appx. 059-062). After the EMRB announced its
5 intentions to move forward under the same procedure that had governed the
6 original election in 2006, Local 14 filed a petition for judicial review and
7 petition for writ of mandamus with the Eighth Judicial District Court seeking
8 review of the EMRB's decision to use the same procedures in the runoff
9 election. (Appx. 063-112).

10 Pursuant to stipulation the District Court ordered a stay of the EMRB
11 proceedings moving toward the runoff election. (Appx. 120-125). On August
12 24, 2102, the District Court lifted the stay except as to actually holding the
13 runoff election which allowed the EMRB to finalize details such as the dates
14 and locations which needed to be updated from the original election plan.
15 (Appx. 245). After the stay was lifted the EMRB approved a plan that called
16 for the election to be conducted by mail between February 4, 2013 and March
17 5, 2013. (Appx. 246-274). The plan the EMRB approved for the runoff
18 election was the same plan which had been used to conduct the original
19 election, and which had been reached by consent between Local 14 and
20 ESEA, with new dates and locations being the only substantive changes.
21 (Compare Appx. 017-030; 246-274).

22 However on January 8, 2013 the District Court granted Local 14's
23 petition for judicial review and directed the EMRB to come up with an
24 election plan that was "reasonably calculated to produce a definitive result."
25 (Appx. 365-366). The District Court did not preclude the EMRB from using
26 any election plan, including the same plan which had controlled the original
27 election, but did prevent the EMRB from moving forward with the runoff
28

1 election plan that had been approved and placed the EMRB under the
2 obligation to repeat the process of developing an election plan *ab initio*
3 (Appx. 365-366). In effect, this puts the EMRB even further behind in the
4 election process than it was at the time this Court ordered the runoff election
5 back in 2009 because the EMRB is still obligated to conduct the runoff
6 election, but is now without the benefit of an existing election plan and must
7 construct a plan from scratch.

8 In the proceedings before the District Court the EMRB repeatedly
9 argued that the District Court lacked jurisdiction to consider a pre-election
10 petition for judicial review, and that the judicial review must wait until after
11 the election was conducted. (Appx. 169-190; 275-288).² The EMRB
12 requested that the District Court make a specific finding on the issue of its
13 subject matter jurisdiction. (Appx. 287) The District Court did not make any
14 specific finding but implicitly held that it did have jurisdiction by granting the
15 petition for judicial review over the objections of the EMRB. (Appx. 365-
16 366).

17 IV. LEGAL ARGUMENT

18 In order to clarify the law in this and in future EMRB election
19 proceedings it is appropriate for this Court to exercise its original jurisdiction
20 and issue a writ of mandamus directing the District Court to deny the petition
21 for judicial review filed below or by granting a writ of certiorari to nullify the
22 District Court's order due to a lack of jurisdiction to review pre-election
23 decisions setting the procedure for a representative election. By granting this
24 writ petition the Court can definitively clarify this issue and determine

25 ² The EMRB agreed that the District Court had jurisdiction to consider that portion of
26 Local 14's petition which sought mandamus relief. The District Court properly denied the
27 request for a writ of mandate (Appx.364). Thus the harm to the EMRB in this case stems
28 entirely from the relief ordered as a result of Local 14's petition for judicial review.

1 whether Nevada will be an aberration from the prevailing standards of labor
2 law or will instead follow the uniform weight of authority.

3
4 **A. Relief by Extraordinary Writ is Appropriate And Necessary**
5 **To Clarify The Availability of Judicial Review Prior to**
6 **Holding A Representative Election Under NRS 288.160.**

7 A writ of mandamus is available to compel the performance of an act
8 by an inferior tribunal. *See* NRS 34.160 and *Round Hill Gen. Imp. Dist. v.*
9 *Newman*, 97 Nev. 601, 637 P.2d 534 (1981). "To justify the issuance of the
10 writ to enforce the performance of an act by a public officer, two things must
11 concur: the act must be one the performance of 'which the law specially
12 enjoins as a duty resulting from an office,' and an actual omission on the part
13 of the respondent to perform it." *State v. Gracey*, 11 Nev. 223, 233 (1876).
14 As set forth below, the law compels the District Court to deny Local 14's
15 petition for judicial review due to the lack of jurisdiction to conduct a pre-
16 election petition for judicial review. The actual omission of that duty
17 occurred when the District Court improperly exercised jurisdiction over the
18 judicial review by granting Local 14's petition. (Appx. 365-366).

19 Alternatively, the Court should issue a writ of certiorari that the District
20 Court's decision on Local 14's petition for judicial review was beyond its
21 jurisdiction. NRS 34.020. This Court has previously held that certiorari was
22 appropriate to remedy a district court's review of an administrative decision
23 where the district court lacked the jurisdiction to do so. *Ruddell v. Sixth*
24 *Judicial Dist. Court in and for Humboldt County*, 54 Nev. 363, 17 P.2d 693
25 (1933). Certiorari is appropriate because the District Court exceeded its
26 jurisdiction when conducting the pre-election judicial review, the order of
27 remand back to the EMRB is not an appealable order pursuant to *Greenspun*,
28

1 and no other plain, speedy and adequate remedy exists to correct the
2 jurisdictional issue. NRS 34.020(2).

3 Additionally, this Court will consider an extraordinary writ, even when
4 there is a speedy and adequate remedy at law, when "an important issue of
5 law needs clarification, and public policy will be served by this Court's
6 invocation of its original jurisdiction." *Dayside Inc. v. First Jud. Dist. Ct.*,
7 119 Nev. 404, 407, 75 P.3d 384, 386 (2003), *overruled on other grounds by*
8 *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 197
9 P.3d 1032 (2008). This petition satisfies both criteria.

10 1. This Petition Concerns An Important Issue of Law

11 The central issue in this petition is the ability of the EMRB to quickly
12 and expeditiously hold a representative election unmolested by judicial
13 interference until after the election has actually been conducted.

14 The EMRB is the state agency which administers the EMRA affecting
15 all local government employees and employers. See NRS 288.110(2). This
16 includes 160 local government employers and 214 employee associations or
17 unions representing approximately 80,000 local government employees
18 throughout Nevada. Under the EMRA, the recognized unions negotiate terms
19 and conditions of employment on behalf of these employees with their local
20 government employers. NRS 288.150. If the employees in a bargaining unit
21 become dissatisfied with their chosen representative, the EMRA provides for
22 only one mechanism for them to remove a bargaining representative- a
23 majority of employees in a bargaining unit must withdraw their support of the
24 recognized union. NRS 288.160(3)(c).³ Often, this measure of support is
25 gauged by a secret ballot election conducted by the EMRB. NRS 288.160(4).

26 ³ Individual employees lack standing to file a petition with the EMRB to dislodge an
27 incumbent union. Instead, the employees must either convince the local government
28 employer to seek written permission from the EMRB to withdraw recognition of the

1 The issue of whether a district court may conduct a pre-election judicial
2 review of the procedure chosen to conduct the election is a significant issue in
3 the field of labor law because it determines whether or not a party that seeks
4 to stall or delay a representative election has a judicially available procedure
5 to do so or whether the EMRB may expeditiously hold an election without
6 premature judicial interference.

7 When a representative election is held to determine whether a group of
8 employees supports a particular union to be the chosen representative, it is
9 imperative that the election be able to occur quickly in order to accurately
10 assess employee support for a prospective union or else employee support for
11 the prospective union may begin to wane. See Samuel Estreicher, *Improving*
12 *the Administration of the National Labor Relations Act Without Change*, 5
13 FIU L. Rev. 361, 365 (2010) (discussing the need for the NLRB to quickly
14 conduct election proceedings).

15 The importance of the question of the role that a pre-election judicial
16 review plays in delaying representation proceedings was addressed by the
17 United States Supreme Court in *Boire v. Greyhound Corp.*, 376 U.S. 473
18 (1964). In *Boire* the Supreme Court considered the legislative history of the
19 National Labor Relations Act ("NLRA") and acknowledged that Congress had
20 intentionally restricted the ability of the courts to review Board certification
21 proceedings. *Id.*⁴ According to the legislative history accepted by the
22 Supreme Court in *Boire*, setting the appropriate time for judicial review was
23 an important issue because "...the union, unless an election can promptly be

24 incumbent union, see NAC 288.145(2), or else organize themselves into a competing
25 organization which can then petition for recognition. NAC 288.146.

26 ⁴ *Boire* did discuss two narrow exceptions to the general rule that arise when national
27 interests of foreign policy are at stake, or when the agency is acting outside of its statutory
28 authority, *Boire* at 480, however neither exception is implicated in this case.

1 held to determine the choice of representation, runs the risk of impairment of
2 strength by attrition and delay while the case is dragging on through the
3 courts," and "...such provision would permit dilatory tactics in representation
4 proceedings." *Id.* at 478 (quoting H.R.Rep. No. 972, 74th Cong., 1st Sess., 5
5 and 93 Cong.Rec. 6444, respectively). Likewise, a premature judicial review
6 inhibits the EMRB's ability to accurately and effectively gauge the level of
7 support for a given union by the employees of a particular bargaining unit.

8 Where a court invades the jurisdiction and authority of a public agency
9 so that the agency's statutory duties cannot be effectively fulfilled, this raises
10 questions of "high importance." *NLRB v. Waterman S.S. Corp.*, 309 U.S. 206,
11 208 (1940). *Waterman* is especially instructive as it involved a similar
12 situation where, among other issues, the National Labor Relations Board
13 ("NLRB") was attempting to conduct a representative election but the election
14 had been halted pending review by the court of appeals. *Id.* at 224-225. After
15 exercising its discretionary authority to grant certiorari, the Supreme Court
16 held in *Waterman* that "[t]he control of the election proceedings, and the
17 determination of the steps necessary to conduct that election fairly were
18 matters which Congress entrusted to the Board alone. Interference in those
19 matters constituted error on the part of the court below." *Id.* at 226.

20 Accordingly, a lengthy and protracted election process inhibits the
21 employees' ability to freely select their bargaining representatives by
22 entrenching an already-recognized union in the position as the recognized
23 bargaining agent. As the issue in this petition concerns the only statutorily
24 available remedy for employees to select their representatives and affects the
25 ability of the EMRB to carry out meaningful elections, this petition concerns
26 important issues of law.

2. Public Policy Is Served By Granting This Petition

The EMRA reflects the public policy of this State that local government employees in Nevada have the right to join employee organizations, to have employee organizations recognized by their employers, and to have a recognized organization bargain on their behalf to establish terms and conditions of their employment. NRS 288.140; 288.150; NRS 288.270(1)(e). This Court has repeatedly acknowledged that that by enacting the EMRA, the Legislature "...intended to apply principles similar to those of the NLRA to its public employers." *Weiner v. Beatty*, 121 Nev. 243, 248-249, 116 P.3d 829, 832 (2005) (quoting *Truckee Meadows v. Int'l Firefighters*, 109 Nev. 367, 374, 849 P.2d 343, 348 (1993)).

Delaying a representative election through a premature judicial review frustrates the public policies embodied in the EMRA. As set forth above, a delay in an election by allowing premature judicial review creates impediments for local government employees to organize and to have their interests represented by the organization of their choice.

A review of authority surrounding the NLRA indicates that the need to efficiently and quickly hold representative elections without judicial interference is one of the paramount purposes of the NLRA. This was unambiguously expressed by the United States Supreme Court in *American Federation of Labor v. NLRB*, 308 U.S. 401 (1940). In *American Federation of Labor*, the Supreme Court held that the NLRA expressed a deliberate choice to exclude "representation certifications of the Board from the review of federal appellate courts." *Id.* at 411. This deliberate choice was made precisely to avoid the problems caused by "long delays in the procedure ... resulting from applications to the federal appellate courts for review of orders for elections." *Id.* at 409-410.

1 *Boire* likewise expressed that the limitations on judicial review in
2 representation proceedings under the NLRA were a deliberate choice to give
3 effect to the public policy of avoiding the lengthy delays caused by judicial
4 review. *Boire* at 478-479.

5 In *N.L.R.B. v. A.J. Tower Co.*, 329 U.S. 324 (1946) the Supreme Court
6 again acknowledged the public policy contained within the NLRA that
7 representative elections must be conducted quickly in order to be meaningful.
8 In *A.J. Tower*, the Supreme Court expressed that the representative election
9 provisions of the NLRA required "the Board [to] adopt policies and
10 promulgate rules and regulations in order that employees' votes may be
11 recorded accurately, efficiently and speedily." *Id.* at 331.

12 The National Labor Relations Board itself has also acknowledged the
13 policy contained within the NLRA that representative elections must be
14 resolved expeditiously. *See, e.g., Northeastern University*, 261 NLRB 1001,
15 1002 (1982); *see also, Tropicana Products, Inc.*, 122 NLRB 121, 123 (1958)
16 (stating "[i]n many situations, notably representation proceedings under
17 Section 9, time is of the essence if Board processes are to be effective.").

18 As the EMRA is modeled after the NLRA and is intended to apply the
19 same principles of the NLRA to Nevada's local government employees, it
20 follows that the same public policy supporting an expeditious election that is
21 free of premature judicial review arising under the NLRA also arises under
22 the EMRA. The EMRB has long held that that representation questions must
23 be resolved expeditiously. *See General Sales Drivers, Delivery Drivers, and*
24 *Helpers Teamsters Local No. 14 v. City of Las Vegas*, EMRB Case No. A1-
25 045307, Item No. 76, 1978 WL 419110 (March 6, 1978); *see also, Retail*
26 *Clerks Union, Local 1434 v. Washoe Medical Center*, EMRB Case No. A1-
27 045312, Item No. 82, 1978 WL 419116 (May 10, 1978) (referring to the
28

1 recognition procedures in NRS 288.160 as "a simple and expeditious
2 procedure").

3 As stated above, the EMRA affords that the sole remedy to employees
4 who are dissatisfied with a recognized labor union is to dislodge the
5 recognized union by withdrawing their support and often proceeding through
6 a representative election. NRS 288.160(3)(c); (4). A slow and cumbersome
7 election process that must first navigate the time-consuming and often costly
8 process of judicial review before an election can even be held only helps to
9 solidify the *status quo* because it provides extra layers of procedural
10 protection to blunt the enthusiasm for a new union to become the recognized
11 bargaining agent and begin representing the employees. This only works to
12 disadvantage the employees themselves by removing an incentive for their
13 union to be an effective representative – the incentive that the union may be
14 quickly replaced by the employees if it fails to adequately perform. This runs
15 contrary to the public policy embodied in the EMRA to allow local
16 government employees to choose their own bargaining representatives by a
17 show of majority support. NRS 288.160(2).

18 Further, the drain on support and resources that accompanies pre-
19 election judicial review interferes with the employees' right to select their
20 own bargaining representative because it favors larger organizations with the
21 resources to litigate as opposed to smaller grass-roots organizations that may
22 seek recognition as a bargaining agent but lack the resources to endure
23 lengthy pre-election litigation.

24 This public policy is expressed in NRS 288.160(4) which establishes
25 the authority to conduct secret ballot elections and authorizes judicial review
26 but simultaneously defers judicial review until after the election has been
27 concluded and a final decision has been made by the EMRB.
28

1 Therefore this petition raises issues that are important because they
2 concern the fundamental purposes of the EMRA, and public policy would be
3 served by granting this writ petition because it would return the EMRB
4 election process to the expeditious process that is free of premature judicial
5 review as envisioned by NRS 288.160(4). Thus, important questions of law
6 and public policy are involved and this Court should exercise its original
7 jurisdiction and grant this petition.

8 **B. The District Court Lacked Jurisdiction To Grant**
9 **Local 14's Petition for Judicial Review**

10 1. A District Court May Only Exercise Jurisdiction to
11 Conduct a Judicial Review Over the Actions of State
12 Administrative Agencies Where Authorized By Statute

13 This Court has held that district courts have no inherent appellate
14 jurisdiction over the acts of administrative agencies except where the
15 legislature has made some statutory provision for judicial review. *Crane v.*
16 *Continental Telephone Co. of California*, 105 Nev. 399, 401, 775 P.2d 705,
17 706 (1989).

18 Where the legislature has made such an allowance to permit judicial
19 review, "strict compliance with the statutory requirements for such review is a
20 precondition to jurisdiction by the court of judicial review, and
21 noncompliance with the requirements is grounds for dismissal." *Washoe*
22 *County v. Otto*, 128 Nev. Adv. Op. 40, p. 10, 282 P.3d 719, 725 (2012)
23 (quoting *Kame v. Employment Security Dep't*, 105 Nev. 22, 25, 769 P.2d 66,
24 68 (1989)).

25 In this case, NRS 288.160(4) is the operative statutory provision that
26 addresses judicial review of EMRB election proceedings. As set forth below,
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1 a pre-election judicial review is not authorized by NRS 288.160(4) and
2 therefore falls beyond the District Court's jurisdiction.

3
4 2. NRS 288.160(4) Limits Judicial Review Only to Final
5 Decisions Following the Conclusion of the Election

6 NRS 288.160(4) states in its entirety:

7 If the Board in good faith doubts whether any
8 employee organization is supported by a majority
9 of the local government employees in a particular
10 bargaining unit, it may conduct an election by
11 secret ballot upon the question. Subject to judicial
12 review, the decision of the Board is binding upon
13 the local government employer and all employee
14 organizations involved.

15 The allowance for judicial review, by the plain language of the statute,
16 refers to the decision that follows the Board's secret ballot election, but does
17 not encompass interlocutory or non-final orders that precede the secret ballot
18 election. This is readily apparent by the fact that subsection 4 authorizes
19 judicial review of a singular "decision of the Board" and refers to this decision
20 as the decision that is "is binding upon the local government employer and all
21 employee organizations involved." NRS 288.160(4).

22 This is also consistent with the broader principle of administrative law
23 that only final orders of an administrative agency are subject to judicial
24 review. *See Public Service Commission of Nevada v. Community Cable TV*,
25 91 Nev. 32, 42, 530 P.2d 1392, 1398 - 1399 (1975) (stating "... the qualities
26 of administrative finality in an order or determination are essential to the
27 invocation of the judicial review even though the applicable statute does not
28 contain the word 'final.'") (internal citations omitted).

1 In this case, the District Court's jurisdiction was limited by NRS
2 288.160(4) to review only of the EMRB's final order. The District Court
3 exceeded its jurisdictional authority when it granted a judicial review of a
4 non-final interlocutory order that preceded the election.

5 3. Statutory Intent Shows that NRS 288.160(4) Limits
6 Judicial Review Only To Final Post-Election Decisions.

7 A writ of certiorari is appropriate even if this Court believes NRS
8 288.160(4) is somehow ambiguous in order to rectify the District Court's
9 improper exercise of jurisdiction. NRS 34.020(2).

10 While the plain language of NRS 288.160(4) only permits judicial
11 review of the final order following the election, if the Court believes NRS
12 288.160(4) to be ambiguous and looks beyond the plain language, then the
13 interpretation is controlled by the legislative intent behind the statute and in
14 accordance with reason and public policy. *Robert E. v. Justice Court of Reno*
15 *Township, Washoe County*, 99 Nev. 443, 664 P.2d 957 (1983). The
16 applicable intent, reason and public policy also confirm that by NRS
17 288.160(4) limits judicial review only to the EMRB's final decision following
18 the election.

19 This Court has explicitly recognized that the EMRA is patterned after
20 the NLRA and the intent of the EMRA is apply the same principles of the
21 NLRA to Nevada's local government employees. *Weiner* at 248-249, 116
22 P.3d at 832. This Court has repeatedly looked to precedent concerning the
23 NLRA in order to interpret and apply the EMRA. *City of North Las Vegas v.*
24 *State Local Government Employee-Management Relations Bd.*, 127 Nev. Adv.
25 Op. 57, 261 P.3d 1071(2011); (applying NLRB precedent to consider the
26 EMRA's statute of limitations); *City of Reno v. Reno Police Protective Ass'n*,
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1 118 Nev. 889, 59 P.3d 1212 (2002) (applying the NLRB's limited deferral
2 doctrine to the EMRB); *Rosequist v. International Ass'n of Firefighters Local*
3 *1908*, 118 Nev. 444, 449, 49 P.3d 651, 654 (2002) (looking to the NLRB's
4 jurisdiction over unfair labor practices to determine extent of EMRB's
5 exclusive jurisdiction); *Truckee Meadows* at 372-377, 849 P.2d at 347-350
6 (approving the EMRB's use of the significantly-related test to determine
7 mandatory subjects of bargaining); *Reno Police Protective Ass'n v. City of*
8 *Reno*, 102 Nev. 98, 715 P.2d 1321 (1986) (approving the NLRB's *Wright*
9 *Line* balance-shifting test to prohibited labor practice claims arising out of
10 conduct that is protected by the EMRA). As the EMRA and the NLRA share
11 the same intent as stated in *Weiner*, it is instructive to consider the stated
12 legislative intent behind the NLRA as applicable to the EMRA.

13 It is black-letter law, as set forth above, that the intent behind the
14 representation election provisions in the NLRA is for the election to take
15 place quickly and expeditiously and to specifically eliminate the availability
16 of pre-election judicial reviews in order to avoid undue delays in the election.
17 *American Federation of Labor v. NLRB*, 308 U.S. 401 (1940); *Boire v.*
18 *Greyhound Corp.*, 376 U.S. 473 (1964). This point had already been well-
19 established under the NLRA by the time that the Nevada Legislature looked to
20 the NLRA when it enacted the EMRA in 1969. 1969 Nev. Stat., ch. 650, §
21 11, at 1378.

22 It is also noteworthy that when the EMRA was enacted in 1969, the bill
23 was specifically changed from its original draft in order to authorize the
24 EMRB to conduct secret ballot elections to determine whether an organization
25 would represent a given bargaining unit. See Minutes of Meeting of the
26 Assembly Committee on Government Affairs, 55th Leg. April 15, 1969;
27 Journal of the Assembly 55th Leg. at 1012 (Nev. Apr. 18, 1969) (changing
28

1 proposed procedure in representation disputes from an appeal hearing to a
2 secret ballot election). This is similar to section 9 of the NLRA which
3 authorizes the NLRB to conduct secret ballot elections to determine
4 representation questions in a bargaining unit. 29 U.S.C. § 159(e)(1).

5 This Court will presume that the Legislature acts with full knowledge
6 of the existing statutes relating to the same subject. *City of Boulder City v.*
7 *General Sales Drivers, Delivery Drivers and Helpers, Intern. Broth. of*
8 *Teamsters, Local No. 14*, 101 Nev. 117, 119, 694 P.2d 498, 500 (1985)
9 (looking to federal statutes relating to the subject of arbitration in order to
10 interpret an EMRA provision concerning arbitration). As the limitation on
11 judicial review in labor elections under federal law had been clearly
12 established since 1940 by the Supreme Court's decision in *American*
13 *Federation of Labor*, and again re-stated in 1964 in *Boire*, and as the EMRA
14 was modeled after the NLRA, it must be presumed that the Legislature had
15 full knowledge that the prevailing standard in the field of labor law was to
16 restrain judicial intervention in representative elections when it created the
17 EMRB and authorized it to conduct representative elections. If the
18 Legislature had intended to depart from the prevailing standard and subject
19 non-final orders and decisions in election proceedings to judicial review, it
20 could have easily included language to that effect within NRS 288.160(4); yet
21 it did not. See *Eddy v. State Bd. of Embalmers*, 40 Nev. 329, 163 P. 245
22 (1917).

23 Given that the EMRA is expressly patterned after the NLRA as this
24 Court recognized in *Weiner and Truckee Meadows*, it follows that the same
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1 intent to insulate election proceedings from premature judicial interference
2 under the NLRA also attaches to NRS 288.160(4).⁵

3 Furthermore, this Court will generally look to and follow the weight of
4 authority from other states that have adopted similar statutes. *e.g.*, *Streeter v.*
5 *Johnson*, 23 Nev. 194, 44 P. 819 (1896). Regarding the EMRA specifically,
6 this Court has previously looked to the decisions of other state courts when
7 applying the EMRA. *Weiner* at 247-248, 116 P.3d at 831-832; *Cone v.*
8 *Nevada Service Employees Union/SEIU Local 1107*, 116 Nev. 473, 998 P.2d
9 1178 (2000); *County of Clark v. Clark County Park Ranger Employees Ass'n*,
10 *IUPA Local 124*, 111 Nev. 1133, 1138, 901 P.2d 152, 155 (1995) (looking to
11 other states' treatment of park rangers when applying the EMRA). Other
12 states that have adopted public sector collective bargaining statutes likewise
13 hold that judicial review is simply not available in election proceedings before
14 the election has actually been conducted.

15 In *City of Hermiston v. Employment Relations Bd.*, 570 P.2d 663 (Or.
16 1977), the Oregon Supreme Court held that a petition for judicial review
17 under the Oregon Administrative Procedures Act that was taken after a state
18 labor board had ordered a representation election, but before the election had
19 taken place was not authorized and was outside of the court's jurisdiction.

20 In *School Bd. of Sarasota County v. Florida Public Emp. Employees*
21 *Relations Commission*, 333 So.2d 95 (Fla.App. 1976), a Florida Court of
22 Appeals dismissed a judicial review of a state labor commission's decision

23
24 ⁵ Typically, the NLRB's decisions after a representative election are not reviewable even
25 after the election unless an unfair labor practice charge results from a refusal to bargain
26 with a newly-recognized union. *Boire* at 476-477. Thus, a plausible interpretation of NRS
27 288.160(4) is that it clarifies that the EMRA does allow judicial review of the final order
28 after an election where it arguably would not otherwise be subject to judicial review at all
when looking exclusively at NLRA precedent.

1 about the appropriateness of a bargaining unit because the decision was not
2 reviewable until after a certification following an election.

3 In *New Hampshire Dept. of Revenue Administration v. Public Emp.*
4 *Labor Relations Bd.*, 380 A.2d 1085, 1087 (N.H. 1977), the New Hampshire
5 Supreme Court held that the courts were without authority to review a
6 representation proceeding before the votes had been cast and counted.

7 In *Ben Mar Mushroom Farms, Inc. v. Pennsylvania Labor Relations*
8 *Bd.*, 243 A.2d 372 (Pa. 1968) the Pennsylvania Supreme Court held that a
9 state labor board's order which set the time and place of a representative
10 election was an interlocutory order and was not within the court's jurisdiction
11 to review.

12 In *Wallach's Inc. v. Boland*, 253 A.D. 371, 373, 2 N.Y.S.2d 179, 181
13 (N.Y.App. Dept. 1, 1938), a New York Court of Appeals held that a labor
14 board's order directing an election was not reviewable until the final order
15 following the election was entered and that premature judicial review would
16 serve to discourage the objective of the state's collective bargaining statutes.

17 In *Five County Joint Juvenile Detention Center v. State Employment*
18 *Relations Bd.* 565 N.E.2d 546 (Ohio, 1991) the Ohio Supreme Court held that
19 "[a]n order of the State Employment Relations Board directing that a union
20 representation election be held is not a final appealable order."

21 In *Renton Education Association v. Washington State Public*
22 *Employment Relations Commission*, 603 P.2d 1271 (Wa.App., 1979), a
23 Washington Court of Appeals held that a state labor commission's order
24 directing an election was not subject to judicial review, and that judicial
25 review may only be taken after certification of a bargaining representative
26 following the election.

1 In *Worcester Indus. Technical Institute Instructors Ass'n v. Labor*
2 *Relations Commission*, 256 N.E.2d 287, 288 - 289 (Mass. 1970), the
3 Massachusetts Supreme Court held that judicial review of a state labor
4 commission's order directing an election was premature because there was no
5 final decision to review and no extraordinary circumstances were presented
6 justifying review.

7 In *City of West Allis v. Wisconsin Employment Relations Commission*,
8 240 N.W.2d 416, 420 (Wis. 1976), the Wisconsin Supreme Court held that
9 courts "...are not to interfere with prompt holding of representation elections
10 by entertaining petitions for review of orders of the employment relations
11 commission determining the unit or directing an election be held. Not until
12 after the election has been held and its outcome certified is judicial review
13 proper."

14 Given the legislative intent to adopt a model of the NLRA and the
15 volume of authority expressing that reason and public policy must restrict a
16 premature judicial review of election proceedings, NRS 288.160(4) must be
17 construed to prevent a premature judicial review of representative election
18 proceedings. Instead the judicial review may only be had after the election has
19 been conducted. NRS 288.160(4) contains language that codifies this principle
20 when it states that judicial review is available but subjects only the final post-
21 election decision to judicial review. As the District Court conducted and
22 granted a judicial review where it plainly lacked the jurisdiction to do so, this
23 Court should grant the requested writ relief.

24 ///

25 ///

26

27

28

1 V. CONCLUSION

2 This petition concerns important questions of labor law arising under
3 the EMRA and concerns the fundamental public policies of the EMRA.

4 NRS 288.160(4) limits the jurisdiction of the courts to conduct a
5 judicial review of EMRB orders and decisions in election matters to the final
6 post-election decision. It is not within the jurisdiction of the district courts to
7 conduct a judicial review of interlocutory and non-final decisions that
8 establish the procedure by which the election will be conducted.

9 Therefore the law imposed a duty on the District Court to deny Local
10 14's petition for judicial review due to a lack of jurisdiction. The District
11 Court improperly exercised jurisdiction to grant the petition for judicial
12 review, and a writ of mandamus or a writ of certiorari from this Court is now
13 necessary to restore the proper application of NRS 288.160(4).

14 DATED this 01 day of March, 2013.

15 CATHERINE CORTEZ MASTO
16 ATTORNEY GENERAL

17 BY: 

18 SCOTT DAVIS, #10019
19 Deputy Attorney General
20 555 E. Washington Avenue, Suite 3900
21 Las Vegas, NV 89101
22 Attorneys for LOCAL GOVERNMENT
23 EMPLOYEE-MANAGEMENT
24 RELATIONS BOARD
25
26
27
28

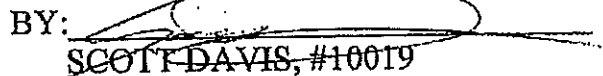
CERTIFICATE OF COMPLIANCE

1
2
3 1. I hereby certify that this Petition for Writ of Mandamus Or the
4 Alternative for Writ of Certiorari complies with the formatting requirements of
5 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and has been
6 prepared in a proportionally spaced typeface using Times New Roman in font
7 14.

8 2. I hereby certify that I have read this Petition for Writ of Mandamus
9 Or the Alternative for Writ of Certiorari and to the best of my knowledge,
10 information and belief it is not frivolous or interposed for any improper
11 purpose. I understand that I may be subject to sanctions in the event that the
12 accompanying brief is not in conformity with the requirements of the Nevada
13 Rules of Appellate Procedure.

14 DATED this 01 day of March, 2013.

15 CATHERINE CORTEZ MASTO
16 ATTORNEY GENERAL

17
18 BY: 
19 SCOTT DAVIS, #10019
20 Deputy Attorney General
21 555 E. Washington Avenue, Suite 3900
22 Las Vegas, NV 89101
23 Attorneys for LOCAL GOVERNMENT
24 EMPLOYEE-MANAGEMENT
25 RELATIONS BOARD
26
27
28

CERTIFICATE OF SERVICE

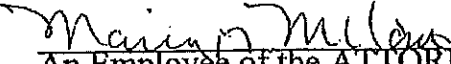
I hereby certify that I am an employee of the Office of the Attorney General and that on the 1st day of March, 2013, pursuant to NRAP 25(c)(1)(B), I caused the foregoing PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE FOR WRIT OF CERTIORARI to be served by mail on the parties listed below:

The Honorable Kenneth C. Cory
Eighth Judicial District Court
Department I
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

Kristin L. Martin, Esq.
McCracken, Stemerman & Holsberry
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Employees Association*

Carlos McDade, Esq.
Donna Mendoza-Mitchell, Esq.
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Clark County School District
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Las Vegas, NV 89146
Attorney for Clark County School District


An Employee of the ATTORNEY
GENERAL'S OFFICE

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

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

Supreme Court No. 62719
District Court Case No. A528346

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK; AND THE
HONORABLE KENNETH C. CORY, DISTRICT
JUDGE, DISTRICT JUDGE,

Respondents,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14; EDUCATION
SUPPORT EMPLOYEES ASSOCIATION;
AND CLARK COUNTY SCHOOL DISTRICT,
Real Parties in Interest.

RECEIPT FOR DOCUMENTS

TO: Attorney General/Las Vegas/Scott R Davis
McCracken, Stemerma & Holsberry/Kristin L. Martin
Dyer, Lawrence, Penrose, Flaherty, Donaldson & Prunty/Michael W. Dyer ✓
Clark County School District Legal Department/Carlos L. McDade
Steven Grierson, District Court Clerk
Hon. Kenneth C. Cory, District Judge

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

| | |
|------------|---|
| 03/01/2013 | Appeal Filing fee-waived: State/County/Municipality. |
| 03/01/2013 | Filed Petition for Writ of Mandamus or in the Alternative for Writ of Certiorari. |
| 03/01/2013 | Filed Notice of Petition for Writ of Mandamus or in the Alternative for Writ of Certiorari. |
| 03/01/2013 | Filed Appendix to Petition for Writ - Volume 1. |
| 03/01/2013 | Filed Appendix to Petition for Writ - Volume 2 |

DATE: March 01, 2013

Tracie Lindeman, Clerk of Court

000155

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KENNETH C. CORY, DISTRICT
JUDGE, DISTRICT JUDGE,

Respondents,

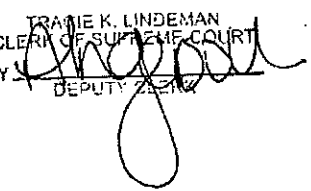
and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14; EDUCATION
SUPPORT EMPLOYEES
ASSOCIATION; AND CLARK COUNTY
SCHOOL DISTRICT,
Real Parties in Interest.

No. 62719

FILED

DEC 18 2013

TRAMIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION

This is a petition for a writ of mandamus, or in the alternative, for a writ of certiorari to vacate a district court's order. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

A district court reviewed an administrative agency's chosen election procedure prior to the election's commencement. Dissatisfied with the agency's choice, the court instructed the agency to adopt a procedure that was reasonably calculated to produce a definitive result. We conclude

that the district court lacked jurisdiction to conduct a pre-election review of the agency's chosen election procedure.

FACTS

The Local Government-Employee Management Board (EMRB) held a representative election to determine whether the International Brotherhood of Teamsters, Local 14 (Local 14), or the Education Support Employees Association would be recognized as the bargaining agent for the Clark County School District's non-certified employees' bargaining unit. The EMRB determined that the election's results were inconclusive and planned to hold a runoff election.

Local 14 objected to the EMRB's chosen procedure for the runoff election, and proposed a different method; but, the EMRB denied it. Local 14 then filed a petition for judicial review of the EMRB's chosen election procedure. The district court granted the petition and remanded the case to the EMRB to develop an election procedure that was reasonably calculated to produce a definitive result.

The EMRB claims that the district court lacked jurisdiction to consider a pre-election petition for judicial review and now seeks a writ of mandamus, or in the alternative, of certiorari to vacate the district court's order.

DISCUSSION

A writ of mandamus is available only when the petitioner does not have a plain, speedy and adequate remedy at law. *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

Here, writ relief is appropriate because the EMRB cannot appeal the district court's remand order. The district court's order did not

constitute a final judgment because the remand did not dispose of the case's underlying issue. See *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). Consequently, the district court's order is not appealable. See *State, Taxicab Auth. v. Greenspun*, 109 Nev. 1022, 1025, 862 P.2d 423, 424 (1993). Thus, the EMRB does not have an adequate remedy at law and mandamus relief is appropriate. See *Haley v. Eighth Judicial Dist. Court*, 128 Nev. __, __, 273 P.3d 855, 858 (2012).

District courts can review an administrative agency's decision only when a statutory provision expressly allows it. *Crane v. Cont'l Tel. Co. of Cal.*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989) (citing *Lakeview Vill., Inc. v. Bd. of Cnty. Comm'rs*, 659 P.2d 187, 192 (Kan. 1983)). Local 14 asserts that NRS 288.160(4) and NRS 233B.130 allowed the district court to review the EMRB's decision. Thus, we must review these statutes to determine if either one expressly authorizes a district court to conduct a pre-election review of an administrative agency's election procedure.

Under NRS 288.160(4),

[i]f the Board in good faith doubts whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit, it may conduct an election by secret ballot upon the question. Subject to judicial review, the decision of the Board is binding upon the local government employer and all employee organizations involved.

NRS 288.160(4) did not give the district court the authority to review the EMRB's election plan. The statute authorizes the district court to determine whether the EMRB had a good faith doubt as to whether a majority of the bargaining unit's members supported a particular employee organization. However, the statute does not expressly provide the district court the power to conduct a pre-election review of the EMRB's

election procedure. Thus, the district court could not have reviewed the EMRB's election procedure under NRS 288.160(4).

Under NRS 233B.130,

1. Any party who is:

(a) Identified as a party of record by an agency in an administrative proceeding; and

(b) Aggrieved by a final decision in a contested case,

is entitled to judicial review of the decision. Where appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute. Any preliminary, procedural or intermediate act or ruling by an agency in a contested case is reviewable if review of the final decision of the agency would not provide an adequate remedy.

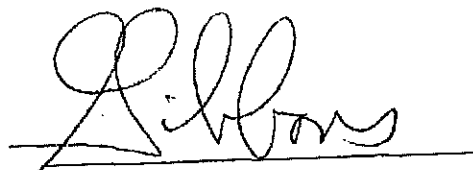
Local 14 is an aggrieved party, but the EMRB's chosen election procedure does not constitute a final decision. Choosing the election's procedure is an intermediate step in the election process. Only the EMRB's determination of the election's results would constitute a final decision. Thus, under NRS 233B.130, the district court could have conducted a pre-election review of the EMRB's election procedure only if this matter qualified as a contested case and a judicial review of the EMRB's determination of the election's results would not have provided Local 14 with an adequate remedy.

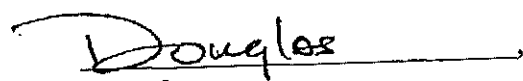
NRS 233B.130 did not provide the district court the power to review the EMRB's election procedure. This matter is not a contested case because the controlling regulations do not require notice and an opportunity for a hearing at which the parties can present evidence supporting their respective arguments. See NRS 233B.032 (defining a

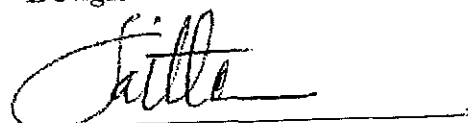
"contested case"); *see also Citizens for Honest & Responsible Gov't v. Sec'y of State*, 116 Nev. 939, 951-52, 11 P.3d 121, 129 (2000). Specifically, NAC 288.110 governs runoff elections, and it does not require a district court to hold a hearing to address a party's pre-election challenges. Rather, the regulation provides an opportunity for a hearing only after the election has concluded. Additionally, judicial review of the EMRB's decision concerning the election's results would provide Local 14 with an adequate remedy. Thus, judicial review of the EMRB's chosen election method under NRS 233B.130 is improper.

Neither NRS 288.160(4) nor NRS 233B.130 vested the district court with the authority to conduct a pre-election review of the EMRB's chosen election procedure. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order granting Local 14's petition for judicial review.


Gibbons J.


Douglas J.


Saitta J.

cc: Hon. Kenneth C. Cory, District Judge
Attorney General/Las Vegas
Clark County School District Legal Department
Dyer, Lawrence, Penrose, Flaherty, Donaldson & Prunty
McCracken, Stemerman & Holsberry
Eighth District Court Clerk

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.

FILED

FEB 05 2015

STATE OF NEVADA
E.M.R.B.

And related counter-claim

TALLY OF BALLOTS

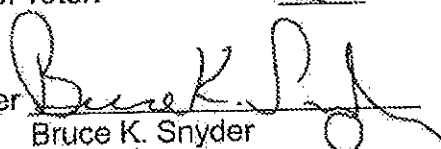
As Commissioner of the Nevada Local Government Employee-Management Relations Board, I hereby certify that the results of the tabulation of ballots cast in the election held in the above-captioned matter, and concluded on the date set forth below, were as follows:

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

5255
26
38
18
20
3692
1498
5190
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.) **ORDER**

CLARK COUNTY SCHOOL DISTRICT, and) ITEM NO. 520Q
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.)

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

24 ///

25 ///

26 ///

27 ///


28 ///

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

12 BY: 
13 SANDRA MASTERS, Board Member
14
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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

NOTICE OF ENTRY OF ORDER

vs.

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

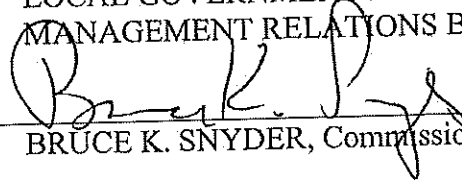
To: Clark County School District and their attorneys Carlos L. McDade, Esq., Office
of the General Counsel for the Clark County School District

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

000170

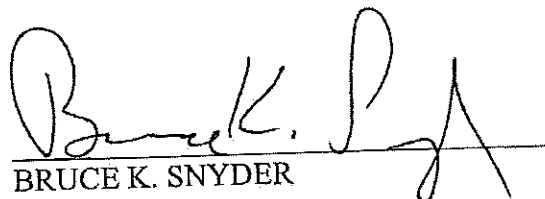
CERTIFICATE OF MAILING

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

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

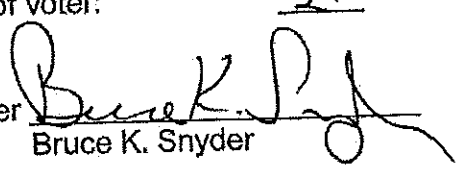
As Commissioner of the Nevada Local Government Employee-Management Relations Board, I hereby certify that the results of the tabulation of ballots cast in the election held in the above-captioned matter, and concluded on the date set forth below, were as follows:

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

5255
26
38
18
20
3692
1498
5190
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.

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</u> <u>Association, 3505 East Flamingo,</u> <u>Suite 2, Las Vegas, Nevada 89121</u> <u>(702) 794-2537</u> | Defendant(s) (name/address/phone): <u>State of Nevada,</u> <u>Local Government Employee-</u> <u>Management Relations Board, International</u> <u>Brotherhood of Teamsters Local 14,</u> <u>Clark County School District</u> |
| Attorney (name/address/phone): <u>Francis C. Flaherty & Sue M. Matuska</u> <u>Dyer, Lawrence, Flaherty, Donaldson &</u> <u>Prunty, 2805 Mountain Street,</u> <u>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 Probate <small>(select case type and estate value)</small> <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 Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum <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 |

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

3/19/15

Date

[Signature]

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

1 PTJR
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

DISTRICT COURT
CLARK COUNTY, NEVADA

14 EDUCATION SUPPORT
15 EMPLOYEES ASSOCIATION,
16 an employee organization

A-15-715577-J
Case No.

17 Petitioner;

Dept. No. I

18 vs.

19 STATE OF NEVADA, LOCAL GOVERNMENT
20 EMPLOYEE-MANAGEMENT RELATIONS BOARD,
21 an agency of the State of Nevada;
22 INTERNATIONAL BDROTHERHOOD OF
23 TEAMSTERS LOCAL 14, an employee organization; and
24 CLARK COUNTY SCHOOL DISTRICT,
25 a county school district,

26 Respondents.

27
28 **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

1 Petitioner alleges as follows:

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

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

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

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

12 5. Petitioner is aggrieved by the Order, and substantial rights of Petitioner have been
13 prejudiced because the Order is: (a) in violation of constitutional or statutory provisions; (b) in
14 excess of the statutory authority of the EMRB; (c) made upon unlawful procedure; (d) affected by
15 other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence
16 on the whole record; and/or (f) arbitrary or capricious or characterized by abuse of discretion. NRS
17 233B.130(1), NRS 233B.135(3).

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

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27 _____
28 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."

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

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

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

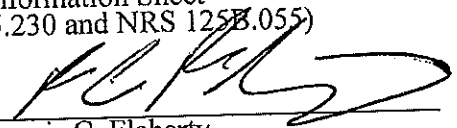
-or-

___ 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, Sternerman, Bowen & Holsberry
1630 Commerce Street, Suite A-1
Las Vegas, NV 89102

klm@dcbsf.com

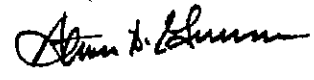
S. Scott Greenberg, Esq.
Office of General Counsel
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146

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


CLERK OF THE COURT

ORDR

ADAM PAUL LAXALT
Nevada Attorney General
Scott Davis
Deputy Attorney General
Nevada State Bar No. 10019
555 E. Washington Ave. #3900
Las Vegas, NV 89101
Telephone: (702) 486-3894
Fax: (702) 486-3416
sdavis@ag.nv.gov
Attorneys for State of Nevada
Local Government Employee-
Management Relations Board

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
CLARK COUNTY, NEVADA

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,

Petitioner,

v.

STATE OF NEVADA, LOCAL
GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD;
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 14; and CLARK
COUNTY SCHOOL DISTRICT,

Respondents.

Case No.: A-15-715577-J

Dept. No.: I

ORDER GRANTING COUNTERMOTION TO DISMISS

Petitioner Education Support Employees' Motion for Stay filed on March 19, 2015 ("Motion") came before the Court on May 19, 2015. Respondent State of Nevada, Local Government Employee-Management Relations Board ("the Board") and the International Brotherhood of Teamsters Local 14 ("Teamsters") filed separate oppositions to the motion. Additionally, the Board filed a Countermotion to Dismiss Petitioner's Motion ("Countermotion").

| | |
|--|--|
| <input type="checkbox"/> Voluntary Dismissal | <input type="checkbox"/> Summary Judgment |
| <input type="checkbox"/> Involuntary Dismissal | <input type="checkbox"/> Stipulated Judgment |
| <input type="checkbox"/> Stipulated Dismissal | <input type="checkbox"/> Default Judgment |
| <input checked="" type="checkbox"/> Motion to Dismiss by Deft(s) | <input type="checkbox"/> Judgment of Arbitration |

1 ESEA was represented by Francis Flaherty, Esq., who appeared before the Court.
2 Teamsters was represented by Kristin Martin, Esq., and the Board was represented by Deputy
3 Attorney General Scott Davis.

4 Having considered the pleadings as well as the arguments of counsel, the court finds
5 that it lacks jurisdiction over the petition at this juncture because the Board's order to conduct
6 the second discretionary runoff election is not a final order subject to judicial review under
7 NRS 288.160(4). Only the Board's final order at the conclusion of the process is subject to
8 judicial review. *State, Local Government Employee-Management Relations Board v. Eighth*
9 *Judicial District Court*, Nev. Supreme Court Case No. 62719, 2013 WL 7155080 (Dec. 18,
10 2013). This order does not preclude ESEA from seeking judicial review at the conclusion of
11 the election process.


12 Therefore, good cause appearing;

13 IT IS HEREBY ORDERED, that the Motion to Stay is DENIED and the Countermotion
14 to Dismiss is GRANTED. This matter is dismissed without prejudice.
15

16 DATED this 4 day of June, 2015.

17
18 
19 DISTRICT COURT JUDGE

20 Respectfully submitted by:
21 ADAM PAUL LAXALT
22 Attorney General

23 By: 
24 Scott Davis
25 Deputy Attorney General
26 Attorney for the State of Nevada,
27 Local Government Employee-Management Relations Board
28

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

DEC 07 2015

STATE OF NEVADA
E.M.R.B.

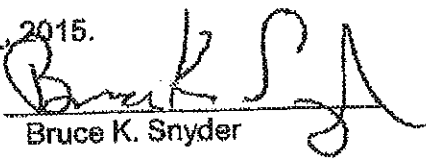
TALLY OF BALLOTS

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 Void Ballots Cast | <u>17</u> | <u>19</u> |
| No. of Ballots Cast by Termed/Quit Employees | <u>3</u> | |
| No. of Duplicate Ballots Cast | | |
| 2. Number of Ballots Challenged on the Ineligibility of the Voter | | <u>22</u> |
| 3. Number of Ballots Challenged Based on Alleged Defect in Ballot | <u>9</u> | <u>35</u> |
| No. of Challenges Sustained | <u>2</u> | |
| No. of Challenges Overruled in Favor of ESEA | <u>24</u> | |
| No. of Challenges Overruled in Favor of Teamsters | | |
| 4. Number of Valid Ballots Cast for ESEA | <u>968</u> | <u>970</u> |
| No. of Unchallenged Ballots Cast | <u>2</u> | |
| No. of Challenges Overruled in Favor of ESEA (from 3) | | |
| 5. Number of Valid Ballots Cast for Teamsters | <u>4325</u> | <u>4349</u> |
| No. of Unchallenged Ballots Cast | <u>24</u> | |
| No. of Challenges Overruled in Favor of Teamsters (from 3) | | |
| 6. Number of Valid Ballots Cast (sum of 4 and 5) | | <u>5319</u> |

Dated: December 5 2015.

By the Commissioner


Bruce K. Snyder


We acknowledge receipt of a copy of this tally:

Teamsters Local 14

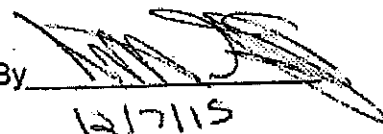
Clark County School District

Education Support
Employees Association

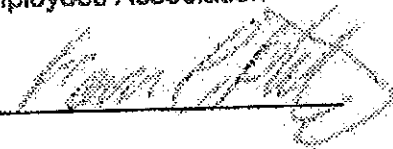
By



By


12/7/15

By



| KEY NO | LNAME | FNAME | MNAME | ADDRESS | CITY | STATE | ZIP |
|--------|-------------------|------------------|-------|--------------------------------|-----------------|-------|------------|
| 00001 | AABERG | TOMMY MANUEL | | 1762 ORCHARD VALLEY DR | LAS VEGAS | NV | 89142 |
| 00002 | AABERG BROOKS | NANCY IRENE | | 1762 ORCHARD VALLEY DR | LAS VEGAS | NV | 89142 |
| 00003 | ABBEY | DAWNALYN | | 903 ALTA OAKS DR | HENDERSON | NV | 89014 |
| 00004 | ABBEY | MICHAEL | P | 903 ALTA OAKS DR | HENDERSON | NV | 89014 |
| 00005 | ABBINGTON | T | J | 1117 DAYTONA LANE | LAS VEGAS | NV | 89117 |
| 00006 | ABBOTT | CHELSE | S | PO BOX 7241 | BUNKERVILLE | NV | 89007 |
| 00007 | ABBOTT | ELAINE | M | 169 N ARROWHEAD | MESQUITE | NV | 89027 |
| 00008 | ABBOTT | LAREN | B | 169 N ARROWHEAD | MESQUITE | NV | 89027 |
| 00009 | ABBOTT | LINDA | L | 8136 ECHO VALLEY WAY | LAS VEGAS | NV | 89123 |
| 00010 | ABDELNOUR | DEBORAH | | 8701 SUMMER RIDGE DR | LAS VEGAS | NV | 89134 |
| 00011 | ABDOULJALIL | TENER NEJADINE | | 8701 SUMMER RIDGE DR | LAS VEGAS | NV | 89129 |
| 00012 | ABDUS-SALAAM | BAHEEJAH | F | 2715 JOUST ST | N LAS VEGAS | NV | 89030 |
| 00013 | ABEDINPOUR | MALEK | | 1260 JARBIDGE RD | LAS VEGAS | NV | 89110 |
| 00014 | ABEYTA | APRIL | A | 3632 WALNUT WOOD ST | LAS VEGAS | NV | 89129 |
| 00015 | ABEYTA | BEATRICE | L | 7575 PARNELL | LAS VEGAS | NV | 89147 |
| 00016 | ABEYTA | CECIL | I | 7575 PARNELL AVE | LAS VEGAS | NV | 89147 |
| 00017 | ABEYTA | JUANITA | A | 9309 RED ROSE AVE | LAS VEGAS | NV | 89129 |
| 00018 | ABEYTA | PAUL | A | 3632 WALNUT WOOD ST | LAS VEGAS | NV | 89129 |
| 00019 | ABNER | LINDA | K | 3223 CAMELBACK | LAS VEGAS | NV | 89109 |
| 00020 | ABOONA | MAY PETER | | 7556 SPLASHING ROCK DR | LAS VEGAS | NV | 89131 |
| 00021 | ABRAHANTES-MORENO | ALINA | S | 7002 ADELAIDE AVE | LAS VEGAS | NV | 89156 |
| 00022 | ABRAM | BEVERLYN | | 5722 INDIAN SPRINGS ST | NORTH LAS VEGAS | NV | 89031 |
| 00023 | ABRAM | ERICA BATRICE | J | 2316 WOOD DALE CT | NORTH LAS VEGAS | NV | 89031-3600 |
| 00024 | ABRAMO | CHRISTOPHER | J | 271 COMFORT DR | HENDERSON | NV | 89074 |
| 00025 | ABRUZEE | MICHAEL | J | 1488 LABREA RD | HENDERSON | NV | 89011 |
| 00026 | ABSTON | SANDRA | | 508 BASTANCHURY AVE | HENDERSON | NV | 89110 |
| 00027 | ABUNDIS-SANCHEZ | MARISOL | | 4609 ARROWROOT AVE | LAS VEGAS | NV | 89178 |
| 00028 | ACARA | CHRISTOPHER PAUL | V | 8834 SUNFLOWER HILL ST | LAS VEGAS | NV | 89113 |
| 00029 | ACCAD | EVELYN | L | 7476 WAGON WHEEL RANCH WAY | LAS VEGAS | NV | 89052 |
| 00030 | ACEBAL | GEORGINA | | 2570 W HORIZON RIDGE PKWY 6202 | HENDERSON | NV | 89123 |
| 00031 | ACERET | CAROL | | 945 E ELDORADO LANE | LAS VEGAS | NV | 89142 |
| 00032 | ACEVEDO | ALEJANDRA | | 5718 COLERIDGE WAY | LAS VEGAS | NV | 89142 |
| 00033 | ACEVEDO | MARIA LETICIA | | 4840 W MONTARA CIR | LAS VEGAS | NV | 89121 |
| 00034 | ACEVEDO | VANESSA | C | 3863 WINTER WHITETAIL ST | LAS VEGAS | NV | 89122 |
| 00035 | ACEVES | BEATRICE | J | 2101 KAPOK TREE LN | LAS VEGAS | NV | 89142 |
| 00036 | ACEVES | SALVADOR | G | 2718 LITTLE ASTON CIR | LAS VEGAS | NV | 89142 |
| 00037 | ACHAVAL | VICTORIA | M | 425 LORENZI STREET | LAS VEGAS | NV | 89107 |
| 00038 | ACKERET | PATRICIA | L | 7405 CYPRESS GROVE COURT | LAS VEGAS | NV | 89129-5952 |
| 00039 | ACKERMAN | BARRY | | 4727 CHESTNUT BLAZE DR | NORTH LAS VEGAS | NV | 89032 |

| | | | | | | | |
|-------|-------------|-------------|---|-------------------------|-----------------|----|-------|
| 11560 | ZIMMERMAN | LINDA | M | 9045 TEETERING ROCK AVE | LAS VEGAS | NV | 89143 |
| 11561 | ZIMMERMAN | LISA | A | 435 FEDERMAN DR | LAS VEGAS | NV | 89123 |
| 11562 | ZIMMERMAN | SUSAN | M | 3455 CREEK RIVER DR | LAS VEGAS | NV | 89129 |
| 11563 | ZION | LINDA | M | 3912 TOULOUSE CT | NORTH LAS VEGAS | NV | 89031 |
| 11564 | ZOLL | BETTY JO | E | 6104 HEATHER MIST LN | LAS VEGAS | NV | 89108 |
| 11565 | ZOLLETT | STACI | E | 8855 W ARBY AVE - 1039 | LAS VEGAS | NV | 89148 |
| 11566 | ZORITY | SUSANN | | 301 S TORREY PINES DR | LAS VEGAS | NV | 89107 |
| 11567 | ZOUITA | AHMED | | 1831 MONTE ALBAN DR | NORTH LAS VEGAS | NV | 89031 |
| 11568 | ZUHLKE | DAWN | E | 3874 E DELING COURT | LAS VEGAS | NV | 89104 |
| 11569 | ZUNIGA | ATHENA | L | 338 TEMPLETON DR | HENDERSON | NV | 89074 |
| 11570 | ZUNIGA | ERIC DANIEL | | 248 WILTED JASMINE CT | LAS VEGAS | NV | 89106 |
| 11571 | ZUNIGA | JANIE | | 8342 ROPING COWBOY AVE | LAS VEGAS | NV | 89178 |
| 11572 | ZUNIGA | JUAN | | 2134 DAISY MEADOW LANE | N LAS VEGAS | NV | 89032 |
| 11573 | ZUNIGA | TINA MARIE | | 10588 CAVE RIDGE ST | LAS VEGAS | NV | 89179 |
| 11574 | ZUNIGA VEGA | ARMANDO | | 1840 PEARL HATPIN CT | LAS VEGAS | NV | 89106 |
| 11575 | ZUPKAS | KATHLEEN | | 7403 FORT MODERMITT AVE | LAS VEGAS | NV | 89179 |
| 11576 | ZUPKOFKA | ROBERT | A | 7301 BLIZZARD CT | LAS VEGAS | NV | 89145 |
| 11577 | ZUPKOFKA | TERESA | | 7301 BLIZZARD CT | LAS VEGAS | NV | 89145 |
| 11578 | ZUPPELLI | SHIRLEY | J | 2846 SOLERA MOON DR | HENDERSON | NV | 89044 |

BEFORE THE LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO,

Petitioner,

Case No. A1-045735

vs.

CLARK COUNTY SCHOOL DISTRICT and
EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,

Respondents.

FILED
December 11, 2015
State of Nevada
E.M.R.B.
12:22 p.m.

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,

Counter-Claimant,

vs.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO, and
CLARK COUNTY SCHOOL DISTRICT,

Counter-Respondents.

COMPLAINT AND OBJECTION TO RUNOFF ELECTION

COMES NOW, Education Support Employees Association ("ESEA"), and complains that the Board exceeded its jurisdiction pursuant to NRS 288.160(4) by conducting the second runoff election between ESEA and International Brotherhood of Teamsters, Local 14 ("Local 14") that occurred by secret ballot between November 2, 2015, and December 5, 2015 ("second runoff election"), and objects to the determination of the results of such runoff election on the basis of the majority-of-the-votes-cast standard dictated in the Board's February 17, 2015, Certification of Election Results and Implication of Runoff Election Results ("2015 Board Order").

The Board's second runoff election was governed by the Board's Amended Election Plan for Second Runoff Election that was filed on August 19, 2015. Pursuant to paragraph B of Section V of said Plan, a party "may file objections to the procedural conduct of the election, to conduct in

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

000185

1 violation of this Plan or such other conduct (including any claimed violation of either NRS Chapter
2 288 or NAC Chapter 288) which may have improperly affected the results of the election" within
3 5 business days after the election. "Objections must be in writing and contain a brief statement of
4 facts upon which the objections are based." *Id.*

5 The facts upon which the objection is based are that the Board conducted a runoff election
6 between the same parties by secret ballot between January 5, 2015, and February 3, 2015, and
7 certified that those election results "[did] not justify removing ESEA in favor of Local 14 under the
8 majority vote requirement imposed in the Supreme Court's 2009 order. As such ESEA will continue
9 as the recognized bargaining agent." Nevertheless, in contravention of the Supreme Court's 2009
10 order, the Board ordered another runoff election between exactly the same parties and ordered that
11 the outcome would be determined by a different measurement -- a majority-of-the-votes-cast. The
12 Board conducted such second runoff election between November 2, 2015, and December 5, 2015,
13 and Local 14 received a majority of the votes cast but again did not receive the vote of a majority of
14 the bargaining unit.

15 Upon information and belief, ESEA alleges that the Board will enforce the 2015 Board Order
16 by applying it to the results of the second runoff election, determining that Local 14 received a
17 majority of the votes cast and, therefore, determining that Local 14 has the support of the majority
18 of the employees of the bargaining unit of the support staff employees of the Clark County School
19 District. ESEA objects to such enforcement of the 2015 Board Order, including the holding of the
20 second runoff election in its entirety, and the determination of its results by the mere majority-of-the-
21 votes-cast standard; ESEA alleges that such enforcement violates NRS 288.160(4) and NAC
22 288.110(10)(d), based on the plain language of the statute and regulation, as well as the supreme
23 court's interpretation thereof, and improperly affects the results of the runoff election.

24 ESEA requests relief as follows:

25 1. For an order that such action and determination of the second runoff election violates
26 NRS 288.160(4) and NAC 288.110(10)(d).

27 2. For an order that such violation improperly affects the results of the runoff election.


28 ///

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1 3. For an order that such improper effect on the results of the election renders the runoff
2 election null and void.

3 Respectfully submitted this 11th day of December, 2015.

4 DYER, LAWRENCE, FLAHERTY
5 DONALDSON & PRUNTY

6 By 
7 Francis C. Flaherty
8 Nevada Bar No. 5303
9 Sue S. Matuska
10 Nevada Bar No. 6051
11 DYER, LAWRENCE, FLAHERTY,
12 DONALDSON & PRUNTY
13 2805 Mountain Street
14 Carson City, NV 89703
15 (775) 885-1896 telephone
16 (775) 885-8728 facsimile
17 fflaherty@dyerlawrence.com

18 Attorneys for ESEA
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CERTIFICATE OF SERVICE

Pursuant to NAC 288.200(2), I certify that I am an employee of Dyer, Lawrence, Flaherty, Donaldson & Prunty, counsel for ESEA, and that on this 11th day of December, 2015, I caused a true and correct copy of the within COMPLAINT AND OBJECTION TO RUNOFF ELECTION to be:

☐ Deposited in the U.S. Mail, postage prepaid, addressed to each of the persons listed below.

☒ Transmitted via electronic mail to each of the persons listed below.

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.
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Clark County School District
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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

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Debora McEachin

FILED

JAN 20 2016

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF) CASE NO. A1-045735
TEAMSTERS, LOCAL 14, AFL-CIO,)

Petitioner,) ORDER

vs.) ITEM NO. 520T

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.)

On January 11, 2016, 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.

This matter concerns the representation of the bargaining unit of support staff employees of the Clark County School District ("bargaining unit"). The bargaining unit has been represented by the Education Support Employees Association ("ESEA"). Pursuant to our prior order in this matter, the Commissioner has conducted the second discretionary runoff election. The results of the election were reported to the Board through the Tally of Ballots, which is

1 attached hereto. The Tally of Ballots indicates that the International Brotherhood of Teamsters,
2 Local 14 ("Local 14") received a majority of votes cast in the election.

3 NAC 288.110(8) permits a party to an election to file an objection to "the conduct of the
4 election or conduct affecting the results of the election." ESEA filed an objection to the election
5 on the basis that the election was not within the Board's authority. Having considered ESEA's
6 objection, the Board hereby overrules the objection. We find that this election is within our
7 authority under the Act and that use of the majority of votes cast standard is warranted for the
8 reasons stated in Item No. 520Q. No other objections were filed.

9 The Board is cognizant of the logistics affecting a change in bargaining agent of a unit
10 this size, and the Board finds that a delayed effective date of 30 days is appropriate in order to
11 permit Local 14 and the School District time to make arrangements for a change in bargaining
12 agent. Given the unusual and excessive length of time that has elapsed since this matter was first
13 presented to the Board, we also find that it is appropriate for Local 14 to update and resubmit the
14 information required by NRS 288.160(1) to the School District, with a copy of said information
15 submitted to the Commissioner of the EMRB.

16 ///

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1 Based upon the foregoing and the Tally of Ballots attached hereto, it is hereby certified
2 that a majority of the valid ballots have been cast for the International Brotherhood of Teamsters,
3 Local 14 and that the same shall be the exclusive collective bargaining representative of the
4 employees in the bargaining unit, effective upon the later of 30 days from the date of this written
5 order or submission to the Clark County School District of the material required by NRS
6 288.160(1).

7 DATED the 20th day of January, 2016.

8 LOCAL GOVERNMENT EMPLOYEE-
9 MANAGEMENT RELATIONS BOARD

10 BY: 

11 PHILIP E. LARSON, Chairman

12 BY: 

13 BRENT C. ECKERSLEY, ESQ.,
14 Vice-Chairman

15 BY: 

16 SANDRA MASTERS, Board Member
17
18
19
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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

NOTICE OF ENTRY OF ORDER

vs.

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 Scott Greenberg, 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
January 20, 2016. A copy of said order is attached hereto.

DATED this 20th day of January, 2016.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 

MARISU ROMUALDEZ ABELLAR
Board Secretary

000192

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 20th day of January, 2016, 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

Scott Greenberg, Esq.
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146



MARISU ROMUALDEZ ABELLAR
Board Secretary

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

DEC 07 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 Void Ballots Cast | | |
| No. of Ballots Cast by Termed/Quit Employees | <u>17</u> | <u>19</u> |
| No. of Duplicate Ballots Cast | <u>2</u> | |
| 2. Number of Ballots Challenged on the Ineligibility of the Voter | | <u>22</u> |
| 3. Number of Ballots Challenged Based on Alleged Defect in Ballot | | <u>35</u> |
| No. of Challenges Sustained | <u>9</u> | |
| No. of Challenges Overruled in Favor of ESEA | <u>2</u> | |
| No. of Challenges Overruled in Favor of Teamsters | <u>24</u> | |
| 4. Number of Valid Ballots Cast for ESEA | | <u>970</u> |
| No. of Unchallenged Ballots Cast | <u>968</u> | |
| No. of Challenges Overruled in Favor of ESEA (from 3) | <u>2</u> | |
| 5. Number of Valid Ballots Cast for Teamsters | | <u>4349</u> |
| No. of Unchallenged Ballots Cast | <u>4325</u> | |
| No. of Challenges Overruled in Favor of Teamsters (from 3) | <u>24</u> | |
| 6. Number of Valid Ballots Cast (sum of 4 and 5) | | <u>5319</u> |

(PK)

KU

Dated: December 5, 2015.

By the Commissioner


Bruce K. Snyder

We acknowledge receipt of a copy of this tally:

Teamsters Local 14

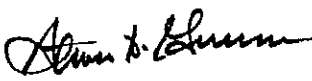
Clark County School District

Education Support
Employees Association

By: 

By: 
12/7/15

By: 


CLERK OF THE COURT

1 PTJR
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.

PETITION FOR JUDICIAL REVIEW

29 COMES NOW Petitioner, EDUCATION SUPPORT EMPLOYEES ASSOCIATION
30 ("ESEA"), by and through its undersigned counsel, and hereby petitions this Court for judicial
31 review of the January 20, 2016, Order ("2016 Board Order") of Respondent STATE OF NEVADA,
32 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD ("the Board").
33 A true and correct copy of the 2016 Board Order is attached hereto as Exhibit 1 and incorporated
34 herein by reference. The 2016 Board Order denied or overruled ESEA's Complaint and Objection
35 on the second, discretionary runoff election and certified INTERNATIONAL BROTHERHOOD OF
36 TEAMSTERS, LOCAL 14 ("Local 14") as the exclusive bargaining representative of the support

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(775) 885-1896

1 staff employees of the CLARK COUNTY SCHOOL DISTRICT ("the District"), effective thirty (30)
2 days after the latter of: (1) the date of the written 2016 Board Order; or (2) Local 14's presentation
3 to the District of the documents required by NRS 288.160(1), which are its constitution and bylaws,
4 a roster of its officers and representatives and a pledge not to strike. In support of this Petition,
5 Petitioner alleges as follows:

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

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

8 3. The 2016 Board Order is a final decision reviewable by the Court pursuant to NRS
9 233B.125, 233B.130(1) and 288.130 and per the Court's June 8, 2015, Order Granting
10 Countermotion to Dismiss at 4:7-8. A true and correct copy of the Court's June 8, 2015, Order
11 Granting Countermotion to Dismiss is attached hereto as Exhibit 2 and incorporated herein by
12 reference.

13 4. The 2016 Board Order is the final decision in EMRB Case No. A1-045735, in which,
14 initially, Local 14 was the petitioner and the District and ESEA were respondents, and, subsequently,
15 ESEA was the counter claimant and Local 14 and the District were the counter-respondents. Thus,
16 Petitioner ESEA is identified as a party of record in the Order. Respondents, Local 14 and the
17 District are also identified as parties of record in the same proceeding.

18 5. Petitioner is aggrieved by the 2016 Board Order, and substantial rights of Petitioner
19 have been prejudiced because the 2016 Board Order is: (a) in violation of constitutional or statutory
20 provisions; (b) in excess of the statutory authority of the Board; (c) made upon unlawful procedure;
21 (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and
22 substantial evidence on the whole record; and/or (f) arbitrary or capricious or characterized by abuse
23 of discretion. NRS 233B.130(1), NRS 233B.135(3).

24 6. Petitioner requests that the Court receive the record of the administrative proceeding
25 in accordance with NRS 233B.131 and 233B.133, and thereafter conduct its review of the Order
26 based upon that record.

27 ///

28 ///

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

1 WHEREFORE, Petitioner prays for judgment as follows:

- 2 1. For an order setting aside the 2016 Board Order and declaring that ESEA remains the
3 exclusive bargaining agent;
4 2. For an award of attorney's fees and costs incurred by Petitioner in this proceeding; and,
5 3. For such other and further relief as the Court deems just and proper.

6 Dated this 20th day of January, 2016.

7 DYER, LAWRENCE, FLAHERTY,
8 DONALDSON & PRUNTY

9 By: 

10 Francis C. Flaherty
11 Nevada Bar No. 5303
12 Sue S. Matuska
13 Nevada Bar No. 6051
14 Attorneys for Petitioner
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Dyer, Lawrence, Flaherty, Donaldson & Prunty
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Carson City, Nevada 89703
(775) 885-1896

AFFIRMATION
Pursuant to NRS 239B.030

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

☒ 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

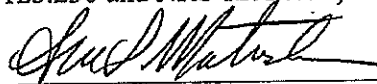
-or-

☐ 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: January 20, 2016



Francis C. Flaherty
Sue S. Matuska
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 20th day of January, 2016, 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

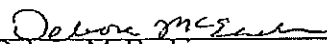
klm@dcbsf.com

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Debora McEachin


CLERK OF THE COURT

1 BREF
2 FRANCIS C. FLAHERTY
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4 SUE S. MATUSKA
5 Nevada Bar No. 6051
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13 Attorneys for Petitioner

14
15
16 DISTRICT COURT
17 CLARK COUNTY, NEVADA

18 EDUCATION SUPPORT
19 EMPLOYEES ASSOCIATION,
20 an employee organization

Case No. A-15-715577-J

21 Petitioner,

Dept. No. 1

22 vs.

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

Hearing Date: April 20, 2016

Time: 9:00 a.m.

Respondents.

21
22 **PETITIONER'S OPENING MEMORANDUM OF POINTS AND AUTHORITIES**
23 **IN SUPPORT OF PETITION FOR JUDICIAL REVIEW**

24 COMES NOW Petitioner, EDUCATION SUPPORT EMPLOYEES ASSOCIATION
25 ("ESEA") by and through its attorneys Dyer, Lawrence, Flaherty, Donaldson & Prunty, and pursuant
26 to NRS 233B.133, NRAP 28, and the briefing scheduled announced by the Court at the February 17,
27 2016, hearing on the Motion for Stay, hereby files its Opening Memorandum of Points and

28 ///

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Carson City, Nevada 89703
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Authorities in support of the Petition for Judicial Review filed herein by Petitioner on Janaruy 20,
2016.

DATED this 17th day of March, 2016

DYER, LAWRENCE, FLAHERTY,
DONALDSON & PRUNTY

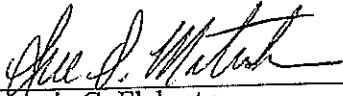
By: 
Francis C. Flaherty
Nevada Bar No. 5303
Sue S. Matuska
Nevada Bar No. 6051
Attorneys for Plaintiff

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I. JURISDICTIONAL STATEMENT

A. ESEA initiated this instant matter by filing a Petition for Judicial Review on January 20, 2016, pursuant to NRS 233B.010 *et seq.*, in the above-entitled Court in accordance with NRS 233B.130(2).

B. ESEA filed the Petition on the same day of service of the STATE OF NEVADA, LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD'S ("the Board's") January 20, 2016 Order, ("2016 Board Order") in Case No. A1-045735 and thus was within the thirty (30) days allowed by NRS 233B.130(2).

C. The 2016 Board Order is a final decision reviewable by the Court pursuant to NRS 233B.125, 233B.130(1) and 288.130 and per the Court's June 8, 2015, Order Granting Countermotion to Dismiss, *see* Petitioner's Motion for Stay ("Stay Motion"), Exhibit ("Ex.") 7 at 4:7-8 and, therefore, properly before the Court pursuant to NRS 233B.130 *et seq.*

II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Whether NRS Chapter 288 expressly or impliedly authorizes the Board to order and hold a second runoff election between the same parties to a first runoff election in order to determine the results by the different and lower standard of a mere majority of the votes cast when the Nevada Supreme Court has twice stated that a majority of all employees in the bargaining unit is required and the Legislature has thrice rejected a change to such standard?

B. Whether the Board has violated the Administrative Procedure Act by adopting a new rule allowing it to conduct such a second runoff election and determine the results by a mere majority of the votes cast without following any of the procedures of NRS Chapter 233B.040 *et seq.*?

III. STATEMENT OF THE CASE

For more than 40 years, ESEA has been the recognized bargaining agent for the bargaining unit consisting of virtually all of the classified employees of the CLARK COUNTY SCHOOL DISTRICT ("the District"). For more than 13 of those years, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 14 ("Local 14") has been unsuccessfully attempting to convince the Board that Local 14 is supported by a majority of employees in that bargaining unit. In all this time, the District, who receives the dues payments of the classified employees and is thus well aware of

1 how many bargaining unit employees are members of ESEA, has never attempted to withdraw
2 recognition from ESEA as the exclusive bargaining agent pursuant to NRS 288.160(3) on the basis
3 that ESEA is not supported by a majority of the bargaining unit.

4 Pursuant to NRS chapter 288, an employee organization may initially become the recognized
5 and exclusive bargaining agent by presenting to the local government employer: (a) a copy of its
6 constitution and bylaws, if any; (b) a roster of its officers, if any, and representatives; and (c) a
7 pledge in writing not to strike, and a verified membership list showing that it represents *a majority*
8 *of the employees in the bargaining unit*. NRS 288.160(1) and (2). There are certain limited criteria
9 under which the employer, with permission of the Board, may withdraw such recognition. NRS
10 288.160(3). Also, the Board itself, if it has a "good faith doubt" as to "whether any employee
11 organization is supported by *a majority of the local government employees in a particular*
12 *bargaining unit* . . . may conduct an election by secret ballot upon the question." NRS 288.160(4)
13 (emphasis added).¹ Pursuant to its own regulation, NAC 288.110(10)(d), the Board determines the
14 results of such an election based on the demonstration that the "employee organization is supported
15 by *a majority of the employees within the particular bargaining unit*." (Emphasis added). Also
16 for such elections, the Nevada Supreme Court has twice held that both NRS 288.160(4) and NAC
17 288.110(10)(d) require a majority vote of all the employees in the bargaining unit and has stated that
18 it will defer to the Nevada Legislature to change this standard.

19 Thus, whether it is seeking initial recognition as the recognized bargaining agent or it is
20 seeking to displace a rival, incumbent employee organization, an employee organization (union)
21 must show that it is supported by a majority of the employees in the bargaining unit, not just those
22 who may vote in a representation election. Demonstrated, verifiable support of a majority of
23 employees of the entire bargaining unit is *the alpha and the omega* for a union seeking to be seated
24 as the recognized bargaining agent.

25 ///

26 _____
27 ¹ Finally, NRS 288.160(5) provides that without Board involvement, parties may agree to
28 hold an election to "determine whether an employee organization represents the majority of . . .
employees in a bargaining unit."

1 Over the course of more than thirteen (13) years, the Board has twice declared that Local 14
2 has not met the standard of NRS 288.160(4) to show it was supported by a majority of employees
3 of the bargaining unit because it only received a majority of the votes cast and did not receive a
4 majority vote of all the employees in the bargaining unit. This first occurred at a 2006 representation
5 election and then occurred the second time at a February, 2015 runoff election between ESEA and
6 Local 14. Nevertheless, immediately after the February, 2015 runoff election and the determination
7 that ESEA would remain as the bargaining agent, the Board suddenly changed course; it: (1) ordered
8 a second runoff election between the exact same parties; ESEA and Local 14; (2) declared that it
9 would apply a mere majority-of-the-votes-cast standard to determine the results; (3) held that second
10 runoff election at the end of 2015; and (4) in its January 20, 2016, Order ("2016 Board Order"),
11 despite Local 14 again failing to receive a majority vote of all the employees in the bargaining unit,
12 certified Local 14 as the exclusive bargaining agent, effective thirty (30) days after the latter of: (1)
13 the date of the written 2016 Board Order; or (2) Local 14's presentation to the District of the
14 documents required by NRS 288.160(1), which are its constitution and bylaws, a roster of its officers
15 and a pledge not to strike.² In doing so, substantial rights of ESEA have been prejudiced because
16 the Board has blatantly exceeded its statutory authority, inventing a new power to order a "re-do"
17 on a runoff election and inventing a new standard for determining representation election results in
18 contravention of two Nevada Supreme Court orders, and by applying that standard to the results of
19 the unlawful second, runoff election between ESEA and Local 14; the consequence of these actions
20 will be the loss to the employees of the status of ESEA as their recognized bargaining agent and the
21 loss to ESEA of its status as the recognized bargaining agent for the support staff employees of the
22 District— its entire book of business.

23 IV. STATEMENT OF FACTS

24 In what Petitioner believes to be a reasonable amount of detail, Petitioner provides the
25 following chronology of the pertinent facts that have led to the present Petition for Judicial Review.
26 In 2002, Local 14 petitioned the Board seeking an order that it be recognized as the bargaining agent

27
28 ² The Board denied ESEA's motion to stay this Order, but on February 17, 2016, this Court granted ESEA's Motion to Stay this Order and, thus, this result has not taken effect.

1 for the bargaining unit represented by ESEA. AR³ 1-101. The Board held a hearing. The only
2 “evidence” that was presented squarely on the issue of whether Local 14 rather than ESEA was
3 supported by a majority of the local government employees in the bargaining unit was the testimony
4 of Local 14’s representative Gary Mauger that Local 14 had obtained some 4,000 representation cards
5 from employees of the District. However, the cards were never counted or examined by the Board
6 and no comparison was ever made between the names on such cards and the names of employees
7 on a list of bargaining unit employees provided by the District. Nevertheless, the Board held that
8 it had a “good faith doubt” pursuant to NRS 288.160(4) as to the employees’ majority support. AR
9 104-112. On September 24, 2002, the Board ordered that a representation election was necessary
10 to ascertain whether Local 14 or ESEA had the support of a majority of employees in the bargaining
11 unit. *Id.*

12 On September 27, 2002, ESEA filed a petition for judicial review in district court challenging
13 certain aspects of the Board’s order. The Board’s order was stayed, initially by the district court and
14 subsequently by stipulation of the parties. On January 23, 2003, the Board issued an order
15 establishing the terms of the election. AR 119-121. Among other things, that order interpreted the
16 Board’s own regulation, NAC 288.110.⁴ *Id.* The order stated that, in order for the Board to
17 “certif[y] [an organization] as representing the unit,” the election had to show that a majority of all
18 the employees in the entire bargaining unit (“outright majority”) not merely a majority of those
19 casting votes (“majority of votes cast”) supported that organization. Stay Motion, Ex. 1; AR 119-
20 121.

21 On February 24, 2003, Local 14 cross-petitioned to challenge the outright majority
22 requirement. After the district court (Judge Wall) ruled on the petitions for judicial review, both

23
24 ³ “AR” refers to the Administrative Record filed with the Court on April, 20, 2012, in
25 *International Brotherhood of Teamsters, Local 14 v. Education Support Employees Association*,
26 (Case No. A528346), *see* introduction to Supplement to Administrative Record (“AR, Supp.”) filed
27 with the Court on March 2, 2016, explaining that the original April 20, 2012, Administrative Record
28 and the March 2, 2016, Supplement constitute the complete Administrative Record, to date, in this
matter.

⁴ In 2003, the relevant language was contained in subsection (9)(d) of NAC 288.110. Today,
that language, which has remained unchanged, is located in subsection (10)(d) of NAC 288.110.

1 sides appealed to the Nevada Supreme Court. On December 21, 2005, the supreme court entered
2 an Order of Affirmance rejecting both appeals and declaring that the plain language of NAC 288.110
3 and NRS 288.160(4) require an outright majority. *See* Stay Motion, Ex. 2 (*Education Support*
4 *Employees Ass'n. v. Employee-Management Relations Board*, Docket Nos. 42315/42338 (December
5 21, 2005)) ("2005 Order of Affirmance").

6 Specifically, the supreme court stated:

7 [T]he statute *and* administrative code plainly and unambiguously state that to win an
8 election, the employee organization must have "a majority of the employees within
the particular bargaining unit."

9 Stay Motion, Ex. 2 at 11 (emphasis added). In fact, the supreme court *specifically rejected* the
10 argument that NRS 288.160 or NAC 288.110 required a mere "majority of the employees who vote."
11 *Id.* Finally, the supreme court emphasized that "in the case of an unambiguous statute, *the EMRB*
12 *is required to follow the law 'regardless of result'*" and "[w]e defer to the Nevada Legislature as to
13 whether the definition of a majority vote should be changed." *Id.* at 11-12 (emphasis added).

14 On April 20, 2006, the representation election was held and the Board determined that no
15 organization received majority support in that election. AR 161-62. Despite a motion by Local 14
16 to the Board that it declare that the "no union" option prevailed in the election, the Board certified
17 the election results as reported by the Board's Commissioner and, on September 7, 2006, ordered
18 that it had "exhausted its jurisdiction" and that all pending or future motions on the election were
19 moot. AR 163-64. On September 18, 2006, Local 14 filed a petition for judicial review seeking to
20 set aside the Board's September 7, 2006, order and to compel the Board to issue a declaration that
21 "no union" "won" or that Local 14 "won" the election. On April 4, 2007, the district court issued
22 an order stating that the Board erred when it determined that it had exhausted its jurisdiction but
23 making no determination as to how the Board was to proceed.⁵ In response, the Board, on May 31,
24 2007, ordered that the previously certified election results stood and that the results preserved the
25 status quo of ESEA as the recognized and exclusive bargaining agent. AR 165-67.

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27 _____
28 ⁵ From the April 4, 2007, Order forward, this matter has been handled exclusively by this
Court.

1 Local 14 filed another petition for judicial review (styled a "supplemental petition") on June
2 11, 2007, requesting the district court to order that "no union" or Local 14 be declared the winner,
3 or, alternatively, that a runoff election be ordered pursuant to the Board's regulations. On January
4 16, 2008, the district court granted the petition in part by ordering that a runoff election be held and
5 denied it in part. It also encouraged the parties to appeal the decision to the Nevada Supreme Court.
6 On January 29, 2008, Local 14 appealed the denial to the supreme court. ESEA filed a motion to
7 dismiss, which the supreme court ultimately denied, and, nearly two years later, the supreme court
8 entered another Order of Affirmance, upholding the district court's conclusion that the regulations
9 of the Board required a runoff election and reaffirming that the outright majority requirement would
10 determine the results of the election. See Stay Motion, Ex. 3 (*International Brotherhood of*
11 *Teamsters, Local 14 v. Education Support Employees Ass'n.*, Docket No. 51010 (December 21,
12 2009)) ("2009 Order of Affirmance").

13 Specifically, the supreme court stated:

14 [T]he language of NRS 288.160 and NAC 288.110 are plain and unambiguous and
15 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.

16 Stay Motion, Ex. 3 at 2 (emphasis added). The supreme court also stated that such standard applied
17 to a runoff election and acknowledged that such election "may produce similar inconclusive results."
18 *Id.* at 3.

19 After the parties' own efforts to agree on a plan for the runoff election failed, the Board
20 announced its intention to move forward under the same procedure that had governed the original
21 election in 2006. AR 287-91. Local 14 filed another petition for judicial review (styled a "second
22 supplemental petition") and for writ of mandate with the district court seeking review of the Board's
23 decision to use the same procedures in the runoff election.

24 After a stipulated stay was lifted, the Board approved a plan that called for the runoff election
25 to be conducted pursuant to the same rules used for the original election, with new dates and
26 locations. AR 358-61. However on January 8, 2013, the district court granted Local 14's petition
27 for judicial review and directed the Board to come up with an election plan that was "reasonably
28 calculated to produce a definitive result."

1 On March 1, 2013, the Board filed a Petition for a Writ of Mandamus or in the alternative
2 for a Writ of Certiorari with the Nevada Supreme Court seeking an order that the district court be
3 directed to dismiss and deny the petition for judicial review or for an order that said petition was
4 void on the basis that the district court lacked jurisdiction. On December 18, 2013, the supreme
5 court granted the Board's petition, declaring that "[n]either NRS 288.160(4) nor NRS 233B.130
6 vested the district court with the authority to conduct a pre-election review of the EMRB's chosen
7 election procedure." Stay Motion, Ex. 4 at 5.

8 The runoff election was finally held approximately two years later by secret, mail-in ballot
9 between January 5, 2015, and February 3, 2015. As in 2006, the runoff election resulted in no party
10 receiving an affirmative vote from an outright majority of all employees in the bargaining unit. See
11 AR, Supp.⁶ 468 & 470. On February 17, 2015, the Board certified these results by issuance of the
12 Order on Certification and Implications of Runoff Election Results ("the 2015 Board Order"), AR,
13 Supp. 469-78, and declared that the results:

14 do not justify removing ESEA in favor of Local 14 under the majority vote requirement
15 imposed in the Supreme Court's 2009 order. As such ESEA will continue as the recognized
bargaining agent.

16 Stay Motion, Ex. 5 at 2; AR, Supp. 470.

17 Nevertheless, the Board suddenly departed from its prior position and the supreme court
18 orders by declaring that it has discretionary or implied authority to order another runoff election, and
19 that such discretionary election will be determined by a mere majority of the votes cast. Specifically,
20 the Board declared that it somehow has a "statutory duty to hold elections and to resolve our good
21 faith doubts"⁷ and that to do so it must "excise[] the cause of futility in this case and proceed[] under
22 something different than the majority of the unit standard." Stay Motion Ex. 5 at 4; AR, Supp. 472.

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26 ⁶ "AR, Supp." refers to the Supplement to Administrative Record filed with the Court on
27 March 2, 2016.

28 ⁷ Note that there is no "duty"; all elections ordered by the Board are discretionary: "If the
Board in good faith doubts . . . it *may* conduct an election" NRS 288.160(4) (emphasis added).

1 Thus, without a change by the Legislature to the language in NRS 288.160(4), the Board re-
2 interpreted NAC 288.110(10)(d) to require only a majority of votes cast. Stay Motion Ex. 5 at 5;
3 AR, Supp. 473. Further it stated that such a:

4 discretionary second runoff election is warranted if it is conducted under a standard that is
5 likely to produce meaningful results. Thus, where it appears that a discretionary runoff
6 election will produce meaningful results that will resolve this Board's good faith doubt, it
7 is within our authority under both NRS 288.160(4) and NAC 288.110(7) .

8 Stay Motion Ex. 5 at 4-5; AR, Supp. 472-73. Thus, the Board made two things clear: (1) that its
9 purpose in ordering a second runoff election was to avoid the outright majority standard which the
10 supreme court stated it must follow "regardless of result"; and, (2) that this new authority that it has
11 granted itself will have general applicability anytime it is unable to determine that an employee
12 organization has outright majority support in a runoff election and wishes to deviate from the clear
13 standard of the Nevada Legislature and Nevada Supreme Court.

14 On March 19, 2015, ESEA petitioned this Court for judicial review of the 2015 Board Order
15 and filed a Motion for Stay. Local 14 and the Board each filed an opposition to the Motion for Stay
16 and the Board also filed a countermotion to dismiss the petition for judicial review, arguing that
17 review of the 2015 Board Order would be a pre-election review of an election procedure and,
18 therefore, would be in contravention of the Supreme Court's December 18, 2013, order. ESEA
19 opposed the countermotion to dismiss, arguing that ordering a second, discretionary runoff election
20 was not at all an "election procedure" but, rather, an exercise of a substantive authority that the
21 Board simply did not possess, the purpose of which was, to avoid the supreme court's 2009 Order
22 of Affirmance interpreting NRS 288.160(4) and NAC 288.110(10)(d) as requiring that the runoff
23 between the parties be determined by the outright majority standard.

24 This Court, on the record at the hearing on the countermotion expressed doubt as to the
25 Board's authority to conduct the second, discretionary election to be determined by a mere majority
26 of votes cast, but, nevertheless, granted the Board's motion to dismiss without prejudice on the basis
27 of the Supreme Court December 18, 2013, order but with a clarification that it was not "preclud[ing]
28 ESEA from seeking judicial review at the conclusion of the election process." See Order Granting
Counter-motion to Dismiss. Stay Motion, Ex. 7 at 4.

1 The unlawful, second, discretionary runoff election was held by secret, mail-in ballot between
2 November 2, 2015, and December 5, 2015. At the time of this election, the bargaining unit was
3 composed of 11,578 employees. AR, Supp. at 632-33 (first and last page of the *Excelsior* list
4 indicating eligible voters in the bargaining unit). As in the legal runoff election, no party received
5 an affirmative vote from an outright majority of all employees in the bargaining unit, but Local 14
6 received a majority of the votes cast. AR, Supp. 619. ESEA filed with the Board a Complaint and
7 Objection on the Board's conduct of the second runoff election and on any determination of the
8 results on the basis of the mere majority-of-the-votes-cast-standard. Stay Motion, Ex. 8; AR, Supp.
9 621-24. Specifically, the Complaint and Objection plead that, at the second runoff election, "Local
10 14 received a majority of the votes cast but again did not receive the vote of a majority of the
11 bargaining unit" and that, therefore, any determination that Local 14 has the support of the
12 bargaining unit was objectionable. Stay Motion, Ex. 8 at 2:13-21; AR, Supp. 622. On January 11,
13 2016, the Board, at a noticed public meeting, did not dispute ESEA's allegation that Local 14 failed
14 to receive the vote of a majority of the bargaining unit but denied ESEA's Complaint and Objection
15 and ordered that because Local 14 had received a majority of the votes cast at the second runoff
16 election, it would be certified as the recognized bargaining agent thirty (30) days after the latter of:
17 (1) the date of the written 2016 Board Order; or (2) Local 14's presentation to the District of the
18 documents required by NRS 288.160(1), which are its constitution and bylaws, a roster of its officers
19 and a pledge not to strike. Counsel for ESEA made an oral motion that the Board stay its order
20 pending judicial review, but the Board denied that motion. The Board's actions at the January 11,
21 2016, were reduced to writing on January 20, 2016, in the 2016 Board Order. Stay Motion, Ex. 9;
22 AR, Supp. 625-31. ESEA filed its Petition for Judicial Review as well as a Motion for Stay on
23 January 20, 2016. On February 17, 2016, this Court granted the Motion for Stay pending judicial
24 review.

25 V. ARGUMENT

26 A. Standard of Review.

27 NRS 233B.130 authorizes any aggrieved party to a final decision of an agency to seek
28 judicial review of that decision. Pursuant to NRS 233B.135(3), a court may set aside a final decision

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1 of an agency if substantial rights of the petitioner have been prejudiced because the final decision
2 of the agency is: (a) in violation of constitutional or statutory provisions; (b) in excess of the
3 statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of
4 law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole
5 record; or (f) arbitrary or capricious or characterized by abuse of discretion.

6 Courts conduct *de novo* review of conclusions of law made by administrative agencies on
7 legal issues, including matters of statutory and regulatory interpretation. See *City of Reno v. Bldg*
8 *& Constr. Trades*, 127 Nev. __, __, 251 P.3d 718 (127 Nev. Adv. Op. No. 10, March 31, 2011);
9 *UMC Physician's v. Nevada Serv. Emp. Union*, 124 Nev. 84, 88, 178 P.3d 709, 712 (2008) (because
10 it was not within the language of the statute, supreme court declined to defer to EMRB's
11 interpretation of statute that complainant in an EMRB matter must be "recognized" at the time the
12 claim arose); *City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006) (where the
13 power to issue preliminary injunctions was not within the language of NRS 288.110, the supreme
14 court held that the district court had erred by giving the EMRB deference on its interpretation that
15 it had such power); *State, Div. of Insurance v. State Farm*, 116 Nev. 290, 293, 995 P.2d 482, 485
16 (2000) (a court "will not hesitate" to declare an agency interpretation invalid when it "conflicts with
17 existing statutory provisions or exceeds the statutory authority of the agency or is otherwise arbitrary
18 or capricious.")

19 **B. Summary of Argument.**

20 In this case, each of the standards set forth in paragraphs (a) through (f) of subsection 3 of
21 NRS 233B.135 are present. In its 2015 Board Order, the Board acknowledged that NAC 288.110(7)
22 mandates "only a single runoff election when the results of a first election are inconclusive, and we
23 *emphatically reject any interpretation to the contrary.*" Stay Motion, Ex. 5 at 2-3; AR. Supp. 470-71
24 (emphasis added). It stated that, "it appears based upon the supreme court's 2009 order that an
25 additional runoff election made mandatory under this subsection [subsection 7 of NAC 288.110]
26 would be subject to the "majority of the unit" standard." *Id.*

27 Nevertheless, after clarifying these limitations on its authority under its own regulations and
28 the restrictions placed on it by the supreme court's 2009 order, the Board, without following any of

1 the procedures of the Administrative Procedure Act, boldly, arbitrarily and capriciously departed
2 from its prior position and made the legal conclusion that it had “discretionary authority, as well as
3 implied authority” under its statutes and regulations to order another runoff election between the
4 same parties, and to determine the results of that runoff election by just a majority of votes cast. Stay
5 Motion, Ex. 5 at 4; AR, Supp. 472 (emphasis added). It then held such runoff election and, in its
6 2016 Board Order, determined that Local 14 would be certified as the recognized bargaining agent
7 pursuant to the standard set forth in its 2015 Board Order. Stay Motion, Ex. 9; AR, Supp. 625-29.

8 ESEA’s substantial rights have been prejudiced by these actions. These actions were taken
9 in violation of the Board’s statutory provisions and orders of the supreme court to which it was a
10 party, were taken without proper application of the Administrative Procedure Act and, as such, were
11 arbitrary, capricious and an abuse of discretion. Because these actions were conclusions of law
12 made by the Board and subsequent actions taken pursuant thereto, this Court reviews on a *de novo*
13 basis and should “not hesitate” to conclude that such actions were invalid as “conflict[ing] with
14 existing statutory provisions or exceed[ing] the statutory authority of the agency or [being] otherwise
15 arbitrary or capricious.” *See State, Div. of Insurance v. State Farm*, 116 Nev. at 293, 995 P.2d at
16 485.

17 **C. NRS Chapter 288 Does Not Expressly Authorize the Board to Order another**
18 **Runoff Election and Determine the Result by a Majority Of Votes Cast**
Standard and, as a Matter of Law, Such Power Cannot Be Implied.

19 The Board clarified in its 2015 Board Order that the plain language of its regulation [NAC
20 288.110(7)] requires “only a single runoff election.” Stay Motion, Ex. 5 at 2-3; AR, Supp. 470-71.
21 It noted that the supreme court’s 2009 Order of Affirmance also spoke of the runoff election as a
22 single, one time event. *Id.* NRS chapter 288 does not address runoff elections in any way. Despite
23 the plainly permissive “may” found in NRS 288.160(4) regarding the holding of an initial
24 representation election, the Board, in its 2015 Board Order, cited to NRS 288.160(4) stating that it
25 has a “statutory duty to hold elections and to resolve [its] good faith doubt” and that the “legislature
26 has decreed” that it must definitively resolve who has the majority support of the employees of a
27 bargaining unit. Stay Motion, Ex. 5 at 3-4; AR, Supp. 471-72. There is no such “legislative decree”
28 ///

1 in NRS chapter 288 for initial representation elections and certainly not for runoff elections which
2 are not addressed by the legislature at all.

3 Belying its claim of a "legislative decree," the Board then proceeds to characterize the second
4 run-off election as "discretionary." *Id.* at 4; AR, Supp. 472. This claim also fails under supreme
5 court precedent. Generally, the powers of an administrative agency are limited to those powers
6 specifically set forth in statute. *City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13
7 (2006). The only situation in which powers can be implied is where they are necessary to the
8 agency's performance of those express statutory duties. *Id.* at 334-35, 131 P.3d at 13-14. In
9 *Kilgore*, the court held that the power of the Board to issue a preliminary injunction was neither
10 expressly provided by statute nor implied by statute because it was *not* "essential to carry out [the]
11 agency's express statutory duties." The court so concluded because it found that the Board's express
12 statutory power to investigate and determine the merits of complaints would *not* be "rendered
13 meaningless without the authority to issue preliminary injunctions." *Id.*

14 The Board's duties under NRS 288.160 are *not* "rendered meaningless" without the authority
15 to hold discretionary runoff elections to be determined by a different standard than the previous
16 elections in a representation challenge situation. To ensure stability in labor relations, NRS 288.160
17 sets forth a fair and orderly process for recognizing an exclusive bargaining agent and for removing
18 or replacing that bargaining agent. As described in the statement of the case, for initial recognition,
19 it requires that an employee organization present certain documentation, including a verified
20 membership list showing that "it represents *a majority of the employees in a bargaining unit.*" NRS
21 288.160(1) and (2) (emphasis added). Then, for a rival organization that has followed the proper
22 procedures, *see* NAC 288.146, and that has given the Board reason to have a good faith doubt
23 whether "any employee organization is supported by *a majority of the local government employees*
24 *in a particular bargaining unit,*" NRS 288.160(4) gives the Board the authority but not a mandate
25 to conduct an election upon the question. NRS 288.160(4) (emphasis added).

26 Thus, the plain language of NRS 288.160(4) *authorizes* the Board to hold an election as a
27 means of determining that an employee organization has the requisite support of the members it
28 represents or desires to represent. NRS 288.160(4) does *not mandate* an election and it certainly

1 does not mandate repeated elections between the same parties, conducted under different standards
2 for the purpose of declaring "a winner" in the typical sense of election victors. There is nothing
3 irrational about this orderly process. As the Board recognized in its 2015 Board Order, the
4 fundamental purpose of NRS chapter 288 is to preserve labor stability. The work to be done by local
5 governments is too important, and the available resources are too limited, to permit strikes or work
6 stoppages,⁸ or the distraction and disruption caused by prolonged inter-union disputes. The Nevada
7 Supreme Court has also so held. *See Clark County Classroom Teachers Ass'n v. Clark County Sch.*
8 *Dist.*, 91 Nev. 143, 145, 532 P.2d 1032 (1975) ("labor peace and stability in an area as vital as public
9 education are indisputably a necessity to the attainment of that goal. Inter-union strife within the
10 schools must be minimized. Unnecessary work stoppages and the consequent impairment of the
11 educational process cannot be tolerated without significant injury to public education.") (quoting
12 *Local 858 of AFT v. School Dist. No. 1*, 314 F.Supp. 1069, 1077 (D. Colo. 1970)).

13 The high standards that the Legislature has set in NRS 288.160(1) and (2) for a group to
14 obtain recognition as the employee organization serve this legislative goal of preserving labor peace.
15 The capricious holding of repeated elections between rival unions does not serve this legislative goal
16 of preserving peace. Indeed, it would be inconsistent and contrary to reason and public policy to
17 allow a rival employee organization to unseat an incumbent organization based on just a majority
18 of votes cast by those that are willing and able to participate in a particular election.⁹ This is
19 particularly so in a state like Nevada where the rival employee organization is *not* required to make
20 any particular showing of support, through interest cards, signatures on petitions or otherwise, before
21

22 ⁸ See NRS 288.160(1) (request for recognition must be accompanied by no-strike pledge);
23 288.160(3)(b) (employer may withdraw recognition if bargaining agent disavows no-strike pledge);
24 288.230 (declaring strikes to be unlawful); 288.240 (injunctive relief against strike); 288.250
25 (punishment of employee organization for commencing strike); and 288.260 (punishment of
employee for participation in strike).

26 ⁹ The inconsistency and, indeed, absurdity of the application of such a rule is even more
27 pronounced in the situation before the Court in this case where the Board has held election after
28 election involving the same parties. It is fair to ask what impact, the confusion and fatigue among
the "voters" in the bargaining unit has had on the results of these elections. In short, the Board's
actions have been antithetical to preserving labor stability.

1 such an election may be ordered.¹⁰ Indeed, in 2003, 2005 and 2007, the Nevada Legislature rejected
2 bills that would have created a standard where a rival could unseat an incumbent based on less than
3 an outright majority.¹¹ When statutory language that has been interpreted by the highest court
4 remains unchanged by the Legislature, it is presumed that the legislature approves of that
5 interpretation, and that is exactly what has happened here. *See Northern Nevada Ass'n of Injured*
6 *Workers v. Nevada State Indus. Ins. Sys.*, 107 Nev. 108, 112, 807 P.2d 728, 730 (1991).

7 Further, in this matter, the supreme court's 2005 and 2009 Orders of Affirmance are the "law
8 of the case" as to the meaning of NRS 288.160(4) and NAC 288.110(10)(d) that the Board is
9 required to follow. Again, briefly, the supreme court, in its 2005 Order of Affirmance stated:

10 [T]he statute and administrative code plainly and unambiguously state that to win an
11 election, the employee organization must have "a majority of the employees within
the particular bargaining unit."

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13
14 ¹⁰ Nevada is in the minority in this approach. Most states that allow for public sector
15 collective bargaining require a rival or intervening union to provide evidence of employee support
16 before such an election will even be ordered. Such showing of support is usually required to be
17 evidenced by items such as notarized membership lists, membership cards, signed petitions or dated
18 statements of interest that are kept confidential by the relevant public employee board (EMRB
19 counterpart). See e.g. ALASKA STAT § 23.40.100(a)(1)(B) (2015); CAL. GOV. CODE §
20 3544.1(b) (2015); CONN. GEN. STAT § 5-275 (2015); DEL. CODE ANN. tit. 19, §§ 1310, 1311(b)
21 (2015); FLA. STAT. ch. 447-307 & 308 (2015); HAW. REV. STAT. § 89-7 (2015); 115 ILL.
22 COMP. STAT. § 5/7(c)(1) (2015); IND. CODE ANN. §§ 20-290502, 20-29-5-3 (2015); IOWA
23 CODE §§ 20.14(5)(a), 20.15 (2015); KAN. STATE ANN. § 75-4327(d)(2015); KY. REV. STAT.
24 ANN. § 345.060 (2015); ME. REV. STAT. ANN. tit. 26 § 967(2) (2015); MASS. GEN. LAWS ch.
25 150E, § 4 (2015) and MASS. REGS. CODE 456 § 14.05 (2015); MICH. COMP. LAWS ANN. §
423.212(a) (2015); MINN. STAT. § 179a.12 (2015); MO. CODE REGS. ANN. TITLE 8, § csr 40-
2.030 (2015); NEB. REV. STAT § 48-838(3) (2015); N.H. REV. STAT. ANN. § 273-A:10 (2015);
N.J. ADMIN. CODE tit. 19, §§ 11-1.2, 11-1.3; N.M. STAT. ANN. § 10-7E-16(C) (2015); OHIO
REV. CODE ANN. § 4117.07(A)(1) (2015); OR. REV. STAT § 243.682(1)(b)(B)(2015); PA.
STAT. ANN. tit. 43 § 1101.603(c) (2015); S.D. ADMIN. R. 47:02:02:04.01 (2015); TENN. CODE
ANN. § 49-5-605 (2015); VT. STAT. ANN. tit. 21 § 1724(a)(1) (2015); WASH. ADMIN. CODE
§ 391-25-110 (2015); WIS. STAT. § 111.83(6) (2015).

26 ¹¹ Since the matter between these two parties began and twice since the supreme court's
27 interpretation that NRS 288.160(4) requires an outright majority, several bills have been introduced
28 to relax the standard but the Nevada Legislature has declined to do so, indicating its approval of the
outright majority standard. See AB 545 (2003); AB 568 (2005) and AB 337 (2007). Pursuant to
NRS 47.130 and 47.150, ESEA requests that the Court take judicial notice of this material.

1 Stay Motion, Ex. 2 at 11(emphasis added). Further, the supreme court stated that because this was
2 a “case of an unambiguous statute, the EMRB is required to follow the law ‘regardless of result’”
3 and “[w]e defer to the Nevada Legislature as to whether the definition of a majority vote should be
4 changed.” *Id.* at 11-12. The court did not merely interpret NAC 288.110(10)(d) and agree that it
5 was within the language of NRS 288.160(4). It declared that NRS 288.160(4) plainly and
6 unambiguously requires a showing of support from a “majority of all the members within the
7 particular bargaining unit.” *Id.* at 11. It did not first consider NAC 288.110(10)(d) and then declare
8 that it thought that regulation was a good way to interpret NRS 288.160(4). It did not determine that
9 NRS 288.160(4) had more than one possible meaning and then defer to the Board’s interpretation
10 as being consistent with one of those. Rather, it stated that “[i]n light of this plain and unambiguous
11 language [of NRS 288.160(4)], we will not disturb the EMRB’s interpretation.” Thus, it is clear that
12 the supreme court interpreted NRS 288.160(4) on its own, *from the new*. (See
13 https://www.law.cornell.edu/wex/de_novo: *de novo* means *from the new*).

14 The supreme court reaffirmed this position in its 2009 Order of Affirmance regarding the
15 issue of conducting the runoff election when it stated:

16 [T]he language of NRS 288.160 and NAC 288.110 are plain and unambiguous and
17 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.

18 Stay Motion, Ex. 3 at 2 (emphasis added). Finally, the supreme court in 2009 also “conclude[d] that
19 NRS 288.160(4)’s and NAC 288.110(10)(d)’s majority-vote requirement is equally applicable to the
20 runoff election.” *Id.* at 3. The supreme court came to this conclusion despite expressly
21 acknowledging “that a runoff election *may produce similar inconclusive results*.” *Id.* (emphasis
22 added). By acknowledging this possibility of an inconclusive result, the supreme court foreclosed
23 the interpretation which the Board boldly, arbitrarily and capriciously made in its 2015 Board Order
24 and executed in its 2016 Board Order – that the Board somehow has a “duty” to hold a second,
25 “discretionary” runoff election in order to apply a different standard that will produce a so-called
26 “conclusive” result, namely the declaration of “a winner” despite the lack of evidence that the so-
27 called winner is supported by a majority of all of the members of the bargaining unit.

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1 Thus, when it comes to determining the results when a rival organization has challenged the
2 incumbent employee organization and a representation election occurs (and certainly to determine
3 the results of this dispute), the Board's express statutory duty, as interpreted twice by the Nevada
4 Supreme Court, is to require "support from a majority of all of the members of the bargaining unit
5 and not just a majority of those who vote" even if it produces a so-called "inconclusive result."

6 Therefore, the Board *is* able to carry out its express statutory duty under NRS 288.160(4) and
7 *did* carry out its express statutory duty when it held the runoff election in February of 2015, at which
8 Local 14 failed to show that it is supported by a majority of employees in the bargaining unit. This
9 *is* a meaningful exercise of the Board's duties under NRS 288.160(4). Put another way, it would *not*
10 render its duties meaningless under NRS 288.160(4) to conclude that the Board does *not* have the
11 power to compel changes in the recognized bargaining agent anytime a rival organization, with no
12 showing of support prior to the election, convinces the Board that it should doubt the incumbent's
13 status but does not receive votes from a majority of the bargaining unit in the election, keeping in
14 mind that Local 14 has never provided evidence that ESEA is not supported by that majority and that
15 the District has never moved to withdraw recognition.

16 The Board simply does not and cannot have the implied power to disregard the law, disregard
17 the Nevada Supreme Court's orders to which it was a party, and to make changes that the supreme
18 court has expressly declared are a subject to be addressed by the Legislature. Just ordering the
19 second runoff election was, itself, not necessary to effectuate the Board's express statutory duties,
20 but conducting it and determining the results by a mere majority-of-the-votes-cast standard is a
21 blatantly unauthorized use of the Board's power in violation of the supreme court's 2009 Order of
22 Affirmance.

23 Further support for the conclusion that the Board acted beyond and without jurisdiction of
24 NRS chapter 288 or any implied powers therefrom is found in the doctrine of law that provides that
25 where an agency is directly prohibited from doing something, it cannot simply accomplish the same
26 results by taking an indirect route. *Sadler v. Eureka County*, 15 Nev. 39, 42, 1880 Nev. LEXIS 10
27 (1880). In *Sadler v. Eureka County*, the Nevada Supreme Court determined that where the law
28 required the Eureka Board of County Commissioners to let certain contracts only to the lowest

1 bidder, it could not award such a contract to such a bidder and then order changes requiring the
2 payment of more money without also conducting public bidding. Indeed, the supreme court stated
3 that if a court were to give such an exercise of power "judicial sanction, it would strip the public of
4 the very protection which the legislature intended to give by the restrictions which it imposed." *Id.*
5 at 43; *see also State v. Clark*, 90 Nev. 144, 147, 520 P.2d 1361, 1363 (1979) (district court cannot
6 grant post-conviction relief that shortened a sentence instead of going through parole board); *SEIU*
7 *Local 503 v. Department of Admin. Servs.*, 183 Ore. App. 594, 604, 54 P.3d 1043, 1048 (Or. Ct.
8 App. 2002) ("axiomatic that what the government [state agency] cannot do directly it cannot do
9 indirectly").

10 The Board's actions in this case are a classic example of what is prohibited by the above rule
11 of law. By statute, regulation and order of the highest court in the State, the Board is directly
12 prohibited from determining the results of a representation election by a mere majority-of-the-votes-
13 cast standard. To avoid the effect of such statute, regulation and judicial orders, the Board has
14 attempted to accomplish the same thing by the contrived, indirect route of a "mandated" yet
15 "discretionary" second runoff election. But the Nevada Legislature and the Nevada Supreme Court
16 have pronounced the state of the law on this issue, thus precluding the Board's creative "solution."

17 **D. By Declaring its Authority to Order a Second, Discretionary Election to be**
18 **Determined by a Majority of Votes Cast Standard, the Board Has Engaged in**
19 **Unlawful Rule Making in Violation of the Administrative Procedure Act and by**
20 **Conducting such Election, it has Acted Pursuant to that Unlawful Rule.**

21 The Board's statement in its 2015 Board Order that:

22 where it appears that a discretionary runoff election will produce
23 meaningful results that will resolve this Board's good faith doubt, it
24 is within our authority under both NRS 288.160(4) and NAC
25 288.110(7), as well as our implied authority, to conduct a
26 discretionary second runoff election

27 is a directive for the purpose of effectuating its statutory duties. Stay Motion Ex. 5 at 4-5; AR, Supp.
28 472-73. As such, it is rule making. NRS 233B.010. A directive to effectuate or interpret law or
policy is a "regulation" as that term is defined in NRS 233B.038. A "regulation" is subject to
Nevada's Administrative Procedure Act ("the APA") and must be adopted pursuant thereto, not
pursuant to an order of the Board that is made without notice to the general public, without

1 workshops and without review by the Legislative Counsel pursuant to NRS 233B.040 *et seq.* "The
2 APA was adopted to establish minimum procedural requirements, such as notice and hearing, for
3 all rule making by non-exempt state government agencies." *State Farm Mut. v. Comm'r of Ins.*, 114
4 Nev. 535, 543, 958 P.2d 733, 738 (1998). "The notice and hearing requirements are not mere
5 technicalities; they are essential to the adoption of valid rules and regulations." *Id.* (citing *Public*
6 *Serv. Comm'n v. Southwest Gas*, 99 Nev. 268, 662 P.2d 624 (1983) stressing the importance of
7 following the APA).

8 Specifically, NRS 233B.038 defines a "regulation" to mean:

- 9 (a) An agency rule, standard, directive or statement of general applicability which
10 effectuates or interprets law or policy, or describes the organization, procedure or practice
11 requirements of any agency;
12 (b) A proposed regulation;
13 (c) The amendment or repeal of a prior regulation; and
14 (d) The general application by an agency of a written policy, interpretation, process
15 or procedure to determine whether a person is in compliance with a federal or state statute
16 or regulation in order to assess a fine, monetary penalty or monetary interest.

17 "An agency makes a rule when it does nothing more than state its official position on how it
18 interprets a requirement already provided in the statute and how it proposes to administer the
19 statute." *K-Mart Corp. v. SIIS*, 101 Nev. 12, 17, 693 P.2d 562, 565 (1985). In *K-Mart Corp. v.*
20 *SIIS*, the State Industrial Insurance System ("SIIS") was under a legislative mandate to assess self-
21 insured employers pursuant to a formula provided by statute. *Id.* at 15; 693 P.2d at 564-65. SIIS
22 applied the formula and assessed self-insured employers, but when it notified the employers of their
23 assessments, SIIS also declared that the assessments had to be paid in a lump sum by a certain date
24 and declared that any experience dividend that the agency owed the self-insured employer would be
25 offset against the assessment. A self-insured employer challenged the assessment and the
26 declarations of the agency regarding the lump sum payment and the offset rule as being rules or
27 regulations adopted in violation of chapter 233B of NRS because no prior notice or workshops were
28 provided.

The supreme court held that the application of the statutory formula to determine the
assessments "was simply the agency's pronouncement of how the statute operated in a specific
context" and that it therefore did not require the formalities of rule making. However, regarding the

1 rulings on the lump sum payment and the offset, the supreme court held that these matters "were not
2 necessarily required by statute" and, therefore, could not be a simple pronouncement of the operation
3 of a statute. *Id.* at 17; 693 P.2d at 565. Further, the supreme court took note of an existing
4 regulation of SIIS that addressed a similar "offset" rule and emphasized that the fact that the agency
5 already had adopted, pursuant to the APA, a regulation with a similar rule "belie[d] the System's
6 contention that rulemaking was not necessary in this instance." *Id.* at 17-18; 693 P.2d at 565.
7 Finally, the supreme court stated that the "System's decision to require a lump sum payment . . . and
8 to permit offsets against the employer's experience dividends is a statement of general applicability
9 which effectuates law or policy." *Id.* at 18; 693 P.2d at 565 (*citing* NRS 233B.038). Thus, the
10 supreme court held that both the decision to require a lump sum payment and the rule on offsets were
11 invalid because they were not made in compliance with the procedures for adoption of regulations
12 pursuant to NRS 233B.040 *et seq.*

13 Similar to SIIS' actions in *K-Mart v. SIIS*, the Board's declarations and actions regarding a
14 second discretionary runoff election and the standard by which it was determined in the 2016 Board
15 Order are not required by statute. As previously stated, the statutes do not address runoff elections
16 at all but merely authorize, not require, the Board to hold an initial election if it has a "good faith
17 doubt" as to majority representation.

18 Further, and also similar to SIIS' actions in *K-Mart v. SIIS*, the Board's previous adoption
19 of a regulation, NAC 288.110(7), addressing runoff elections and NRS 288.110(10)(d) addressing
20 the standard for determining majority support "belie[] its contention that rulemaking is not necessary
21 in this instance." In fact, only a few months after issuing its 2015 Board Order, the Board proposed
22 a regulation to amend NAC 288.110(7) to change the standard for determining the results of
23 representation elections to a majority-of-the-votes-cast standard, evidencing the Board's belief that
24 rule making is necessary for application of such a standard. *See* R025-15I, available at
25 <http://www.leg.state.nv.us/register/2015Register/R025-15I.pdf>.¹² This regulation was withdrawn
26 by the Board after review by the Legal Division of the Legislative Counsel Bureau. Minutes from

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28 ¹² Pursuant to NRS 47.130 and 47.150, ESEA requests that the Court take judicial notice of
this material.

1 an August 2015, meeting of the Board indicate that this was due in part "to the fact that . . . part of
2 the regulation setting the standard for determining the 'winner' of the election is currently in court."
3 Stay Motion, Ex. 10.¹³ Finally, right in the 2015 Board Order, the Board stated that in a case where
4 it cannot determine a "winner" of a runoff election, it will or may hold another second, discretionary
5 runoff election to be determined by a majority of votes cast. Stay Motion Ex. 5 at 4-5; Ar, Supp.
6 472-73. This is a statement of general applicability that effectuates law or policy under NRS
7 288.160(4) which therefore must be adopted in compliance with 233B.040 *et seq.* before being
8 adopted and certainly before being enforced. The Board's recent attempt to adopt a regulation to
9 create this standard, *see* R025-15I described above, reveals its own admission of the obligation to
10 have done this through a properly adopted regulation. Because the 2016 Board Order was an
11 enforcement of this "rule" which was not made in compliance with the procedures for adoption of
12 regulations pursuant to NRS 233B.040 *et seq.*, it is clearly invalid.

13 In another case where an agency took certain action pursuant to a new "interpretation" not
14 expressly noticed as rule making, the supreme court set out the issue as follows: "whether the agency
15 is engaging in rule making such that the APA safeguards for promulgating regulations apply or
16 whether the agency is merely making an 'interpretive ruling.'" *State Farm Mut. v. Comm'r of Ins.*,
17 114 Nev. 535, 543, 958 P.2d 733, 738 (1998). An "interpretive ruling" is "merely a statement of
18 how the agency construes a statute or a regulation according to the specific facts before it." *Id.*
19 (*citing General Motors Co. v. Ruckelshaus*, 742 F.2d 1561, 1565 (U.S. App. D.C. 1985)). In *State*
20 *Farm Mutual* the supreme court held that the Division of Insurance engaged in rule making when

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22 ¹³ In fact the Board has on two other occasions attempted to change the rules as to
23 representation elections and has done so by following the rulemaking procedures of NRS 233B.060
24 and 233B.061. In 2013, it proposed an amendment to NAC 288.110(7) to change the requirement
25 that "the Board will conduct a runoff election" in the event of inconclusive results, to an
26 authorization that "the Board may conduct a runoff election." *See* R043-13P, available at
27 <http://www.leg.state.nv.us/register/2013Register/R043-13P.pdf> (although ultimately this amendment
28 was not included in the adopted version of R043-13). Further, in 2008, it proposed a new regulation
providing for an entirely different process for determining the representative of local government
employees when a rival organization challenges the incumbent organization's majority status. *See*
R062-08I, available at <http://www.leg.state.nv.us/register/2008Register/R062-08I.pdf>. (R062-08I
was ultimately not adopted). Again, pursuant to NRS 47.130 and 47.150, ESEA requests that the
Court take judicial notice of this material.

1 it declared its interpretation of the term “fault” in a statute that prohibited insurers from cancelling,
2 nonrenewing or increasing premiums based on claims for which the insured was not “at fault.” The
3 Division made this declaration when it denied State Farm’s request for a rate increase. *Id.* at 537;
4 958 P.2d at 734. However, the supreme court held that the Division’s interpretation “was a
5 statement of general applicability that effectuated agency policy on surcharging Nevada insureds”
6 and that, therefore, “the Division should have followed the rule making procedures in APA.” *Id.* at
7 544; 958 P.2d at 738. The court also provided the following parentheticals as examples of where
8 the court “has not hesitated to invalidate agency actions in which the agency was formulating a rule
9 or policy of general application and not merely making an interpretive ruling according to the facts
10 before it”: *Las Vegas Transit v. Las Vegas Strip Trolley*, 105 Nev. 575, 780 P.2d 1145 (1989)
11 (agency’s adoption of new definition of “trolley” should have been subject to formal rule making
12 proceeding); *State Bd. of Equal. v. Sierra Pac. Power*, 97 Nev. 461, 634 P.2d 461 (1981) (agency
13 should have complied with procedural rule making requirements in adopting new method or formula
14 for calculating property taxes). *Id.*

15 Just as the Division of Insurance’s declaration and application of its interpretation of the
16 statutory term “fault” was an adoption of a rule and not a mere interpretive statement, the Board’s
17 interpretation of its own authority to hold a second, discretionary runoff election, to determine the
18 results of that runoff election by only a majority of the votes cast and to take action upon that
19 interpretation are also the adoption of a rule that is a statement of general applicability that
20 effectuates the Board’s powers under NRS 288.160. The Board did not merely construe NRS
21 288.160(4) or NAC 288.110(10)(d) according to the specific facts between ESEA and Local 14.
22 Indeed, to have done so would have highlighted the outrageousness of the Board’s actions, which
23 were to basically order a “re-do” to produce a different result. Rather, the Board took pains to set
24 forth a “statement of general applicability” when it stated, on page 4-5 of its 2015 Board Order that:

25 where it appears that a discretionary runoff election will produce meaningful results
26 that will resolve this Board’s good faith doubt, it is within our authority under both
27 NRS 288.160(4) and NAC 288.110(7), as well as our implied authority, to conduct
28 a discretionary second runoff election.

///

1 Stay Motion, Ex. 5 at 4-5; AR, Supp. 472-73. Without complying with any of the requirements of
2 the APA, this statement adopts a new "regulation" of the Board.

3
4 Finally, the supreme court has held that if the decision of an agency impacts the rights of
5 others not involved in the proceeding it is more akin to a regulation. *Southern Nev. Op. Eng'rs*
6 *Contract Compliance Trust v. Johnson*, 121 Nev. 523, 529-30, 119 P.3d 720, 725 (2005). Therefore,
7 in *Southern Nevada Operating Engineers* the court invalidated the Labor Commissioner's
8 determination that the "field soils tester" classification be removed from the prevailing wage list
9 even though it was made in the context of a contested case. The supreme court so held because the
10 Commissioner's determination had general applicability to a class of individuals beyond those
11 involved in the contested case who received notice and a hearing and was, therefore, effectively an
12 amendment of the regulation establishing the prevailing wage list. *Id.* at 531; 119 P.3d at 726.

13 Again, the 2015 Board Order and the action the Board took pursuant thereto in the 2016
14 Board Order are more akin to what the supreme court found in *Southern Nevada Operating*
15 *Engineers* to be the adoption of a rule. The Board did not simply determine the rights of ESEA and
16 Local 14. It declared, without notice, without workshops and without public hearings that, not only
17 ESEA and Local 14, but all future participants in representative elections may, or may not, at the
18 Board's discretion, be subject to a second, discretionary runoff election based on just a majority of
19 votes cast standard.

20 In closing on the subject of ad hoc rulemaking, it must be emphasized again that the Board
21 is well aware of the need for proper rulemaking on the subject of representation elections, runoff
22 elections and the appropriate standard to be used to determine the results thereof. In accordance with
23 APA procedures, it proposed changes thereto by way of proposed regulations in 2008 and 2013
24 which were ultimately not adopted. *See* footnote 13. And, most recently, just last year, after issuing
25 its 2015 Board Order, it proposed a regulation exactly on point to the issue of this case. R025-I
26 would have amended NAC 288.110 to provide that all representation elections, including runoff
27 elections, be determined by just a majority of the votes cast. This proposed regulation was properly
28 submitted to the office of the Legislative Counsel for review. Ultimately, the EMRB withdrew the

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1 proposed regulation, citing the pending litigation that is before the Court today. No greater evidence
2 can be provided to "believe the contention" that rulemaking is not required in the present situation.
3 See *K-Mart Corp. v. SIRS*, 101 Nev. at 17-18; 693 P.2d at 565. There is no question that the 2015
4 Board Order and the actions taken pursuant to it in the 2016 Board Order violate the APA, and for
5 this reason alone must be declared void.

6 VI. CONCLUSION

7 The Board is a state agency which was created by the Nevada Legislature through the
8 provisions of NRS chapter 288. It is subject to the Administrative Procedure Act. It is bound by
9 orders of the Nevada Supreme Court that interpret its statutory duties. In this case, the supreme court
10 has interpreted the Board's duty when a rival organization has challenged the incumbent employee
11 organization and a representation election occurs: the Board's express statutory duty, as interpreted
12 twice by the supreme court, is to require "support from a majority of all of the members of the
13 bargaining unit and not just a majority of those who vote" even if it produces a so-called
14 "inconclusive result." The Legislature has not changed the standard, interpreted by the supreme
15 court, since this ruling quoted above. As a clear matter of law, therefore, the Board did not have
16 authority to order or to conduct a second, discretionary runoff election and to determine the results
17 by just a majority of the votes cast. Local 14, the rival organization, did not produce evidence to the
18 Board that ESEA is not supported by a majority of all of the members of the bargaining unit, but
19 more importantly despite three elections, it has not demonstrated that it is supported by a majority
20 of the bargaining unit, as required by NRS 288.160(4). Nor has the District sought to withdraw
21 recognition from ESEA. The second, discretionary runoff election, and the 2016 Board Order
22 certifying its results must be declared void. Additionally, the portion of the 2015 Board Order
23 adopting the rule that when the first runoff election does not produce a "conclusive" result, a second,
24 discretionary runoff election will be or may be held must also be declared void.

25 WHEREFORE, Petitioner prays for judgment as follows:

26 1. For an order invalidating the 2016 Board Order and declaring that the Board exceeded its
27 authority under NRS 288.160(4) by ordering a second, discretionary run-off election, the results of
28 which would be determined by only a majority of the votes cast.

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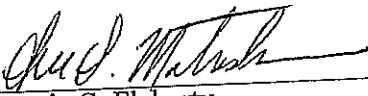
2. For an award invalidating the portion of the 2015 Board Order which adopted the rule that when the first runoff election does not produce a "conclusive" result, a second, discretionary runoff election will be or may be held.

3. For an award of attorney's fees and costs incurred by Petitioner in this proceeding; and,

4. For such other and further relief as the Court deems just and proper.

Dated this 17th day of March, 2016.

DYER, LAWRENCE, FLAHERTY,
DONALDSON & PRUNTY

By: 

Francis C. Flaherty
Nevada Bar No. 5303
Sue S. Matuska
Nevada Bar No. 6051
Attorneys for Petitioner


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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read the foregoing Memorandum of Points and Authorities, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 17th day of March, 2016.

DYER, LAWRENCE, FLAHERTY,
DONALDSON & PRUNTY

By: 
Francis C. Flaherty
Nevada Bar No. 5303
Sue S. Matuska
Nevada Bar No. 6051
Attorneys for Petitioner

AFFIRMATION
Pursuant to NRS 239B.030

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

☒ 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 17, 2016



Francis C. Flaherty
Sue S. Matuska
Attorney for Petitioners

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 March, 2016, I caused a true and correct copy of the foregoing PETITIONER'S OPENING MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF 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:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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 CASE
NO. 70586**

District Court Case No. A-13-
715577-J

Electronically Filed
Oct-18 2016 04:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX – VOLUME I

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Case No. 70586

INDEX TO APPELLANT'S APPENDIX

Appellant, STATE OF NEVADA, LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD, by and through its undersigned attorneys, Attorney General ADAM PAUL LAXALT; Chief Deputy Attorney General GREGORY L. ZUNINO; Deputy Attorney General DONALD J. BORDELOVE, hereby submits this JOINT APPENDIX as follows:

| DESCRIPTION | VOL. | BATES NUMBERS |
|---|-------------|----------------------|
| Addendum to Administrative Record Volume Three (Transcripts of Argument and Orders of the District Court and the Nevada Supreme Court) | II | 283-300 |
| Certification of Election dated 06/19/06 | I | 051-052 |
| Complaint and Objection to Runoff Election filed 12/11/15 | I | 185-188 |
| Cross-Petition for Judicial Review on Behalf of International Brotherhood of Teamsters, Local 14, AFL-CIO filed 02/24/03 | I | 018-026 |
| Decision Item No. 520D dated 09/24/02 | I | 003-011 |
| Declaration of Kristin L. Martin in Support of International Brotherhood of Teamsters Local 14's Opposition to the Petition for Judicial Review filed 04/01/16 | II | 277-282 |
| Election Plan for Runoff Election | I | 101-121 |
| International Brotherhood of Teamsters Local 14's Opposition to the Petition for Judicial Review filed 04/01/16 | II | 235-276 |

| | | |
|--|----|---------|
| International Brotherhood of Teamsters Local 14's Supplement to Petition for Judicial Review dated 06/13/07 | I | 068-072 |
| International Brotherhood of Teamsters Local 14's Verified Second Supplemental Petition for Judicial Review and/or Writ of Mandate filed 03/08/12 | I | 089-096 |
| Notice of Appeal (IBT 14) dated 01/29/08 | I | 709-080 |
| Notice of Appeal filed 06/09/16 | II | 470-472 |
| Notice of Appeal filed 11/05/03 (ESEA) | I | 031-033 |
| Notice of Appeal filed 11/10/03 (IBT 14) | I | 034-036 |
| Notice of Entry of Order | I | 087-088 |
| Notice of Entry of Order | I | 170-171 |
| Notice of Entry of Order filed 01/20/16 | I | 192-193 |
| Notice of Entry of Order filed 01/22/08 | I | 073-078 |
| Notice of Entry of Order filed 04/12/07 | I | 059-064 |
| Notice of Entry of Order filed 05/17/16 | II | 464-469 |
| Notice of Entry of Order filed 10/24/12 | I | 099-100 |
| Notice of Entry of Order Granting Petition for Judicial Review filed 02/04/13 | I | 122-126 |
| Notice of Petition for Writ of Mandamus or in the Alternative for Writ of Certiorari filed 01/03/13 /// /// | I | 127-129 |

| | | |
|--|---|---------|
| Order Denying Petition for Judicial Review Filed by the Education Support Employees Association and by the International Brotherhood of Teamsters filed 10/29/03 | I | 027-028 |
| Order Granting Countermotion to Dismiss filed 06/08/15 | I | 179-180 |
| Order Granting Petition filed 12/18/13 | I | 156-161 |
| Order Item No. 520C dated 09/19/02 | I | 001-002 |
| Order Item No. 520F dated 01/23/03 | I | 012-014 |
| Order Item No. 520I | I | 053-054 |
| Order Item No. 520J | I | 065-067 |
| Order Item No. 520K | I | 085-086 |
| Order Item No. 520M dated 10/24/12 | I | 097-098 |
| Order Item No. 520Q | I | 163-169 |
| Order Item No. 520T filed 01/20/16 | I | 189-191 |
| Order of Affirmance filed 12/21/05 | I | 037-049 |
| Order of Affirmance filed 12/21/09 | I | 081-084 |
| Petition for Judicial Review filed 01/20/16 | I | 196-200 |
| Petition for Judicial Review filed 03/19/15 | I | 173-178 |
| Petition for Judicial Review filed 09/18/06 (IBT 14) | I | 055-058 |
| Petition for Judicial Review filed 09/27/02 | I | 015-017 |
| Petition for Writ of Mandamus or in the Alternative for Writ of Certiorari filed 01/03/13 | I | 130-154 |

| | | |
|--|----|---------|
| Petitioner's Opening Memorandum of Points and Authorities in Support of Petition for Judicial Review filed 03/17/16 | I | 201-234 |
| Receipt for Documents dated 03/01/13 | I | 155 |
| Reply in Support of Petitioner's Opening Memorandum of Points and Authorities in Support of Petition for Judicial Review filed 04/08/16 | II | 317-334 |
| Respondent Employee-Management Relations Board's Reply Memorandum of Points and Authorities in Opposition to Petition for Judicial Review filed 04/01/16 | II | 301-316 |
| Talley of Ballots file 02/05/15 | I | 162 |
| Talley of Ballots filed 12/07/15 | I | 194-195 |
| Tally of Ballots | I | 050 |
| Tally of Ballots filed 02/05/15 | I | 172 |
| Tally of Ballots filed 12/07/15 | I | 181-184 |
| Transcript of Proceedings filed 04/26/16 | II | 335-463 |
| Written Notice of Entry of Order filed 10/30/03 | I | 029-030 |

Dated: October 18, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ Donald J. Bordelove
Gregory L. Zunino
Bureau Chief
Donald J. Bordelove
Deputy Attorney General
Attorneys for *State of*
Nevada, Local Government
Employee-Management
Relations Board

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General and that on the 18th day of October, 2016 I served the foregoing **Joint Appendix – Volume I** via Eflex Electronic Service to the following:

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s/ Marilyn Millam

An Employee of the
Office of the Attorney General

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

5 INTERNATIONAL BROTHERHOOD OF
6 TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

7 vs.

8 CLARK COUNTY SCHOOL DISTRICT and
9 EDUCATION SUPPORT EMPLOYEES
ASSOCIATION
10 Respondents.

ITEM NO. 520C

CASE NO. AI-045735

ORDER

11 For Complainant: Lewis N. Levy, Esq.
Levy, Stern & Ford

12 For Respondents: C.W. Hoffman, Esq.
13 Clark County School District

14 Sandra G. Lawrence, Esq.
15 Dyer, Lawrence, Cooney & Penrose

16 On January 29, 2002, Petitioner INTERNATIONAL BROTHERHOOD OF
17 TEAMSTERS, LOCAL 14, AFL-CIO (hereafter "Teamsters") filed an Application for Order
18 Convening an Administrative Hearing for the Purpose of Determining Whether to Conduct an
19 Election Pursuant to NRS 288.160, NAC 288.145 and NAC 288.146(1) and (2) with the Local
20 Government Employee-Management Relations Board (hereafter "Board").

21 A hearing was conducted on September 18, 2002, on the issue of whether the petition
22 filed by Teamsters Local 14 was defective.

23 The Board deliberated on that issue on September 18, 2002, noticed in accordance with
24 Nevada's Open Meeting Law. Based upon the Board's deliberations,

25 All parties agree that ESEA was subject to a challenge by a raiding union during a 30-day
26 window period in November, 2001.

27 The facts presented today show that Teamsters sent correspondence to the School District
28 dated November 15 and received by the School District on November 19, 2001. The Board

1 received a copy of that correspondence also on November 19, 2001. The real issue is whether
2 that correspondence met the requirement of "challenge" under NAC 288.146(2).

3 Black's Law Dictionary (5th edition, 1979, p. 209) defines "challenge" as to "question
4 formally the legality or legal qualification of" and "to formally call into question the capability
5 of a person for a particular function."

6 This Board hereby finds that the November 15th letter stating that Teamsters requests
7 recognition and indicates it has verifying membership cards verifying its majority status meets
8 the definition of "challenge."

9 The correspondence of the challenging union, Teamsters, was within the November time
10 limit and is, thus, not defective under the first provision of the disjunctive of NAC 288.146(2).

11 In light of Teamsters' November 15th letter being deemed "not defective" as a challenge,
12 we hereby order that the hearing proceed beginning on September 19, 2002 at 8:00 a.m., to
13 determine whether the Board in good faith doubts "whether any employee organization is
14 supported by a majority of the local government employees in a particular bargaining unit,"
15 pursuant to NRS 288.160(4). See NRS 288.160(4).

16 It is further ordered that the remaining portion of the counterclaim shall proceed to
17 hearing as well, as previously noticed.

18 DATED this 19th day of September, 2002.

19 LOCAL GOVERNMENT EMPLOYEE-
20 MANAGEMENT RELATIONS BOARD

21 BY: 
22 JOHN E. DICKS, ESQ., Chairman

23 BY: 
24 JANET TROST, ESQ., Member
25
26
27
28

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

5 INTERNATIONAL BROTHERHOOD OF
6 TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

7 vs.

8 CLARK COUNTY SCHOOL DISTRICT and
9 EDUCATION SUPPORT EMPLOYEES
ASSOCIATION
10 Respondents.

ITEM NO. 520D

CASE NO. A1-045735

DECISION

11 For Complainant: Lewis N. Levy, Esq.
Levy, Stern & Ford

12 For Respondents: C.W. Hoffman, Esq.
13 Clark County School District

14 Michael W. Dyer, Esq.
15 Sandra G. Lawrence, Esq.
Dyer, Lawrence, Cooney & Penrose

16 STATEMENT OF THE CASE

17 On January 29, 2002, Petitioner INTERNATIONAL BROTHERHOOD OF
18 TEAMSTERS, LOCAL 14, AFL-CIO (hereafter "Teamsters 14") filed an Application for Order
19 Convening an Administrative Hearing for the Purpose of Determining Whether to Conduct an
20 Election Pursuant to NRS 288.160, NAC 288.145 and NAC 288.146(1) and (2) with the Local
21 Government Employee-Management Relations Board (hereafter "Board") against the CLARK
22 COUNTY SCHOOL DISTRICT (hereafter "CCSD") and EDUCATION SUPPORT
23 EMPLOYEES ASSOCIATION (hereafter "ESEA").

24 A hearing was conducted on September 19 and 20, 2002. The Board deliberated on all
25 issues presented at the hearing on September 20, 2002, noticed in accordance with Nevada's
26 Open Meeting Law. The Board heard testimony from three witnesses and received evidence
27 from all parties.

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1 the present matter in that the election conducted in Mesquite, Nevada, was by the consent of the
2 parties. It is a customary practice during an organization attempt, to waive dues until the
3 challenging union is recognized.

4 Mauger agreed that although he did receive certain documents and/or a computer disc
5 from the CCSD containing the names of employees, he did not compare the authorization cards
6 with that list.

7 Dean Leavitt testified. He works for CCSD as a building engineer, and has also been a
8 bus driver for the CCSD. He was a member of ESEA and has held positions in that organization.
9 He is, however, no longer a member of ESEA, having resigned during the window period in July
10 2002. At the time of the Teamsters 14's organizing attempt, he assisted in soliciting ESEA
11 members to the Teamsters 14 organization. He felt that ESEA did not really support its members
12 and that there had been a problem with ESEA's health and welfare trust fund. Many members
13 experienced problems with that trust fund in paying medical claims and bills, leaving members
14 to pay the entire bills received from health care providers. He also felt there were problems by
15 the ESEA in the grievance process.

16 Mr. Leavitt started passing out authorization cards in September and continued through
17 November, 2001. He was told by Teamsters 14 not to interfere with the employees doing their
18 work, and to only approach them during non-work hours. He turned his cards into Teamsters 14
19 on a daily basis. He estimates he visited 20 or 30 locations. CCSD has about 300 different
20 facilities. He informed the employees that the authorization cards were necessary in order to
21 obtain an election.

22 He estimates he personally came into contact with about 130 employees, about 50% of
23 that number complained about problems with the ESEA and from that 50%, he received
24 authorization cards from about 45% of those complaining employees. Mr. Leavitt confirmed
25 that 30 of the 130 individuals contacted signed authorization cards.

26 Mr. Leavitt was recalled by the Board and was asked why he continued paying ESEA
27 dues after joining Teamsters 14. His first reason was because of the limited drop period in July
28 2002. That was the first opportunity he had to drop ESEA membership. He also indicated he did

1 not want to harm his relationship with ESEA if it stayed the incumbent representative of the
2 CCSD employees. He also offered that he attempted to change the ESEA's attitude towards its
3 members while on the Board of Directors and on the grievance committee, but he felt he was
4 unsuccessful.

5 Joseph Furtado testified as the Executive Director of ESEA. ESEA, in this matter,
6 represents the support staff. That would not include the teachers, police officers, counselors,
7 administrators, and those not working at least 4 hours per day. Exhibit 7 (Teamsters 14's tally
8 list) contains a listing for one counselor and that would be improper for this bargaining unit.
9 Exhibit 7 also had "radio repair" and Mr. Furtado stated there is no such classification. Upon
10 cross-examination, he agreed that such a description would fall into a category that is a proper
11 member of the bargaining unit in dispute in this matter, e.g., parts/garage. Therapist and Speech
12 therapist were included in Exhibit 7 and they should be in the teachers' bargaining unit. Thus,
13 there are about 3 individuals that are improperly listed in Exhibit 7. Mr. Furtado did mention
14 another category identified as "classification not provided," which had 272 employees listed.
15 Joint Exhibits 1 and 2 were provided indicating current dues-paying members. He believes 84
16 employees later revoked Teamsters 14 representation.

17 Exhibit BB is a list from CCSD's payroll department listing ESEA's dues-paying
18 members as of November 30, 2001. Mr. Furtado agreed that members could not drop their
19 membership with ESEA except during the window period in July 2002, i.e., months after the
20 November 2001 organizing attempts.

21 He testified that ESEA solicited employees to drop their membership with Teamsters 14
22 and such revocations were mailed to Teamsters 14. He did indicate that the employees of CCSD
23 had a "legitimate" reason to be upset with ESEA and that was due to the financial problems with
24 the health and welfare trust fund not paying ESEA members' medical bills. He believes that
25 57% of employees of CCSD employees are still with ESEA.

26 The CCSD offered no witnesses for this portion of the hearing. Dr. Goldman of CCSD
27 testified, however, on Wednesday, September 18, 2002 during the first portion of this
28 administrative hearing.

1 The parties offered closing arguments. Teamsters 14 stated there are two main issues
2 before the Board at this time. Those reasons are (a) whether a good faith doubt exists as to
3 which employee organization has the support of the majority of CCSD support staff and (b) the
4 proper time for the presentation of a verified membership list. Teamsters 14 states NRS
5 288.160(2) requires the list to be provided "at or after" the time of recognition; however, that
6 statute states "at or after" an application for recognition. The attorney for Teamsters 14
7 requested that the Board consider the authorization cards as the "verified membership list" as
8 allegedly the Board has done in prior decisions. Teamsters 14 further offered that the
9 authorization cards are "appropriate" to establish a question on the majority issue, triggering the
10 need for an election.

11 The ESEA argued that all paragraphs of NRS 288.160 must be read together, as a step by
12 step process. Verified membership lists are necessary to verify the accuracy of the authorization
13 cards. Counsel for ESEA agreed that Dean Leavitt was a credible witness and agreed with the
14 assessment of the employees' problems with the health & welfare trust fund not paying medical
15 bills. ESEA asserted that the bottom portions of Exhibits 6 and GG indicated only an interest in
16 Teamsters 14; however, the wording of such exhibits indicate the employees' desire to have
17 Teamsters 14 represent them in the collective bargaining process. Counsel for ESEA indicated
18 that Teamsters 14 seems to only want to "slop" something down for the Board to "lap" up in this
19 matter. ESEA further indicated that if Teamsters 14 wants to argue public policy requiring an
20 election in this matter, that it should seek the assistance of the Legislature.

21 FINDINGS OF FACT

22 1. That Teamsters 14 presented a proper "challenge" (pursuant to NAC 288.146) to the
23 CCSD that it now represents the majority of the bargaining unit that has the ESEA as its current
24 representative and the date of such challenging correspondence was dated November 15, 2001
25 and received by the CCSD on November 19, 2001.

26 2. That CCSD had recognized ESEA as the representative of the bargaining unit in
27 question in this matter.
28

1 3. That Teamsters 14 initiated an organizing attempt, which included approximately 140
2 individuals soliciting membership from CCSD employees.

3 4. That testimony was offered that the solicitation did not interfere with the workday of
4 the employees.

5 5. That testimony was offered that two "mail" boxes of authorization cards were taken to
6 CCSD for the purposes of counting and random verification. No testimony was presented by any
7 party to refute this allegation and in fact, Dr. Goldman of CCSD agreed on September 18, 2002,
8 that two "mail" boxes were indeed delivered to his office pursuant to a conversation with Mr.
9 Mauger for counting purposes.

10 6. That Teamsters 14 did not provide a "verified membership list" to CCSD nor was one
11 requested by CCSD.

12 7. That CCSD did provide Teamsters 14 with documents and/or a computer disc with the
13 names of employees for this bargaining unit.

14 8. That testimony was offered by not only Teamsters 14 witnesses but also by Mr.
15 Furtado of ESEA that employees were disgruntled and/or dissatisfied with ESEA due to financial
16 problems with the health & welfare trust fund and the potential financial liability it has created
17 for the individual members.

18 9. That figures were provided by Mr. Mauger and Mr. Leavitt as to the number of
19 employees signing authorization cards for Teamsters 14.

20 10. That members cannot drop their ESEA membership except during the window period
21 in July 2002.

22 11. That it is not unusual or inconsistent in a "raid" setting for bargaining unit members
23 to remain in the incumbent employee organization and sign authorization and/or enrollment
24 cards with a rival employee organization.

25 12. That credible testimony was also offered concerning bases of dissatisfaction with the
26 ESEA, in addition to the problems with its health and welfare trust fund.

27 13. A verified membership list is only referenced in NRS 288.160(2).

28 14. NRS 288.160(4) is silent as to the issue of a verified membership list.

1 15. Exhibit 7 did not contain any probationary employees.

2 16. Should any finding of fact be more properly construed as a conclusion of law, may
3 they be so deemed.

4 **CONCLUSIONS OF LAW**

5 1. That CCSD is a local government employer as defined by NRS 288.060.

6 2. This Board has jurisdiction over the parties and the subject matter contained in the
7 application on file with the Board, pursuant to the provisions of NRS Chapter 288.

8 3. The Incumbent Association and Teamsters 14 are employee organizations as defined
9 by NRS 288.040.

10 4. Teamsters 14 presented a proper challenge to the representation of the bargaining unit
11 in question by its correspondence dated November 15, 2001.

12 5. NRS 288.160(4) states that the Board may order an election if it has a good faith doubt
13 as to "whether any employee organization is supported by a majority of the local government
14 employees."

15 6. ESEA and Teamsters 14 both agreed that the CCSD employees were "legitimately"
16 upset, dissatisfied, and/or disgruntled with ESEA's representation and especially with the
17 financial problems with its health and welfare trust fund and the members' potential financial
18 liability due to the trust fund's inability to pay the bills of health care providers.

19 7. That no "verified membership list" was presented to CCSD, nor was one requested
20 by CCSD.

21 8. That Exhibit 7 contains a tally, or list, identifying the classifications of employees
22 signing authorization cards for Teamsters 14 and such classifications would be proper for the
23 bargaining unit in question with very few exceptions.

24 9. That such a list did not contain probationary employees and if such employees had
25 been included in the recruitment, then the list (Exhibit 7) may have contained a higher number of
26 employees wishing to join Teamsters 14.

27 10. That only a few categories of classifications in Exhibit 7 were discredited by ESEA
28 and/or the CCSD.

1 11. That the organization drive was conducted in late September through November
2 2001 and the only window period allowing employees to drop their membership with ESEA
3 would not open until July 2002; so it was impossible for the employees to drop their association
4 with ESEA during this organization drive.

5 12. That it is not unusual or inconsistent for employees to stay with the incumbent
6 employee organization while indicating an interest in associating and/or joining a new
7 organization as they do not want to lose the effectiveness of their representation, if necessary, by
8 that incumbent employee organization and they do not wish to alienate that organization should
9 it remain as their bargaining agent. Employees may have many reasons for maintaining dual
10 status during times of uncertainty over representation. Thus, it is not inconsistent to pay dues to
11 one organization while signing authorization cards for another organization.

12 13. The relevant time period to evaluate whether a good faith doubt existed is November
13 1 to 30, 2001 (NAC 288.146).

14 14. That evidence was presented that there exists two "mail" boxes of authorization
15 cards supporting Teamsters 14, and this was confirmed by the testimony of Mr. Mauger. Dr.
16 Goldman of CCSD confirmed Mr. Mauger brought two boxes of cards to his office on December
17 20, 2001.

18 15. The cases mentioned by Teamsters 14, involving Levitz Furniture and Allentown, do
19 indicate that a doubt as to the membership can be created by a showing of employees'
20 dissatisfaction with an incumbent organization and such a showing was presented in the current
21 matter.

22 16. That NRS 288.160(4) does not require the presence of a verified membership list; it
23 only requires a good faith doubt by the Board.

24 17. This Board concludes that a good faith doubt exists whether ESEA or Teamsters 14
25 or any other employee organization is supported by a majority of employees in this bargaining
26 unit.

27 18. Should any conclusion of law be more properly construed as a finding of fact, may
28 they be so deemed.

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STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

ITEM NO. 520F

vs.

CASE NO. A1-045735

CLARK COUNTY SCHOOL DISTRICT, and
EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Respondents.

ORDER

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Counter Claimant,

vs.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO, and
CLARK COUNTY SCHOOL DISTRICT,
Respondents.

For Counter Claimant: Michael W. Dyer, Esq.
Sandra G. Lawrence, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson

For Respondents: Lewis N. Levy, Esq.
Levy, Stern & Ford
C.W. Hoffman, Esq.
Clark County School District

Previously in this matter, the Board ordered an election to determine which labor organization, if any, represented the support employees of the Clark County School District. The parties have been unable to agree to all provisions for such an election agreement and the Board's Commissioner made rulings on three matters which could not be agreed upon; namely:

(1) Majority Status plus one. It was the determination of the Commissioner that the majority status plus one, shall be based on the number of employees in the bargaining unit, ref: NRS 288.160(4) & (5) and NAC 288.110 (9)(d).

1 (2) Verified Membership List. The determination of the Commissioner was that
2 should Teamsters Local 14 receive the proper amount of ballots to be declared the representative,
3 they then should submit a Verified Membership List within 48 hours of the request to the
4 Employer.

5 (3) Campaigning. The determination by the Commissioner was that there would be
6 no distribution of campaign literature on the school property at any time. There would be no
7 restriction on freedom of speech regarding the election during the non-work hours.

8 Furthermore, in its appeal to the Board, Local 14 points out that the ballot is improperly
9 limited to a choice between Local 14 and ESEA, and does not include a third option that rejects
10 both parties.

11 It is the decision of the Board that:

12 The Commissioner is upheld on item #3; namely, neither Local 14 nor ESEA may have
13 access to District property for campaign purposes. However, nothing prevents either party's
14 representatives from handing out literature in public areas like sidewalks and driveways so long
15 as orderly ingress and egress are not disrupted. Additionally, employees may exchange literature
16 on school property, but only during non working time in non working areas.

17 On the issue related to a verified membership list, the Board determines that no such list
18 is required subsequent to an election, the outcome of which is certified by this Board. A Board
19 certification is sufficient evidence that an organization does represent the subject employees
20 pursuant to NRS 288.160(4).

21 The Board notes that Nevada is a right-to-work state and that the NAC 288.110(5)
22 provides for the option of "non-union" to be placed on an election ballot. If this option is not
23 provided to employees in a representation election, it is possible some number of bargaining unit
24 members will not vote. The Board concludes employees are entitled to vote in an election which
25 allows them to select from all possible options. Therefore, "non-union" shall be placed on the
26 ballot for the ordered election.

27 Lastly, although the Legislature does not appear to have specifically addressed whether
28 the majority is of "votes cast" or "of members of the bargaining unit" in NRS 288.160(4), NAC

1 288.160(9)(d) does provide clear interpretation that a majority of the employees within the
2 particular "bargaining unit" is required. Consequently, the Board will require the votes of a 50%
3 plus one of the employees in the bargaining unit to be obtained by an organization before it will
4 be certified as representing that unit.

5 IT IS SO ORDERED.

6 DATED this 23rd day of January 2003.

7 LOCAL GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD

9
10 BY: 
11

JOHN E. DICKS, ESQ., Chairman

12 BY: 
13

JANET TROST, ESQ., Vice-Chairman

Dyer, (rence, Penrose, Flaherty & Donaldson
2805 North Mountain Street
Carson City, Nevada 89703
(775) 885-1896

CASE NO. 02-01495A
DEPT NO. I

REC'D & FILED

'02 SEP 27 P12:46

ALAN GLOVER
J. HARKLEROAD CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION, a Nevada nonprofit
corporation,

Petitioner,

vs.

STATE OF NEVADA, LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS
BOARD, an agency of the State of Nevada;
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO, 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 Decision ("the Decision") issued by respondent LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD ("EMRB"), on September 24, 2002, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference. In support of this petition, ESEA alleges as follows:

1. This petition is filed pursuant to NRS 233B.130, 288.130 and 288.160(4).
2. Venue is proper in this Court under the provisions of NRS 233B.130(2)(b).
3. The Decision is the final decision of the agency in a contested case and is therefore subject to review by the Court.

000015

1 4. ESEA has been a party of record in the proceedings before the EMRB that
2 culminated in the Decision. Respondents INTERNATIONAL BROTHERHOOD OF
3 TEAMSTERS, LOCAL 14, and CLARK COUNTY SCHOOL DISTRICT have also been parties
4 of record in that proceeding.

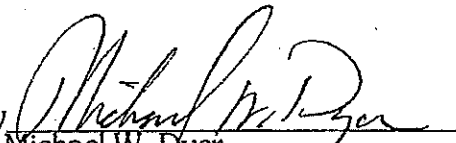
5 5. ESEA is aggrieved by the Decision, and substantial rights of ESEA have been
6 prejudiced because the Decision: (a) is in violation of constitutional or statutory provisions; (b)
7 is in excess of the statutory authority of the EMRB; (c) is made upon unlawful procedure; (d)
8 is affected by other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

11 WHEREFORE, ESEA prays for judgment as follows:

- 12 1. For an order of the Court setting aside the Decision;
13 2. For an award of attorneys' fees and costs incurred by ESEA in this proceeding; and
14 3. For such other and further relief as the Court deems just and proper.

15 Dated this 27th day of September, 2002.

16 DYER, LAWRENCE, PENROSE
17 FLAHERTY & DONALDSON
2805 Mountain Street
18 Carson City, Nevada 89703
Telephone: (775) 885-1896

19
20 By 
21 Michael W. Dyer
22 Nevada Bar No. 2180
23 Attorneys for Petitioners
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify pursuant to NRCP 5(b) that I am an employee of DYER, LAWRENCE, PENROSE, FLAHERTY & DONALDSON and that on the 27th day of September, 2002, I caused to be sent via first class mail, postage prepaid, and by facsimile, a true and correct copy of the foregoing PETITION FOR JUDICIAL REVIEW to each of the following:

EMRB
2501 East Sahara Avenue, Suite 203
Las Vegas, Nevada 89104
Fax: (702) 486-4355

Mr. Lewis N. Levy
Levy, Stern & Ford
Attorney at Law
3660 Wilshire Blvd, Suite 600
Los Angeles, California 90010
Fax: (213) 480-0249

Mr. C.W. Hoffman
Clark County School District
Office of the General Counsel
2832 East Flamingo Road
Las Vegas, Nevada 89121
Fax: (702) 799-5505

Dianna Hegeduis
Deputy Attorney General
E. M. R. B.
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Fax: (702) 486-3416


Debora McEachin

F:\cases\cases02\02206\020925petition.wpd

1 LEWIS N. LEVY, ESQ. (Nevada Bar # 1987)
2 LEVY, STERN & FORD
3 3660 Wilshire Blvd., Suite 600
4 Los Angeles, CA 90010
5 (213) 380-3140

6 Attorneys for Cross-Petition International Brotherhood
7 of Teamsters, Local 14, AFL-CIO

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Shirley E. Rungius
CLERK

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IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, Local 14, AFL-CIO, an
employee organization,

Cross-Petitioner,

vs.

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION, a Nevada nonprofit
corporation; STATE OF NEVADA,
LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD,
an agency of the State of Nevada; ; and
CLARK COUNTY SCHOOL DISTRICT,
a county school district,

Cross-Respondents.

Case No. A458182

CROSS-PETITION FOR JUDICIAL
REVIEW ON BEHALF OF
INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
LOCAL-14, AFL-CIO

Dept.: 20
Date:
Time:

1 EDUCATION SUPPORT EMPLOYEES
2 ASSOCIATION, a Nevada nonprofit
3 corporation,

4 Petitioner,

5 vs.

6 STATE OF NEVADA, LOCAL
7 GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD,
9 an agency of the State of Nevada;
10 INTERNATIONAL BROTHERHOOD
11 OF TEAMSTERS, Local 14, AFL-CIO, an
12 employee organization; and CLARK
13 COUNTY SCHOOL DISTRICT, a county
14 school district,

15 Respondents.

16 COMES NOW Cross-Petitioner in the above matter, INTERNATIONAL
17 BROTHERHOOD OF TEAMSTERS, LOCAL 14, AFL-CIO (hereinafter "Cross-Petitioner
18 Local 14"), by and through its undersigned counsel, and hereby cross-petitions this Court for
19 judicial review of that certain Administrative Order, dated January 23rd, 2003 (hereinafter the
20 "January 23rd Order"), issued by the State of Nevada Local Government Employee-Management
21 Relations Board (hereinafter the "Board"), a copy of which is attached to this Cross-Petition
22 (hereinafter the "Cross-Petition") as Exhibit "A." In support of the instant Cross-Petition, Cross-
23 Petitioner Local 14 alleges as follows:

- 24 1. This Cross-Petition is filed pursuant to NRS. §§233B.130, 288.130 and 288.160(4).
- 25 2. Venue is proper in this Court under the provisions of NRS233B.130(2)(b).
- 26 3. The January 23rd Order is a final decision of the Board – an agency of the State of
27 Nevada – in a contested case and is therefore properly subject to judicial review before this
28 Court pursuant to NRS
4. Cross-Petitioner was a party of record in the proceedings before the Board that
resulted in the issuance of the January 23rd Order. Cross-Respondents Education Support
Employees Association (hereinafter "Cross-Respondent ESEA") and Clark County School
District were also parties of record in those proceedings.

1 5. On or about September 27, 2002, Cross-Respondent ESEA filed the original Petition
2 for Judicial Review (hereinafter the "Petition") in this matter. That Petition sought review of a
3 related final agency decision issued by the Board on or about September 24, 2002. Cross-
4 Petitioner Local 14 and the District were also parties of record in the administrative proceedings
5 that resulted in the September 24, 2002, Order of the Board and the Petition filed herein by
6 Cross-Respondent ESEA.

7 6. While the Petition was pending before this Court, the parties entered into a
8 Stipulation to Stay these proceedings pending the Board's resolution of certain residual matters
9 related to the September 24, 2002, Order. Those issues were fully and finally resolved through
10 the January 23rd Order.

11 7. Cross-Petitioner is informed and believes and thereon alleges that Cross-Respondent
12 has, or in the process of, filing an Amended Petition for Review that also seeks review of all or
13 part of the January 23rd Order.

14 8. The Petition and Amended Petition are currently pending before this Court and the
15 instant Cross-Petition arises out of and involves the same nexus of facts and law as the Petition
16 and, therefore, should be consolidated with all judicial proceedings relating to the Petition.

17 9. Cross-Petitioner Local 14 is aggrieved by the January 23rd Order. Specifically, Cross-
18 Petitioner seeks review of that portion of the January 23rd Order holding certification elections
19 conducted by the Board under NRS §288.160(4) are to be decided by a "super-majority" of all
20 employees in a local governmental bargaining unit, as opposed to a majority of those eligible
21 employees who actually vote in the subject certification election.

22 10. Substantial rights of Cross-Petitioner Local 14 have been prejudiced because the
23 January 23rd Order: (i) is in violation of a constitutional and/or statutory provision; (ii) is in
24 excess of the Board's statutory authority; (iii) rests upon a finding derived from an error of law;
25 (iv) is clearly erroneous in light of countervailing reliable, probative and substantial evidence
26 as contained in the record, as a whole, before the Board, and; (v) is arbitrary or capricious or
27 infected by an abuse of discretion.

28 **WHEREFORE**, Cross-Petitioner Local 14 prays for judgment as follows:

1. For an order of the Court granting review of and setting aside that portion of the

1 January 23rd Order through which the Board concluded certification elections
2 conducted under NRS §288.160(4) shall be decided by a "super-majority" of all
3 employees in the local government bargaining unit as opposed to a majority of those
4 eligible employees who actually vote in any such referendum.

5 2. For an award of those costs and reasonable attorneys' fees incurred by Cross-Petition
6 Local 14 in prosecuting this action, and;

7 3. For all such other and further relief as this Court may deem just, necessary and
8 proper.
9

10 Dated: February 20th, 2003

Respectfully submitted,
LEVY, STERN & FORD

11
12
13 BY:

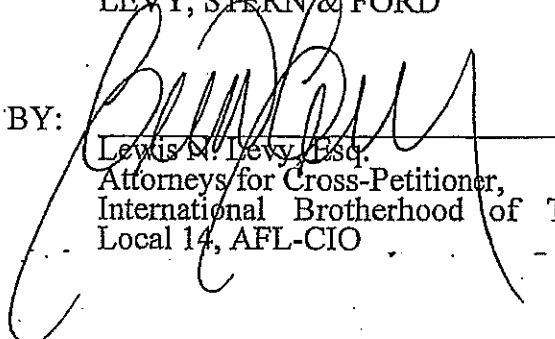

14 Lewis N. Levy, Esq.
15 Attorneys for Cross-Petitioner,
16 International Brotherhood of Teamsters,
17 Local 14, AFL-CIO
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Exhibit “A”

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT, and
EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Respondents.

ITEM NO. 520F

CASE NO. A1-045735

ORDER

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Counter Claimant,

vs.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO, and
CLARK COUNTY SCHOOL DISTRICT,
Respondents.

For Counter Claimant:

Michael W. Dyer, Esq.
Sandra G. Lawrence, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson

For Respondents:

Lewis N. Levy, Esq.
Levy, Stern & Ford

C.W. Hoffman, Esq.
Clark County School District

Previously in this matter, the Board ordered an election to determine which labor organization, if any, represented the support employees of the Clark County School District. The parties have been unable to agree to all provisions for such an election agreement and the Board's Commissioner made rulings on three matters which could not be agreed upon; namely:

(1) Majority Status plus one. It was the determination of the Commissioner that the majority status plus one, shall be based on the number of employees in the bargaining unit, ref: NRS 288.160(4) & (5) and NAC 288.110 (9)(d).

1 (2) Verified Membership List. The determination of the Commissioner was that
2 should Teamsters Local 14 receive the proper amount of ballots to be declared the representative,
3 they then should submit a Verified Membership List within 48 hours of the request to the
4 Employer.

5 (3) Campaigning. The determination by the Commissioner was that there would be
6 no distribution of campaign literature on the school property at any time. There would be no
7 restriction on freedom of speech regarding the election during the non-work hours.

8 Furthermore, in its appeal to the Board, Local 14 points out that the ballot is improperly
9 limited to a choice between Local 14 and ESEA, and does not include a third option that rejects
10 both parties.

11 It is the decision of the Board that:

12 The Commissioner is upheld on item #3; namely, neither Local 14 nor ESEA may have
13 access to District property for campaign purposes. However, nothing prevents either party's
14 representatives from handing out literature in public areas like sidewalks and driveways so long
15 as orderly ingress and egress are not disrupted. Additionally, employees may exchange literature
16 on school property, but only during non working time in non working areas.

17 On the issue related to a verified membership list, the Board determines that no such list
18 is required subsequent to an election, the outcome of which is certified by this Board. A Board
19 certification is sufficient evidence that an organization does represent the subject employees
20 pursuant to NRS 288.160(4).

21 The Board notes that Nevada is a right-to-work state and that the NAC 288.110(5)
22 provides for the option of "non-union" to be placed on an election ballot. If this option is not
23 provided to employees in a representation election, it is possible some number of bargaining unit
24 members will not vote. The Board concludes employees are entitled to vote in an election which
25 allows them to select from all possible options. Therefore, "non-union" shall be placed on the
26 ballot for the ordered election.

27 Lastly, although the Legislature does not appear to have specifically addressed whether
28 the majority is of "votes cast" or "of members of the bargaining unit" in NRS 288.160(4), NAC

1 288.160(9)(d) does provide clear interpretation that a majority of the employees within the
2 particular "bargaining unit" is required. Consequently, the Board will require the votes of a 50%
3 plus one of the employees in the bargaining unit to be obtained by an organization before it will
4 be certified as representing that unit.

5 IT IS SO ORDERED.

6 DATED this 23rd day of January 2003.

7 LOCAL GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD

9 BY: 
10

JOHN E. DICKS, ESQ., Chairman

11 BY: 
12

JANET TROST, ESQ., Vice-Chairman

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 3660 Wilshire Boulevard, Suite 600, Los Angeles, California 90010. I declare that I am employed in the office of a member of the bar of this Court at whose direction this service was made.

On February 20, 2003, I served the following document(s): **CROSS-PETITION FOR JUDICIAL REVIEW ON BEHALF OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 14, AFL-CIO** on the interested parties in this action:

☐ via facsimile to ().

☒ by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California addressed as set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Michael Dyer, Esq.
Dyer, Lawrence, Penrose, Flaherty &
Donaldson
2805 North Mountain Street
Carson City, Nevada 89703

Diana Hegeduis
Deputy Attorney General
555 E. Washington Ave., #3900
Las Vegas, Nevada 89109


C. W. Hoffman, Jr., General Counsel
Clark County School District
2832 East Flamingo Road
Las Vegas, Nevada 89121

James E. Wilkerson, Exec. Director
Employee Management Relations
Board
2501 E. Sahara, No. 203
Las Vegas, NV 89104

I am "readily familiar" with the firm's practice of service of process. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles California in the ordinary course of business.

I declare under penalty of perjury that the above is true and correct.

Executed on February 20, 2003, at Los Angeles, California.


Jacquelyn Zwiern

1 **ORDR**

2 BRIAN A. SANDOVAL

3 Attorney General

4 DIANNA HEGEDUIS, #5616

5 Deputy Attorney General

6 555 E. Washington Avenue, Suite 3900

7 Las Vegas, Nevada 89101

8 (702) 486-3100

9 Attorneys for Respondent LOCAL GOVERNMENT

10 EMPLOYEE-MANAGEMENT RELATIONS BOARD

FILED

OCT 29 9 38 AM '03

Shirley S. Higgins
CLERK

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 EDUCATION SUPPORT EMPLOYEES)
14 ASSOCIATION, a Nevada nonprofit
15 corporation,

16 Petitioner,

17 vs.

18 STATE OF NEVADA, LOCAL GOVT.
19 EMPLOYEE-MGT. RELATIONS BOARD,
20 an agency of the State of Nevada;
21 INTERNATIONAL BROTHERHOOD OF
22 TEAMSTERS, LOCAL 14, AFL-CIO, a
23 employee organization; and CLARK
24 COUNTY SCHOOL DISTRICT, a county
25 school district,

26 Respondents.

27 AND RELATED CROSS-PETITION

CASE NO. A458182

DEPT. NO. XX

D/Hearing: 10-14-03

T/Hearing: 8:30 a.m.

28 ORDER DENYING PETITION FOR JUDICIAL REVIEW FILED BY
THE EDUCATION SUPPORT EMPLOYEES ASSOCIATION AND BY THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

ON the 14th day of October, 2003, the petitions for judicial review filed by
Petitioner, Education Support Employees Association and the International Brotherhood
of Teamsters, Local 14, AFL-CIO, came on for oral arguments before this Honorable
Court. The Education Support Employees Association was represented by attorneys
James Penrose and Michael Dyer; the International Brotherhood of Teamsters, Local 14,
was represented by attorney Kristen Martin; Clark County School District was
represented by Bill Hoffman, General Counsel for the District; and Respondent Nevada

1 State Local Government Employee-Management Relations Board was represented
2 Deputy Attorney General Dianna Hegeduis. The court having reviewed the briefs f
3 herein, heard the arguments of counsel, and good cause appearing therefor,

4 IT IS HEREBY ORDERED that this Court shall give deference to the st
5 agency's interpretation of NAC 288.146 as it pertains to the term "challenge" and fir
6 that the state agency's interpretation thereof is not clearly erroneous.

7
8 IT IS FURTHER ORDERED that substantial evidence exists in the record of t
9 state agency's "good faith doubt" as to which employee organization is supported by
10 majority of the local governmental employees in the particular bargaining unit at issi
11 and was correct in ordering an election pursuant to NRS 288.160(4).

12
13 IT IS FURTHER ORDERED that the verified membership list mentioned in NR
14 288.160(2) is not a prerequisite for the election ordered by the state agency in th
15 matter.

16 Based thereupon, the petition for judicial review filed by the Education Suppo
17 Employees Association is HEREBY DENIED.

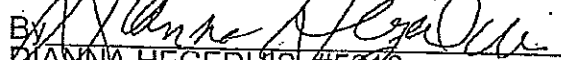
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19 Based thereupon, the petition for judicial review filed by the Internationa
20 Brotherhood of Teamsters, Local 14, is HEREBY DENIED.

21 DATED this 29 day of October, 2003.

22
23 DAVID T. WALL

DISTRICT COURT JUDGE DAVID A. WALL

24 Submitted by:
25 BRIAN A. SANDOVAL
Attorney General

26 By 
27 DIANNA HEGEDUIS, #5616
Deputy Attorney General
28 555 E. Washington Avenue, #3900
Las Vegas, Nevada 89101
Attorneys for Respondent State Agency

1 **NOTC**

2 **BRIAN A. SANDOVAL**
3 Attorney General
4 **DIANNA HEGEDUIS, #5616**
5 Deputy Attorney General
6 555 E. Washington Avenue, Suite 3900
7 Las Vegas, Nevada, 89101
8 (702) 486-3420

FILED

OCT 30 1 16 PM '03

Shirley E. Rasmussen
CLERK

9 Attorneys for Respondent LOCAL GOVERNMENT
10 EMPLOYEE-MANAGEMENT RELATIONS BOARD

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 EDUCATION SUPPORT EMPLOYEES
14 ASSOCIATION, a Nevada nonprofit
15 corporation,

16 Petitioner,

17 vs.

18 STATE OF NEVADA, LOCAL GOVT.
19 EMPLOYEE-MGT. RELATIONS BOARD,
20 an agency of the State of Nevada;
21 INTERNATIONAL BROTHERHOOD OF
22 TEAMSTERS, LOCAL 14, AFL-CIO, an
23 employee organization; and CLARK
24 COUNTY SCHOOL DISTRICT, a county
25 school district,

26 Respondents.

CASE NO. A458182

DEPT. NO. XX

**WRITTEN NOTICE OF ENTRY OF
ORDER**

D/Hearing: n/a

T/Hearing: n/a

27 PLEASE TAKE NOTICE that an order has been entered in this matter denying th
28 petitions for judicial review; and a file-stamped copy of the same is attached hereto.

DATED THIS 30 day of October, 2003.

BRIAN A. SANDOVAL
Attorney General

By

Dianna Hegeduis
DIANNA HEGEDUIS, #5616

Deputy Attorney General

555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Attorneys for State Respondent

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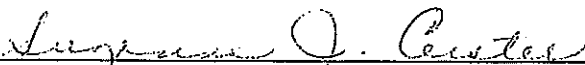
CERTIFICATE OF MAILING

I hereby certify that on the 30th day of October, 2003, I served a copy of the foregoing document with attachment upon the respective parties hereto by depositing a true copy thereof in the U.S. mail, addressed to them at their last known address, postage thereon prepaid, addressed as follows:

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Attorney for Respondent TEAMSTERS



An employee of the State Attorney General's Office

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Telephone: (775) 885-1896
Attorneys for Petitioner and Cross-Respondent,
Education Support Employees Association

FILED

Nov 5 11 17 AM '03

Shirley C. Langston
CLERK

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

EDUCATION SUPPORT EMPLOYEES ASSOCIATION,
a Nevada nonprofit corporation,

Case No. A458182
Dept. No. 20

Petitioner,

NOTICE OF APPEAL

vs.

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

Respondents.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 14, AFL-CIO, an employee organization,

Cross-Petitioner,

vs.

EDUCATION SUPPORT EMPLOYEES ASSOCIATION,
a Nevada nonprofit corporation; STATE OF NEVADA,
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD, an agency of the State of Nevada;
and CLARK COUNTY SCHOOL DISTRICT, a county
school district,

Cross-Respondents.

000031

1 NOTICE IS HEREBY GIVEN that the Education Support Employees Association
2 ("ESEA"), petitioner and cross-respondent in the above-entitled action, hereby appeals to the
3 Supreme Court of Nevada from the Order Denying Petition for Judicial Review entered in this
4 matter on October 29, 2003, insofar as that order denied ESEA's amended petition for judicial
5 review.

6 Dated this 4th day of November, 2003.

7 DYER, LAWRENCE, PENROSE,
8 FLAHERTY & DONALDSON

9
10 By 

11 James W. Penrose
12 Attorneys for Petitioner and Cross-Respondent,
13 Education Support Employees Association
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DYER, LAWRENCE, PENROSE, FLAHERTY & DONALDSON
2805 MOUNTAIN STREET
CARSON CITY, NEVADA 89703
(775) 885-1896

CERTIFICATE OF SERVICE

Pursuant to Rule 5 of the Nevada Rules of Civil Procedure, I certify that I am an employee of the firm of Dyer, Lawrence, Penrose, Flaherty & Donaldson, and that on the 4th day of November, 2003, I caused a true and correct copy of the within NOTICE OF APPEAL to be deposited for mailing in the United States Mail at Carson City, Nevada, with first-class postage thereon prepaid, addressed to:

Mr. Richard G. McCracken, Esq.
Mr. Andrew J. Kahn, Esq.
Ms. Kristin L. Martin, Esq.
McCracken, Sternerman, Bowen & Holsberry
1630 South Commerce Street, Suite A-1
Las Vegas, Nevada 89103

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General Counsel
Clark County School District
2832 East Flamingo Road
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Deputy Attorney General
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Debora McEachin
Debora McEachin

1 Richard G. McCracken #2748
2 Andrew J. Kahn #3751
3 Kristin L. Martin #7807
4 McCRACKEN, STEMERMAN, BOWEN & HOLSBERY
5 1630 South Commerce Street, Suite A-1
6 Las Vegas, Nevada 89102
7 Tel. No. (702) 386-5107

8 Attorneys for Cross-Petitioner
9 International Brotherhood of Teamsters Local 14

10
11 **IN THE EIGHT JUDICIAL DISTRICT COURT**
12 **OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF CLARK**

14 INTERNATIONAL BROTHERHOOD OF
15 TEAMSTERS, Local 14, AFL-CIO, an employee
16 organization,

Case No. A458182

Dept. No. 20

17 Cross-Petitioner,

18 vs.

19 EDUCATION SUPPORT EMPLOYEES
20 ASSOCIATION, a Nevada nonprofit corporation;
21 STATE OF NEVADA, LOCAL GOVERNMENT
22 EMPLOYEE-MANAGEMENT RELATIONS
23 BOARD, an agency of the State of Nevada; and
24 CLARK COUNTY SCHOOL DISTRICT, a county
25 school district,

26 Respondents.

NOTICE OF APPEAL

Notice is hereby given that International Brotherhood of Teamsters Local 14, AFL-CIO
cross-petitioner above named, hereby appeals to the Supreme Court of Nevada the Order

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FILED

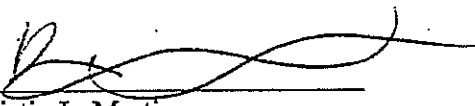
Nov 10 2 00 PM '03

Shirley E. Rungius
CLERK

1 Denying the Petition for Judicial Review Filed by the International Brotherhood of Teamsters

2 Local 14 entered in this action on the 29th day of October, 2003.

3 Dated: November 7, 2003

4 
5 Kristin L. Martin
6 McCRACKEN, STEMERMAN, BOWEN &
7 HOLSBERRY
8 1630 South Commerce Street, Suite A-1
9 Las Vegas, Nevada 89102
10 Tel. No. (602) 386-5107
11 Attorney for International Brotherhood
12 of Teamsters Local 14

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14 24/C:\Documents\documents\k\m\stem\stem 1125\VP\adings\ote of appeal.wpd
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3 CERTIFICATE OF SERVICE

4 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

5 I am employed in the County of San Francisco, State of California. I am over the age of
6 eighteen (18) years, and not a party to this action. I am employed in the office of a member of
7 the bar of this Court at whose direction the service was made. My business address is: 100 Van
8 Ness Avenue, 20th Floor, San Francisco, California 94102.

9 On November 7, 2003, I served the foregoing document described as:

10 **NOTICE OF APPEAL**

11 on the parties in this action by placing a true copy thereof, enclosed in a sealed envelope
12 addressed as follows:

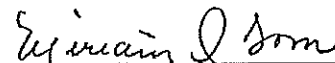
13 James W. Penrose
14 DYER, LAWRENCE, PENROSE
15 FLAHERTY & DONALDSON
16 2805 N. Mountain Street
17 Carson City, NV 89703

18 C.W. Hoffman
19 General Counsel for Respondent
20 Clark County School District
21 2832 E. Flamingo Road
22 Las Vegas, Nevada 89121

23 Dianna Hegeduis
24 Deputy Attorney General
25 555 E. Washington Avenue, Suite 3900
26 Las Vegas, Nevada 89101

[X] (BY OVERNIGHT DELIVERY) I caused said envelope(s) to be delivered overnight
delivery service in lieu of delivery by mail.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct and was executed on this 7th day of November, 2003, at San
Francisco, California.


Miriam I. Tom

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION, A NEVADA
NONPROFIT CORPORATION,
Appellant,

vs.

STATE OF NEVADA, LOCAL
GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD,
AN AGENCY OF THE STATE OF
NEVADA; INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
LOCAL 14, AFL-CIO, AN EMPLOYEE
ORGANIZATION; AND CLARK
COUNTY SCHOOL DISTRICT, A
COUNTY SCHOOL DISTRICT,
Respondents.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO, AN
EMPLOYEE ORGANIZATION,
Appellant,

vs.

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION, A NEVADA
NONPROFIT CORPORATION; STATE
OF NEVADA, LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT
RELATIONS BOARD, AN AGENCY OF
THE STATE OF NEVADA; AND CLARK
COUNTY SCHOOL DISTRICT, A
COUNTY SCHOOL DISTRICT,
Respondents.

No. 42315

FILED

DEC 21 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

No. 42338

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court order denying a petition and a cross-petition for judicial review in a labor

relations action. Eighth Judicial District Court, Clark County; David Wall, Judge.

In its appeal, Education Support Employees Association (ESEA) argues that (1) the State of Nevada, Local Government Employee-Management Relations Board (EMRB) lacked jurisdiction to hear the majority status challenge of International Brotherhood of Teamsters, Local 14 (Local 14), (2) EMRB erroneously interpreted the verified membership list requirement of NRS 288.160, (3) EMRB's good faith doubt determination was not supported by substantial evidence in the record, and (4) EMRB's September 24, 2002, order should be modified in light of a prospective future problem. In its appeal, Local 14 argues that the EMRB erred in interpreting NRS 288.160 and NAC 288.110 as stating that a majority status election is won by a majority of all members in the bargaining unit instead of a majority of members who vote. We disagree with both ESEA and Local 14.

Standard of review

"The function of this court in reviewing an administrative decision is identical to the district court's."¹ Typically, courts are free to decide pure legal questions without deference to the agency.² In reviewing questions of fact, however, we are prohibited from substituting our judgment for that of the agency.³ We review questions of fact to determine whether the agency's decision was clearly erroneous or an arbitrary abuse

¹Riverboat Hotel Casino v. Harold's Club, 113 Nev. 1025, 1029, 944 P.2d 819, 822 (1997).

²Schepcoff v. SIIS, 109 Nev. 322, 325, 849 P.2d 271, 273 (1993).

³NRS 233B.135(3).

of discretion.⁴ Accordingly, an agency's conclusions of law, which are closely related to the agency's view of the facts, are entitled to deference and will not be disturbed if they are supported by substantial evidence.⁵

Additionally, we defer "to an agency's interpretation of a statute that the agency is charged with enforcing."⁶ Substantial evidence exists if a reasonable person could find adequate evidence to support the agency's conclusion.⁷ In making this determination, the reviewing court is confined to the record before the agency.⁸ Therefore, this court's review is limited to determining whether there was "substantial evidence in the record to support the agency determination" or statutory interpretation.⁹

⁴NRS 233B.135(3)(e) – (f); Local Gov't Emp. v. General Sales, 98 Nev. 94, 98, 641 P.2d 478, 480-81 (1982).

⁵Schepcoff, 109 Nev. at 325, 849 P.2d at 273; see also Elliot v. Resnick, 114 Nev. 25, 32 n.1, 952 P.2d 961, 966 n.1 (1998) (stating that an agency's interpretation of a statute, which it has the duty to administer, is entitled to deference).

⁶State, Div. of Insurance v. State Farm, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000).

⁷State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

⁸SIIS v. Christensen, 106 Nev. 85, 87-88, 787 P.2d 408, 409 (1990).

⁹Id. at 787 P.2d at 409; see State Farm, 116 Nev. at 293, 995 P.2d at 485.

ESEA appeal

"Contract bar" doctrine

Typically, the "contract bar" doctrine prohibits a rival employee organization¹⁰ from challenging the recognition of an incumbent employee organization where a collective bargaining agreement exists between the local government employer¹¹ and the incumbent employee organization.¹² The "contract bar" doctrine, however, is temporarily lifted during "window periods" as provided by NAC 288.146(2). At the time the EMRB initially heard this case, NAC 288.146(2) stated:

An employee organization may challenge recognition of another employee organization or request a hearing to determine whether a recognized employee organization has ceased to be supported by a majority of the local government employees in a bargaining unit only during the period:

(a) Beginning upon the filing of notice by the recognized employee organization pursuant to NRS 288.180 of its desire to negotiate a successor agreement and ending upon the commencement of negotiations for such an agreement; or

¹⁰An employee organization is "an organization of any kind having as one of its purposes improvement of the terms and conditions of employment of local government employees." NRS 288.040. This is also referred to as a union.

¹¹A local government employer means "any political subdivision of this State or any public or quasi-public corporation organized under the laws of this State and includes, without limitation, counties, cities, unincorporated towns, school districts, charter schools, hospital districts, irrigation districts and other special districts." NRS 288.060.

¹²NAC 288.146(2).

(b) Beginning 242 days before the expiration date of the existing labor agreement and ending 212 days before the expiration of the labor agreement.

NAC 288.146(2) plainly and unambiguously states that for the EMRB to have jurisdiction to consider a majority status dispute, an employee organization, within the "window period," must either make a challenge or request a hearing.¹³ All the parties agree that Local 14 requested a hearing within the "window period." Consequently, the issue at stake is whether Local 14's November 15, 2001, letter constituted a challenge pursuant to NAC 288.146(2).

In determining whether the letter constituted a challenge, the EMRB turned to the plain meaning of the word "challenge." As defined, "challenge" means a formal questioning of "legal qualifications of a person, action, or thing."¹⁴ Using this definition as a guide, the EMRB determined that by requesting recognition, Local 14 was questioning ESEA's legal qualifications or status. As a result, the EMRB concluded that the letter constituted a challenge. Since NAC 288.146(2) is plain and unambiguous, no further review is necessary.¹⁵ Further, the EMRB's interpretation that Local 14's letter represented a challenge is entitled to great deference since it is charged with enforcing this regulation.¹⁶ It is also not necessary to review the EMRB's interpretation in light of recent amendments to

¹³Id.

¹⁴Black's Law Dictionary 223 (7th ed. 1999).

¹⁵State Farm, 116 Nev. at 293; 995 P.2d at 485.

¹⁶Id.

NAC 288.146(2).¹⁷ Therefore, we conclude that the EMRB had jurisdiction to hear Local 14's request since the letter constituted a sufficient challenge within the "window period."

NRS 288.160

Typically, a local government employer's bargaining unit¹⁸ is represented by only one employee organization.¹⁹ To become the exclusive bargaining unit representative, the employee organization must gain recognition²⁰ from the local government employer.²¹ Difficulties may arise, however, when two or more employee organizations desire recognition. To resolve this dilemma, the State of Nevada enacted NRS 288.160, which establishes the requirements that an employee organization must meet before a local government employer will recognize it.

¹⁷Town of Eureka v. State Engineer, 108 Nev. 163, 167, 826 P.2d 948, 951 (1992) (stating that "absent clear legislative intent to make a statute retroactive, this court will interpret it as having only a prospective effect").

¹⁸A bargaining unit means "a group of local government employees recognized by the local government employer as having sufficient community of interest appropriate for representation by an employee organization for the purpose of collective bargaining." NRS 288.028.

¹⁹NRS 288.027; NRS 288.160(2).

²⁰Recognition requires "the formal acknowledgement by the local government employer that a particular employee organization has the right to represent the local government employees within a particular bargaining unit." NRS 288.067.

²¹NRS 288.160(2).

NRS 288.160(2) pertains to situations where only one employee organization requests recognition. Without any competitors, the employee organization may become the exclusive bargaining representative without the involvement of the EMRB. To become the exclusive bargaining representative, the employee organization must merely (1) present "a verified membership list showing that it represents a majority of the employees" and (2) gain recognition from the local government employer.²² The presentation of the verified membership list, however, may be made at or after the submission of the application for recognition.²³

When more than one employee organization requests recognition, NRS 288.160(4) establishes a method of determining which organization is supported by a majority of the bargaining unit. NRS 288.160(4) also allows a competing employee organization to appeal to the EMRB. If, in assessing the parties' interests, the EMRB determines that there is a "good faith doubt[] whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit, it may conduct an election by secret ballot upon the question."²⁴

Verified membership lists

The requirement of NRS 288.160(2) for a verified membership list pertains only to an unchallenged employee organization gaining recognition. There is no mention in NRS 288.160(2) or (4) that an

²²NRS 288.160(2).

²³Id.

²⁴NRS 288.160(4).

employee organization must provide a verified membership list prior to an election. In fact, as stated in the EMRB's order, "NRS 288.160(4) is silent as to the issue of a verified membership list." Rather, when the majority status of an incumbent employee organization is challenged, NRS 288.160(4) requires only that the EMRB find a good faith doubt prior to ordering an election. Notably, if submitting a verified membership list were a prerequisite, there would be no need to hold an election since majority status would be evident.

On September 19, 2002, Gary Mauger, Local 14's Secretary/Treasurer, testified that CCSD never requested a verified membership list. Taking NRS 288.160 and Mauger's testimony into consideration, the EMRB concluded that Local 14 was not required to submit a verified membership list prior to holding an election. The EMRB's interpretation of NRS 288.160 is entitled to great deference. Thus, we conclude that the EMRB appropriately determined that the submission of a verified membership list is not a prerequisite for an election.

Good faith doubt

There is substantial evidence to support the EMRB's determination that a good faith doubt existed as to whether ESEA or Local 14 was supported by a majority of CCSD's bargaining unit employees. Contrary to ESEA's contentions, NRS 288.160(4) does not require a challenging employee organization to provide substantial evidence that it is supported by the majority of the bargaining unit. Rather, NRS 288.160(4) merely states that the EMRB may order an election if there are "good faith doubts whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit." (Emphasis added.) Consequently, the

requirement is whether substantial evidence exists to support the EMRB's good faith doubt that either ESEA or Local 14 had majority status.

Here, the bargaining unit employees' statements of dissatisfaction with ESEA are admissible to support the EMRB's determination that a good faith doubt existed. Further, the collective testimonies of Mauger, Lamar Leavitt, and Joseph Furtado suggest that there was sufficient uncertainty as to whether ESEA or Local 14 had majority status. Considering this testimony, the EMRB determined that a good faith doubt existed as to whether Local 14 or ESEA had majority status. There is no evidence that the EMRB's decision was clearly erroneous or an arbitrary abuse of discretion.²⁵ Substantial evidence supports the EMRB's decision that a good faith doubt existed and an election was justified.

Order modification

"Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief."²⁶ Accordingly, "the issue involved in the controversy must be ripe for judicial determination"²⁷ and

²⁵NRS 233B.135(3)(e) - (f); Local Gov't Emp. v. General Sales, 98 Nev. 94, 98, 641 P.2d 478, 480-81 (1982).

²⁶Resnick v. Nevada Gaming Commission, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988) (quoting Doe v. Bryan, 102 Nev. 523, 525, 729 P.2d 443, 444 (1986)).

²⁷Kress v. Corey, 65 Nev. 1, 26, 189 P.2d 352, 364 (1948), quoted in Resnick, 104 Nev. at 66, 752 P.2d at 233.

"not merely the prospect of a future problem."²⁸ To prove ripeness, the "party must show that it is probable [that] future harm will occur."²⁹

Here, ESEA claims that if an election occurs, it may have to undergo a recertification by the EMRB. Yet, the EMRB's order does not address the decertification process. The EMRB's order of January 23, 2003, merely sets forth the guidelines for an election. Further, the order states that the EMRB will require either ESEA or Local 14 to obtain a majority of the bargaining unit employee votes before it will recognize it as CCSD's exclusive bargaining unit representative. ESEA has not carried its burden of proving that "it is probable [that] future harm will occur."³⁰ Accordingly, we hold that ESEA's objections concerning the EMRB's January 23, 2003, order are not ripe for review.

Local 14's appeal

Plain and unambiguous language

NRS 288.160(4) sets forth the criteria of resolving a majority status dispute between two employee organizations contending to become a local government employer's exclusive bargaining unit agent. NRS 288.160(4) states that an election shall be held if there is a good faith doubt as to "whether any employee organization is supported by a majority of the local government employees in a particular bargaining

²⁸Resnick, 104 Nev. at 66, 752 P.2d at 233 (quoting Doe, 102 Nev. at 525, 729 P.2d at 444).

²⁹Id., at 66, 752 P.2d at 233.

³⁰Id.

unit." (Emphasis added.) In applicable part, former NAC 288.110(9)(d) stated:³¹

An employee organization will be considered the exclusive bargaining agent for employees within a bargaining unit, pursuant to an election, if:

....

(d) The election demonstrates that the employee organization is supported by a majority of the employees within the particular bargaining unit.

(Emphasis added.)

Contrary to Local 14's contention, neither NRS 288.160 nor NAC 288.110 states that the employee organization seeking exclusive representation must have a majority of the employees who vote. Rather, 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."³² As a result of this clear language, the EMRB held that NRS 288.160(4) and NAC 288.110(9)(d) required a majority of all members within the bargaining unit, not just those who vote. In fact, in the case of an unambiguous statute, the EMRB is required to follow the law "regardless of result."³³ As such, the EMRB appropriately held that the election would be resolved by obtaining a majority vote. In light of this plain and unambiguous

³¹On October 30, 2003, NAC 288.110(9) was amended. This unchanged provision is now NAC 288.110(10)(d).

³²Id.; see NRS 288.160(4).

³³Randono v. CUNA Mutual Ins. Group, 106 Nev. 371, 374, 793 P.2d 1324, 1326 (1990).

language, we will not disturb the EMRB's interpretation of NRS 288.160 and NAC 288.110.³⁴ We defer to the Nevada Legislature as to whether the definition of a majority vote should be changed.

Election laws

Local 14 also argues that the EMRB's decision conflicts with election laws contained within the National Labor Relations Act (NLRA) and the Railway Labor Act (RLA). To support this contention, Local 14 turns to 29 U.S.C. § 159(a) and 45 U.S.C. § 152(4). When interpreting statutes, however, administrative agencies are not bound by stare decisis or dissimilar statutes.³⁵ Nor are agencies compelled to accept any policy arguments "in the face of an unambiguous, controlling statute."³⁶

Here, the election provisions contained within NRS 288.160 and NAC 288.110 are different from those contained within the NLRA and the RLA. Thus, the NLRA is not binding on the EMRB.³⁷

CONCLUSION

We conclude that the EMRB had jurisdiction to hear Local 14's request since Local 14's November 15, 2001, letter constituted a

³⁴State, Div. of Insurance v. State Farm, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000); State v. Jepsen, 46 Nev. 193, 196, 209 P. 501, 502 (1922).



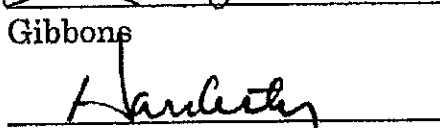
³⁵State, Bus. & Indus. v. Granite Constr., 118 Nev. 83, 88, 40 P.3d 423, 426 (2002) (noting that it is presumed that the state legislature intended to adopt the interpretation of federal acts "only if the state and federal acts are substantially similar and the state statute does not reflect a contrary legislative intent." (quoting Sharifi v. Young Bros., Inc., 835 S.W.2d 221, 223 (Tex. App. 1992)); Gray Line Tours v. Public Serv. Comm'n, 97 Nev. 200, 203, 626 P.2d 263, 265 (1981).

³⁶Randono, 106 Nev. at 375, 793 P.2d at 1327.

³⁷Weiner v. Beatty, 121 Nev. ___, ___, 116 P.3d 829, 832 (2005).

sufficient challenge within the "window period." Further, the EMRB appropriately determined that the submission of a verified membership list is not a prerequisite for an election. The testimony before the EMRB suggests that there was sufficient uncertainty as to whether either ESEA or Local 14 had majority status. Therefore, we further conclude that the EMRB's good faith doubt decision was supported by substantial evidence in the record. In addition, ESEA's objections concerning the EMRB's January 23, 2003, order are not ripe for review. Lastly, since NRS 288.160 and NAC 288.110 are plain and unambiguous, the EMRB properly determined that an employee bargaining organization must have a majority of the total bargaining unit membership's support before it will be considered the exclusive bargaining unit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin
 J.
Gibbons
 J.
Hardesty

cc: Hon. David Wall, District Judge
Dyer, Lawrence, Penrose, Flaherty & Donaldson
Attorney General George Chanos/Las Vegas
C. W. Hoffman Jr.
McCracken Stemerma Bowen & Holsberry
Thomas F. Pitaro
Clark County Clerk

NEVADA LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARDInternational 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

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:
2. Number of void ballots cast:
3. Number of ballots challenged based on alleged defect in ballot:
 - 3(a). Number of challenges sustained:
 - 3(b). Number of challenges overruled (include in 5, 6 or 7, as appropriate):
4. Number of valid votes cast for Teamsters Local 14:
5. Number of valid votes cast for Education Support Employees Association:
6. Number of valid votes cast for No Union:
7. Total number of valid votes counted (sum of 5, 6 and 7):
8. Number of ballots challenged based on alleged ineligibility of voter:

4797
14
5
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2711
1932
93
4736
55

Dated: May 9, 2006.

By the Commissioner

Julie Contreras

We acknowledge receipt of a copy of this tally:

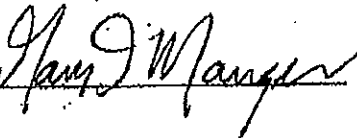
Teamsters Local 14

Clark County School District

Education Support

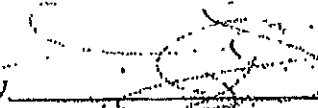
Employees Association

By



By

By



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

5 INTERNATIONAL BROTHERHOOD
6 OF TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

7 vs.

8 CLARK COUNTY SCHOOL DISTRICT, and
9 EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
10 Respondents.

11 EDUCATION SUPPORT EMPLOYEES
12 ASSOCIATION,
Counter Claimant,

13 vs.

14 INTERNATIONAL BROTHERHOOD OF
15 TEAMSTERS, LOCAL 14, AFL-CIO, and
16 CLARK COUNTY SCHOOL DISTRICT,
Counter Respondents.

ITEM NO. 520H

CASE NO. A1-045735

CERTIFICATION OF ELECTION

17 For Petitioner: Michael W. Dyer, Esq.
18 Dyer, Lawrence, Penrose, Flaherty & Donaldson

19 For Respondents: Kristin L. Martin, Esq.
20 C.W. Hoffman, Esq.
Clark County School District

21 On May 9, 2006, an election was conducted under the LOCAL GOVERNMENT
22 EMPLOYEE-MANAGEMENT RELATIONS BOARD ("Board") Rules and Regulations and a
23 Tally of Ballots was prepared.

24 The Board held deliberations on the results of the election on June 19, 2006, noticed in
25 accordance with Nevada's Open Meeting Law.

26 ///

27 ///

28 ///

1 Based upon the Board's deliberations, and having reviewed the Tally of Ballots as
2 reported by the Commissioner and no timely objections have been filed as to the conduct of the
3 election, IT IS HEREBY ORDERED that the results of the election are certified.

4 DATED this 19th day of June, 2006.

5 LOCAL GOVERNMENT EMPLOYEE-
6 MANAGEMENT RELATIONS BOARD

7 BY: 
8

9 JOHN E. DICKS, ESQ., Chairman

10 BY: 
11

12 JAMET TROST, ESQ., Vice-Chairman

13 BY: 
14

15 JAMES E. WILKERSON, SR., Board Member
16
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1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
4

5 INTERNATIONAL BROTHERHOOD OF
6 TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

ITEM NO. 5201

7 vs.

CASE NO. A1-045735

8 CLARK COUNTY SCHOOL DISTRICT, and
9 EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Respondents.

ORDER

10
11 EDUCATION SUPPORT EMPLOYEES
12 ASSOCIATION,
Counter Claimant,

13 vs.

14 INTERNATIONAL BROTHERHOOD OF
15 TEAMSTERS, LOCAL 14, AFL-CIO, and
16 CLARK COUNTY SCHOOL DISTRICT,
Counter Respondents.

17 For Petitioner: Michael W. Dyer, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson

18
19 For Respondents: Kristin L. Martin, Esq.
20 C.W. Hoffman, Esq.
Clark County School District

21
22 On June 19, 2006, the LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
23 RELATIONS BOARD ("Board") issued an order certifying the results of the election that was
24 conducted on May 9, 2006.

25 On June 12, 2006, Petitioner INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
26 LOCAL 14 ("Teamsters 14") filed a Motion for Declaration that "No Union" Won Election or,
27 in the Alternative, for an Evidentiary Hearing. On June 20, 2006, Respondent CLARK
28 COUNTY SCHOOL DISTRICT ("CCSD") filed its reply and on June 21, 2006, Respondent

1 EDUCATION SUPPORT EMPLOYEES ASSOCIATION ("ESEA") filed their response and an
2 Affidavit of Dane Watson. Teamsters 14 filed a reply memorandum on June 28, 2006.

3 On August 16, 2006, ESEA filed a Supplemental Memorandum and a Supplemental
4 Affidavit of Dane Watson. Teamsters 14 filed a Response to ESEA's Supplemental Reply on
5 August 18, 2006.

6 The Board held deliberations on said motion, (Motion for Declaration that "No Union"
7 Won Election or, in the Alternative, for an Evidentiary Hearing) and the relevant
8 Oppositions/Replies on August 22, 2006, noticed in accordance with Nevada's Open Meeting
9 Law. Based upon the Board's deliberations,

10 The Board took judicial notice of ESEA's "Supplemental Reply", however, it noted that
11 ESEA was not the moving party and were thus not entitled to file a "Reply";

12 The Board has determined that it has exhausted its jurisdiction over this matter under
13 Chapter 288 of the Nevada Revised Statutes. Therefore,

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the consent election
15 results stand as certified by the Board on June 19, 2006. Thus, any pending or future motions
16 relating to the consent election are, and would be deemed to be moot.

17 DATED this 7th day of September, 2006.

18 LOCAL GOVERNMENT EMPLOYEE-
19 MANAGEMENT RELATIONS BOARD

20 BY: 

21 JOHN E. DICKS, ESQ., Chairman

22 BY: 

23 JAMES E. WILKERSON, SR., Board Member
24
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COPY

Shelly B. Ringman
SEP 18 11 51 AM '06
FILED

JUDR

McCracken, Stemerman & Holsberry
Andrew J. Kahn (Nevada SBN 3751)
Kristin L. Martin (Nevada SBN 7807)
1630 South Commerce Street, Suite A-1
Las Vegas, NV 89102
Telephone: (702) 386-5107
Facsimile: (702) 386-9848

Attorneys for Petitioner
International Brotherhood of Teamsters,
Local 14

**IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK**

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, Local 14, an employee
organization,

Petitioner,

v.

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION, a Nevada nonprofit
corporation; STATE OF NEVADA, LOCAL
GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD, an
agency of the State of Nevada; and CLARK
COUNTY SCHOOL DISTRICT, a county
school district,

Respondents.

Case No.

PETITION FOR JUDICIAL REVIEW

Dept.:

Date:

Time:

A528346

I

COMES NOW, Petitioner International Brotherhood of Teamsters Local 14 ("Local 14")
and hereby petitions this Court for judicial review of the decision issued by Respondent Local
Government Employee-Management Relations Board ("EMRB") on September 7, 2006 ("the
September 7, 2006 Order"). A true and correct copy of the September 7, 2006 Order is attached
hereto as Exhibit 1. In support of this petition, Local 14 alleges as follows:

1. This petition is filed pursuant to NRS 233B.130, 288.130 and 288.160(4).

2. Venue is proper in this Court under the provisions of NRS 233B.130(2)(b) because Local 14 resides in Clark County and the agency proceeding occurred in Clark County.

3. The September 7, 2006 Order is the final decision of an agency in a contested case and is therefore subject to review by this Court.

4. Local 14 has been a party of record in the proceedings before the EMRB that culminated in the September 7, 2006 Order. Respondents Education Support Employees Association ("ESEA") and the Clark County School District ("CCSD") have also been parties of record in that proceeding.

5. On September 24, 2002, the EMRB ordered that "an election should be held by the Board to determine which employee organization, ESEA or Teamsters Local 14, would represent the majority of the bargaining unit employees in question. . . . Pursuant to NRS 288.160(4), the Board will 'conduct an election by secret ballot' to determine which employee organization, if any, is supported by a majority of CCSD employees in this bargaining unit." A true and correct copy of the EMRB's September 24, 2002 Order is attached hereto as Exhibit 2.

6. On January 23, 2003, EMRB ordered that in the election ordered on September 24, 2002 it "will require the votes of a 50 percent plus one of the employees in the bargaining unit to be obtained by an organization before it is certified as representing the unit." A true and correct copy of the EMRB's January 23, 2003 Order is attached hereto as Exhibit 3.

7. On December 21, 2005, the Nevada Supreme Court issued an order upholding the EMRB's September 23, 2002 and January 23, 2003 Orders. A true and correct copy of the Supreme Court's December 21, 2005 Order is attached hereto as Exhibit 4. The Supreme Court held that "the EMRB properly determined that an employee bargaining organization must have a majority of the total bargaining unit membership's support before it will be considered the exclusive bargaining representative." The Supreme Court further held that a challenge to the EMRB's January 23, 2003 Order on the ground that it would result in ESEA's decertification if ESEA did not obtain votes from a majority of employees was not yet ripe for review.

8. A mail-ballot election between Local 14, ESEA and "No Union" was conducted by EMRB Commissioner Julie Contreras. On May 9, 2006, the ballots were counted in the presence

of Local 14, ESEA and EMRB Commissioner Contreras. EMRB Commissioner Contreras furnished the parties with a tally of the ballots. A true and correct copy of the tally is attached hereto as Exhibit 5. The tally states that a total of 4,797 ballots were cast. Of that total, 2,711 ballots were cast for Local 14; 1,932 ballots were cast for ESEA; and 93 ballots were cast for "No Union."

9. No party filed objections to the conduct of the election or conduct affecting the results of the election pursuant to NAC 288.110(8).

10. On June 12, 2006, Local 14 filed with the EMRB a Motion for a Declaration that "No Union" Won the Election or, in the Alternative, for an Evidentiary Hearing.

11. On or about June 14, 2006, Counsel for ESEA sent a letter to the EMRB objecting to any consideration of Local 14's motion by the EMRB at its meeting scheduled for June 19-20, 2006. A true and correct copy of that letter is attached hereto as Exhibit 6.

12. On June 19, 2006, the EMRB issued an order certifying the results of the election that was conducted on May 9, 2006. A true and correct copy of the EMRB's June 19, 2006 Order is attached hereto as Exhibit 7. That certification does not determine whether Local 14, ESEA or "No Union" won the election.

13. At the June 19, 2006 meeting of the EMRB, the EMRB Commissioners announced that they would defer ruling on Local 14's June 12, 2006 motion until after ESEA filed a response to it.

14. The EMRB's September 7, 2006 Order does not determine who won the election. Instead, it disposes of Local 14's June 12, 2006 motion by "determin[ing] that it has exhausted its jurisdiction over this matter" and that "any pending or future motions relating to the consent election are, and would be deemed to be moot."

15. Local 14 is aggrieved by the September 7, 2006 Order and substantial rights of Local 14 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,

///

1 probative and substantial evidence on the whole record; or (f) is arbitrary or capricious or
2 characterized by an abuse of discretion.

3 WHEREFORE, Local 14 prays for a judgment as follows:

4 1. For an order of the Court granting review, setting aside the September 7, 2006 Order,
5 and compelling the EMRB to issue a declaration that "No-Union" won the election or, in the
6 alternative, that Local 14 won the election;

7 2. For an award of attorneys' fees and costs incurred by ESEA in this proceeding; and


8 3. For such other and further relief as the Court deems just and proper.

9
10 DATED: September 15, 2006

McCRACKEN, STEMERMAN & HOLSBERRY

11
12 By 

13 Andrew J. Kahn
14 Kristin L. Martin
15 Attorneys for Petitioner,
16 International Brotherhood of Teamsters,
17 Local 14
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CLERK OF THE COURT

1 NOTC
2 DYER, LAWRENCE, PENROSE,
3 FLAHERTY & DONALDSON
4 MICHAEL W. DYER
5 Nevada Bar No. 2180
6 JAMES W. PENROSE
7 Nevada Bar No. 2083
8 2085 Mountain Street
9 Carson City, Nevada 89703
10 Telephone: (775) 885-1896
11 Facsimile: (775) 885-8728

12 Attorneys for Respondent Education Support
13 Employees Association

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 14, an employee organization,

Petitioner,

vs.

Case No. A528346
Dept. No. 1

EDUCATION SUPPORT EMPLOYEES ASSOCIATION,
a Nevada nonprofit corporation; STATE OF NEVADA,
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD, an agency of the State of Nevada;
and CLARK COUNTY SCHOOL DISTRICT, a county
school district,

Respondents.

NOTICE OF ENTRY OF ORDER

Date of Hearing: March 15, 2007
Time of Hearing: 9:00 a.m.

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

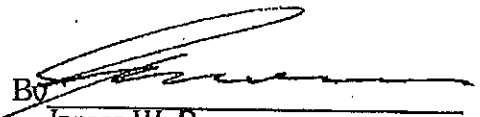
Dyer, Lawrence, Penrose, Flaherty & Donaldson
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

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NOTICE IS HEREBY GIVEN that on April 5, 2007, the Court in the above-entitled matter entered the order attached hereto as Exhibit A and incorporated herein by this reference.

Dated this 12th day of April, 2007.

DYER, LAWRENCE, PENROSE,
FLAHERTY & DONALDSON



Bo
James W. Penrose
Nevada Bar No. 2083
Attorneys for Respondent ESEA

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

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EXHIBIT A

000061

1 **ORDG**2 **RICHARD G. McCracken (SBN 2748)**3 **ANDREW J. KAHN (SBN 3751)**4 **KRISTIN L. MARTIN (SBN 7807)**5 **McCracken, Stemberman & Holsberry**6 **1630 S. Commerce St, Suite A1**7 **Las Vegas Nevada 89102**8 **Tel.: (702) 386-5107**9 **Fax: (702) 386-9848**10 **klm@dchsf.com**11 **Attorneys for Petitioner**12 **International Brotherhood of Teamsters,**13 **Local 14****FILED**

APR 5 10 06 AM '07

Clerk of the Court
CLERK OF THE COURT14 **IN THE EIGHTH JUDICIAL DISTRICT COURT**15 **CLARK COUNTY, NEVADA.**16 **INTERNATIONAL BROTHERHOOD OF**
17 **TEAMSTERS, LOCAL 14, an employee**
18 **organization,**19 **Petitioner,**20 **vs.**21 **EDUCATION SUPPORT EMPLOYEES**
22 **ASSOCIATION, a Nevada nonprofit corporation;**
23 **STATE OF NEVADA, LOCAL GOVERNMENT**
24 **EMPLOYEE-MANAGEMENT RELATIONS**
25 **BOARD, an agency of the State of Nevada; and**
26 **CLARK COUNTY SCHOOL DISTRICT, a**
27 **county school district,**28 **Respondents.****CASE: A-528346****Dept. No.: 1****ORDER GRANTING PETITIONER**
INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
LOCAL 14's PETITION FOR
JUDICIAL REVIEW

Petitioner International Brotherhood of Teamsters Local 14's Petition for Judicial Review came for hearing in Department I of this Court at 9:00 a.m. on March 15, 2007. Appearing for Petitioner was McCracken, Stemberman & Holsberry by Kristin L. Martin. Appearing for Respondent Education Support Employees Association ("ESEA") was Dyer, Lawrence, Penrose, Flaherty & Donaldson by Michael Dyer. Appearing for Respondent State of Nevada Local

000062

1 Government Employee -Management Relations Board ("EMRB") was Nevada Attorney General
2 by Senior Deputy Attorney General Dianna Hegedius. Appearing for Respondent Clark County
3 School District ("CCSD") was C.W. Hoffman.

4 The Petition for Judicial Review is GRANTED because the EMRB erred in deciding that
5 its jurisdiction was exhausted. The EMRB decided that a good faith doubt exists as to whether
6 any employee organization enjoys the majority support of CCSD employees in the bargaining
7 unit currently represented by ESEA, and ordered and conducted an election pursuant to NRS
8 288.160(4) to resolve that doubt. Having done so, it was within the EMRB's jurisdiction to
9 resolve that doubt accordance with the relevant provisions of NRS Chapter 288 and NAC
10 Chapter 288. The EMRB was in error when it decided that its jurisdiction was exhausted after it
11 tallied and certified the number of votes that each option on the election ballot received. The
12 Court makes no finding that the EMRB has to proceed in a certain fashion. The Court hereby
13 remands this case to the EMRB for further proceedings in accordance with this Order.

14 IT IS SO ORDERED.

15
16 Date:

April 4, 2007

KENNETH C. CORY

HONORABLE KENNETH CORY
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of Dyer, Lawrence, Penrose, Flaherty & Donaldson, counsel for ESEA, and that on this 12th day of April, 2007, I caused a true and correct copy of the within NOTICE OF ENTRY OF ORDER to be deposited in the U.S. Mail, first-class postage prepaid, addressed to each of the persons listed below:

Mr. Andrew J. Kahn, Esq.
Ms. Kristin L. Martin, Esq.
Davis, Cowell & Bowe
595 Market Street, Suite 1400
San Francisco, California 94105

Ms. Dianna Hegeduis, Esq.
Senior Deputy Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Mr. C.W. Hoffman, Jr., Esq.
General Counsel
Clark County School District
5100 West Sahara Avenue
Las Vegas, Nevada 89146

Mr. Andrew J. Kahn, Esq.
Ms. Kristin L. Martin, Esq.
McCracken, Stemmerman & Holsberry
1630 South Commerce St., Ste. A-1
Las Vegas, Nevada 89102


Sharon Coates, PP, PLS

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

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

5 INTERNATIONAL BROTHERHOOD OF
6 TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

7 vs.

8 CLARK COUNTY SCHOOL DISTRICT, and
9 EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Respondents.

ITEM NO. 520J

CASE NO. A1-045735

ORDER

11 EDUCATION SUPPORT EMPLOYEES
12 ASSOCIATION,
Counter Claimant,

13 vs.

14 INTERNATIONAL BROTHERHOOD OF
15 TEAMSTERS, LOCAL 14, AFL-CIO, and
16 CLARK COUNTY SCHOOL DISTRICT,
Counter Respondents.

17 For Petitioner: Michael W. Dyer, Esq.
18 Dyer, Lawrence, Penrose, Flaherty & Donaldson

19 For Respondents: Kristin L. Martin, Esq.
20 C.W. Hoffman, Esq.
Clark County School District

21 This matter came on for discussion and deliberations by the Local Government
22 Employee-Management Relations Board ("Board") on the 30th day of May, 2007, noticed
23 pursuant to NRS and NAC chapters 288, NRS chapter 233B, and Nevada's open meeting laws.
24 The Board finds, concludes, and orders as follows:

25 NRS chapter 288 requires the employee organization to have the support of 50% plus one
26 of the bargaining unit members. This prior ruling-requirement of 50% plus one by the Board
27 was affirmed by the Nevada Supreme Court. Neither employee association or union, nor the
28 "no-union" option, prevailed by obtaining the 50% plus one of the members of the bargaining

1 unit at the Board ordered election. The Board initially had a good faith doubt whether the union
2 or association, if any, enjoyed the support of the majority of the members of the bargaining unit
3 at issue, and such is now intuitively obvious and confirmed to any casual observer of the election
4 results. In the Board's opinion, a run-off election would not change that result, nor has one been
5 requested by any party to this matter.

6 The Board then acted within its statutory duty by certifying the election. NAC 288.110.
7 The Board properly refused to grant the motion brought by the Teamsters that the choice "no
8 union" won the election as that option did not have the vote of 50% plus one of the bargaining
9 unit members, and simply ruled that it has exhausted its jurisdiction. No objections were filed by
10 ESEA or Teamsters 14 to the election results as certified by this Board or the procedures of the
11 election.

12 The parties then sought judicial review of that decision, and the Court remanded this
13 matter to this Board for clarification of its earlier ruling.

14 NRS 288.160(3) and NAC 288.145 allow the government employer to withdraw
15 recognition of the employee association. In this matter, the Clark County School District
16 ("School District") has not sought to withdraw its recognition of the Education Support
17 Employees Association ("ESEA"); and as of this date, there is no case pending before this Board
18 brought by the School District to withdraw recognition of the ESEA. In the absence of any
19 petition to this Board alleging an unfair labor practice as a result of the employer's recognition of
20 the ESEA or the employer itself seeking to withdraw recognition of ESEA, this Board is not
21 authorized by statute to independently assert itself into the matter and act under NRS chapter
22 288.

23 It should be further noted that at the administrative hearing in this matter, evidence was
24 presented which demonstrated to this Board that the ESEA has due-paying members in excess of
25 50% plus one from the bargaining unit at issue. Thus, the government employer has not
26 requested permission to withdraw its recognition of the ESEA, and evidence was produced that
27 the majority of the bargaining unit members pay dues to ESEA.

28 ///

1 The Board acted properly in certifying the election. Without more coming before the
2 Board, the Board is not statutorily obligated to proceed any further. Without the parties or any
3 person seeking further relief from the Board, the election results leave the situation status quo.
4 Notice shall be taken that NRS chapter 288 was enacted by the Legislature to ensure labor
5 stability, and the decisions by the Board in this matter were intended to achieve that result.

6 DATED this 31st day of May, 2007.

7 LOCAL GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD
9

10
11 BY: John E. Dicks
12 JOHN E. DICKS, ESQ., Chairman

13 BY: Janet Trost
14 JANET TROST, ESQ., Vice-Chairman

15 BY: James E. Wilkerson
16 JAMES E. WILKERSON, SR., Board Member
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1 **JUDR**

2 McCracken, Stermerman & Holsberry
3 Richard G. McCracken (Nevada SBN 2748)
4 Andrew J. Kahn (Nevada SBN 3751)
5 Kristin L. Martin (Nevada SBN 7807)
6 1630 South Commerce Street, Suite A-1
7 Las Vegas, NV 89102
8 Telephone: (702) 386-5107
9 Facsimile: (702) 386-9848
10 *klm@debsf.com*

11 Attorneys for Petitioner
12 International Brotherhood of Teamsters,
13 Local 14

14 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
15 **OF THE STATE OF NEVADA**
16 **IN AND FOR THE COUNTY OF CLARK**

17 **INTERNATIONAL BROTHERHOOD OF**
18 **TEAMSTERS, LOCAL 14, an employee**
19 **organization,**

20 **Petitioner,**

21 **v.**

22 **EDUCATION SUPPORT EMPLOYEES**
23 **ASSOCIATION, a Nevada nonprofit**
24 **corporation; STATE OF NEVADA, LOCAL**
25 **GOVERNMENT EMPLOYEE-**
26 **MANAGEMENT RELATIONS BOARD, an**
27 **agency of the State of Nevada; and CLARK**
28 **COUNTY SCHOOL DISTRICT, a county**
school district,

Respondents.

Case No. A528346

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS LOCAL 14'S
SUPPLEMENTAL PETITION FOR
JUDICIAL REVIEW

Dept.: 1

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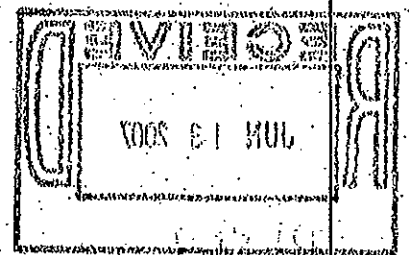
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SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW



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COMES NOW, Petitioner International Brotherhood of Teamsters Local 14 ("Local 14") and hereby petitions this Court for judicial review of the decision issued by Respondent Local Government Employee-Management Relations Board ("EMRB") on May 31, 2007 ("the May 31, 2007 Order"). A true and correct copy of the May 31, 2007 Order is attached hereto as Exhibit A. In support of this petition, Local 14 alleges as follows:

1. This petition is filed pursuant to NRS 233B.130, 288.130 and 288.160(4).
2. Venue is proper in this Court under the provisions of NRS 233B.130(2)(b) because Local 14 resides in Clark County and the agency proceeding occurred in Clark County.

3. The May 31, 2007 Order is the final decision of an agency in a contested case and is therefore subject to review by this Court.

4. Local 14 has been a party of record in the proceedings before the EMRB that culminated in the May 31, 2007 Order. Respondents Education Support Employees Association ("ESEA") and the Clark County School District ("CCSD") were also parties of record in that proceeding.

5. On September 24, 2002, the EMRB ordered that "an election should be held by the Board to determine which employee organization, ESEA or Teamsters 14, would represent the majority of the bargaining unit employees in question. . . . Pursuant to NRS 288.160(4), the Board will 'conduct an election by secret ballot' to determine which employee organization, if any, is supported by a majority of CCSD employees in this bargaining unit." A true and correct copy of the EMRB's September 24, 2002 order is attached hereto as Exhibit B.

6. On January 23, 2003, EMRB ordered that it "will require the votes of a 50 percent plus one of the employees in the bargaining unit to be obtained by an organization before it is certified as representing the unit." A true and correct copy of this order is attached hereto as Exhibit C.

7. On December 21, 2005, the Nevada Supreme Court issued an order upholding the EMRB's orders. A true and correct copy of the Supreme Court's Order is attached hereto as Exhibit D. The Supreme Court held that "the EMRB properly determined that an employee bargaining organization must have a majority of the total bargaining unit membership's support before it will be considered the exclusive bargaining representative." The Supreme Court further

1 held that a challenge to the EMRB's Order on the ground that it required ESEA to undergo a
2 recertification process if it did not obtain votes from a majority of employees was not yet ripe for
3 review.

4 8. A mail-ballot election was conducted by EMRB Commissioner Julie Contreras. On
5 May 9, 2006, the ballots were counted in the presence of Local 14, ESEA and EMRB
6 Commissioner Contreras. EMRB Commissioner Contreras furnished the parties with a tally of
7 the ballots. A true and correct copy of the tally is attached hereto as Exhibit E. The tally states
8 that a total of 4,797 ballots were cast. Of the total, 2,711 ballots were cast for Local 14; 1,932
9 ballots were cast for ESEA; and 93 ballots were cast for "No Union."

10 9. No party filed objections to the election pursuant to NAC 288.110(8).

11 10. On June 12, 2006, Local 14 filed with the EMRB a Motion for a Declaration that
12 "No Union" Won the Election or, in the Alternative, for an Evidentiary Hearing.

13 11. On June 19, 2006, the EMRB issued an order certifying the results of the election
14 that was conducted on May 9, 2006. A true and correct copy of the June 19, 2006 Order is
15 attached hereto as Exhibit F. That certification did not determine which ballot option won the
16 election.

17 13. At the June 19, 2006 meeting of the EMRB, the EMRB Commissioners announced
18 that they would defer ruling on Local 14's motion until after filed a ESEA response to it.

19 14. The EMRB disposed of Local 14's Motion by an order dated September 7, 2006 in
20 which the EMRB decided "that it has exhausted its jurisdiction over this matter" and that "any
21 pending or future motions relating to the consent election are, and would be deemed to be moot."
22 A true and correct copy of the EMRB's September 7, 2006 order is attached hereto as Exhibit G.

23 15. Local 14 petitioned this Court for review of the EMRB's order, and a hearing was
24 held on March 15, 2007 on Local 14's petition for judicial review. On April 4, 2007, this Court,
25 by the Honorable Kenneth Cory, granted Local 14's petition and remanded to the EMRB:

26 The EMRB decided that a good faith doubt exists as to whether any employee
27 organization enjoys the majority support of CCSD employees in the bargaining
28 unit currently represented by ESEA, and ordered and conducted an election
pursuant to NRS 288.160(4) to resolve that doubt. Having done so, it was in the

1 EMRB's jurisdiction to resolve that doubt in accordance with the relevant
2 provisions of NRS Chapter 288 and NAC Chapter 288.

3 A true and correct copy of the Court's order is attached hereto as Exhibit H. Attached hereto as
4 Exhibit I is a true and correct copy of the recorder's transcript of the Court's ruling at the
5 March 15, 2007 hearing.

6 16. On remand from this Court, the EMRB issued its May 31, 2007 Order.

7 17. Local 14 is aggrieved by the May 31, 2007 Order and substantial rights of Local 14
8 have been prejudiced because the Order is: (a) in violation of constitutional or statutory
9 provisions; (b) in excess of the statutory authority of the EMRB; (c) made upon unlawful
10 procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable,
11 probative and substantial evidence on the whole record; or (f) is arbitrary or capricious or
12 characterized by an abuse of discretion.

13 WHEREFORE, Local 14 prays for a judgment as follows:

14 1. For an order of the Court granting review, setting aside the May 31, 2007 decision,
15 and compelling the EMRB to issue a declaration that "No-Union" won the election, or in the
16 alternative, that Local 14 won the election;

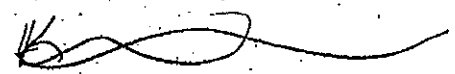
17 2. For an award of attorneys' fees and costs incurred by Local 14 in this proceeding; and

18 3. For such other and further relief as the Court deems just and proper.

19 DATED: June 11, 2007

McCRACKEN, STEMERMAN & HOLSBERY

20
21 By


Richard G. McCracken
Andrew J. Kahn
Kristin L. Martin
Attorneys for Petitioner,
International Brotherhood of Teamsters,
Local 14

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I am employed in the city and county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 595 Market Street, Suite 1400, San Francisco, CA 94105.

Mike Dyer
James Penrose
Dyer, Lawrence, Penrose, Flaherty &
Donaldson
3805 Mountain Street
Carson City, NV 89703

Dianna Hegedius:
Deputy Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101

☒ (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on June 11, 2007, at San Francisco, California.

[X] (STATE) I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Rence Saunders
Rence Saunders


CLERK OF THE COURT

1 NOTC
2 DYER, LAWRENCE, PENROSE,
3 FLAHERTY & DONALDSON
4 MICHAEL W. DYER
5 Nevada Bar No. 2180
6 JAMES W. PENROSE
7 Nevada Bar No. 2083
8 2085 Mountain Street
9 Carson City, Nevada 89703
10 Telephone: (775) 885-1896
11 Facsimile: (775) 885-8728

12 Attorneys for Respondent Education Support
13 Employees Association

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28
EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 14, an employee organization,

Petitioner,

vs.

Case No. A528346
Dept. No. 1

EDUCATION SUPPORT EMPLOYEES ASSOCIATION,
a Nevada nonprofit corporation; STATE OF NEVADA,
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD, an agency of the State of Nevada;
and CLARK COUNTY SCHOOL DISTRICT, a county
school district,

Respondents.

Date of Hearing: January 3, 2008
Time of Hearing: 9:00 a.m.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on January 17, 2008, the Court in the above-entitled
matter entered its Order on Petition for Judicial Review. A true and correct copy of the Order
is attached hereto as Exhibit A and incorporated herein by reference.

///

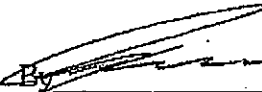
///

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

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

Dated this 22nd day of January, 2008.

DYER, LAWRENCE, PENROSE,
FLAHERTY & DONALDSON


By _____
James W. Penrose
Nevada Bar No. 2083
Attorneys for ESEA

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

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EXHIBIT A

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1 ORDR
2 DYER, LAWRENCE, PENROSE,
3 FLAHERTY & DONALDSON
4 MICHAEL W. DYER
5 Nevada Bar No. 2180
6 JAMES W. PENROSE
7 Nevada Bar No. 2083
8 2085 Mountain Street
9 Carson City, Nevada 89703
10 Telephone: (775) 885-1896
11 Facsimile: (775) 885-8728

FILED

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CR. [Signature]
CLERK OF DISTRICT COURT

12 Attorneys for Respondent Education Support
13 Employees Association

14 EIGHTH JUDICIAL DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
17 LOCAL 14, an employee organization,

18 Petitioner,

19 vs.

Case No. A528346
Dept. No. 1

20 EDUCATION SUPPORT EMPLOYEES ASSOCIATION,
21 a Nevada nonprofit corporation; STATE OF NEVADA,
22 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
23 RELATIONS BOARD, an agency of the State of Nevada;
24 and CLARK COUNTY SCHOOL DISTRICT, a county
25 school district,

26 Respondents.

27 Date of Hearing: January 3, 2008
28 Time of Hearing: 9:00 a.m.

ORDER ON PETITION FOR JUDICIAL REVIEW

29 Petitioner International Brotherhood of Teamsters Local 14's Petition for Judicial Review
30 came on for hearing in Department 1 of this Court at 9:00 a.m. on January 3, 2008. Appearing
31 for Petitioner was McCracken, Stemerman & Holsberry by Kristin L. Martin. Appearing for
32 Respondent Education Support Employees Association ("ESEA") was Dyer, Lawrence,
33 Penrose, Flaherty & Donaldson by Michael Dyer. Appearing for Respondent State of Nevada

1 Local Government Employee-Management Relations Board ("EMRB") was Nevada Attorney
2 General by Senior Deputy Attorney General Dianna Hegedius. Appearing for Respondent
3 Clark County School District ("CCSD") was C.W. Hoffman, Jr.

4 The Petition for Judicial Review is GRANTED in part and DENIED in part, and this
5 matter is remanded to the EMRB to conduct a runoff election in accordance with NAC 288.110.
6 The Court believes that it would be helpful to the parties and consistent with the efficient
7 administration of justice for the Supreme Court to address the issues presented here. Because
8 of the novelty of the legal issues presented, any such review should occur now, before a runoff
9 election is held, so that the parties are not needlessly put to the expense of an election in the
10 event that the Supreme Court ultimately determines that the election is unwarranted.

11 IT IS SO ORDERED.

12 Dated this 10 day of January, 2008.

14 KENNETH C. CORY, Jr.

15 Hon. Kenneth C. Cory
16 District Court Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of Dyer, Lawrence, Penrose, Flaherty & Donaldson, counsel for ESEA, and that on this 22nd day of January, 2008, I caused a true and correct copy of the within NOTICE OF ENTRY OF ORDER to be deposited in the U.S. Mail, first-class postage prepaid, addressed to each of the persons listed below:

Mr. Andrew J. Kahn, Esq.
Ms. Kristin L. Martin, Esq.
Davis, Cowell & Bowe
595 Market Street, Suite 1400
San Francisco, California 94105

Ms. Dianna Hegeduis, Esq.
Senior Deputy Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

Mr. C.W. Hoffman, Jr., Esq.
General Counsel
Clark County School District
5100 West Sahara Avenue
Las Vegas, Nevada 89146

Mr. Andrew J. Kahn, Esq.
Ms. Kristin L. Martin, Esq.
McCracken, Stemmerman & Holsberry
1630 South Commerce St., Ste. A-1
Las Vegas, Nevada 89102


Debora McEachin

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

1 NOTC
2 CASE NO. A 528346

DEPT. NO. 1

3
4
5 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
6 STATE OF NEVADA IN AND FOR THE
7 COUNTY OF CLARK

8 INTERNATIONAL BROTHERHOOD OF
9 TEAMSTERS, LOCAL 14, an employee
10 organization,

Petitioner,

11 vs.

12 EDUCATION SUPPORT EMPLOYEES
13 ASSOCIATION, a Nevada nonprofit
14 corporation; STATE OF NEVADA, LOCAL
15 GOVERNMENT EMPLOYEE
16 MANAGEMENT RELATIONS BOARD, an
17 agency of the State of Nevada; and CLARK
18 COUNTY SCHOOL DISTRICT, a county
19 school district,

Respondents.

20 NOTICE OF APPEAL

21 NOTICE IS HEREBY GIVEN that International Brotherhood of Teamsters,
22 Local 14, Petitioner above named, hereby appeals to the Supreme Court of Nevada from
23 the Order granting in part and denying in part the petition for judicial review entered in this
24 action on the 17th day of January 2008.

25 DATED this 29 day of January, 2008.

26 McCracken, STEMERMAN & HOLSBERY

27 By: 

Richard G. McCracken, NV #2748

Andrew J. Kahn, NV #3751

Kristin L. Martin, NV #7807

1630 South Commerce Street, Suite A-1
Las Vegas, Nevada 89102

Telephone: (702) 386-5107 / Fax: (702) 386-9848

Attorneys for Petitioner

PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed in the city and county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 1400, San Francisco, California 94105.

On January 29, 2008, I served the document described as Notice of Appeal; Case Appeal Statement; and Bond for Costs, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Mike Dyer
James Penrose
Dyer, Lawrence, Penrose, Flaherty &
Donaldson
2805 Mountain Street
Carson City, NV 89703

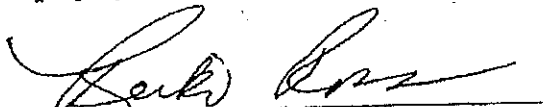
C. W. Hoffman, Jr., General Counsel
Clark County School District
2832 East Flamingo Road
Las Vegas, NV 89121

Dianna Hegedius
Deputy Attorney General
555 East Washington Ave., Suite 399
Las Vegas, NV 89101

[X] (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on January 29, 2007, at San Francisco, California.

[X] (STATE) I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.


Reiko Ross

IN THE SUPREME COURT OF THE STATE OF NEVADA

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AN
EMPLOYEE ORGANIZATION,
Appellant,

vs.

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION, A NEVADA
NONPROFIT CORPORATION; THE
STATE OF NEVADA LOCAL
GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD,
AN AGENCY OF THE STATE OF
NEVADA; AND CLARK COUNTY
SCHOOL DISTRICT, A COUNTY
SCHOOL DISTRICT,
Respondents.

No. 51010

FILED

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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from order granting in part and denying in part a petition for judicial review. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

This action arises out of an election to determine which employee organization would represent the employees of the Clark County School District. Because the primary election was inconclusive, the district court concluded that the Local Government Employee-Management Relations Board (EMRB) is required to conduct a runoff election in accordance with NAC 288.110. We agree.

When a competing employee organization seeks recognition, NRS 288.160(4) permits the EMRB to conduct an election to determine which "employee organization is supported by a majority of the local government employees in a particular bargaining unit." To win an

election and thus be considered the exclusive representative employee organization, the election must "demonstrate[]" that the employee organization is supported by a majority of the employees within the particular bargaining unit." NAC 288.110(10)(d). In a previous order resolving consolidated appeals involving these same parties, we determined that the 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. See Education Support v. Employee-Management Relations Board, Docket Nos. 42315/42338 (Order of Affirmance, December 21, 2005).

At issue in this appeal is whether a runoff election must be conducted when neither employee organization secured a majority vote from all of the members of the bargaining unit.¹ Since we have determined that an employee organization must obtain support from a majority of all of the members of the bargaining unit and not just a majority of those who vote, it was impossible for either Local 14, Education Support Employees Association (ESEA), or the "no union" option to obtain sufficient votes to win the election. Therefore, the election results are inconclusive. NAC 288.110(7) states that "[i]f the results are inconclusive, the Board will conduct a runoff election." (Emphasis added.) We conclude that based on the plain and unambiguous language of NAC

¹At the time the election was held, there were 10,386 employees in the bargaining unit but only 4,797 ballots were cast. Of the ballots cast, 2,711 employees voted for Local 14, 1,932 employees voted for ESEA, and 93 employees voted for "no union."

288.110(7), the EMRB must conduct a runoff election. We further conclude that NRS 288.160(4)'s and NAC 288.110(10)(d)'s majority-vote requirement is equally applicable to the runoff election.

Accordingly, we affirm that portion of the district court's order requiring the EMRB to conduct a runoff election in accordance with NAC 288.110. We recognize that a runoff election may produce similar inconclusive results; however, the parties can agree to an alternative method in which to conduct the runoff election.²

It is so ORDERED.

1. Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

²NRS 288.160(5) provides in pertinent part that "[t]he parties may agree in writing, without appealing to the Board, to hold a representative election to determine whether an employee organization represents the majority of the local government employees in a bargaining unit."

cc: Hon. Kenneth C. Cory, District Judge
Ara H. Shirinian, Settlement Judge
McCracken, Stemerman & Holsberry
Attorney General Catherine Cortez Masto/Carson City
Attorney General Catherine Cortez Masto/Las Vegas
Clark County School District Legal Department
Dyer, Lawrence, Penrose, Flaherty & Donaldson
Eighth District Court Clerk

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT, and
EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Respondents.

ITEM NO. 520K

CASE NO. A1-045735

ORDER

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Counter Claimant,

vs.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO, and
CLARK COUNTY SCHOOL DISTRICT,
Counter Respondents.

For Petitioner: Michael W. Dyer, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson

For Respondents: Kristin L. Martin, Esq. and Adam J. Zapala, Esq.
Davis, Cowell & Bowe. LLP

Carlos L. McDade, Esq.
Clark County School District

On the 12th day of January, 2012, 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 NRS and NAC chapters 288, NRS chapter 233B.

At issue before the Board is a motion to dismiss the entire petition filed by the Education Support Employees Association (ESEA), requesting that this matter be dismissed due to a lack of action on the part of Teamsters Local 14.

On December 21, 2009, the Nevada Supreme Court entered an order directing a runoff election. The Supreme Court's order stated that "the parties can agree to an alternative method in

1 which to conduct the runoff election." No deadline for reaching such an agreement was given
2 and thus far the discussions for agreeing upon an alternative method have been open-ended.
3 After the order was entered by the court, the Commissioner of the EMRB began to explore
4 whether the parties wished to agree to an alternative method of conducting the election. The
5 Commissioner's discussions with the parties have not yet produced any such agreement.

6 ESEA's motion argues that this delay in holding the runoff election has gone on for long
7 enough. We agree that action is needed, however we decline to dismiss the petition. It is the
8 intention of the Board to comply with the Supreme Court's order and to conduct a runoff election
9 in accordance with the procedures that were approved and utilized at the prior election in this
10 matter unless the parties are able to promptly agree upon an "alternative method" for conducting
11 this election.

12 Having considered the above, it is hereby ordered that ESEA's Motion to Dismiss is
13 denied;

14 It is further ordered that the parties shall have no more than 20 days from the date of this
15 order to submit a stipulated election plan for conducting the runoff election. In the event that no
16 stipulated plan is filed with the Board within 20 days, the election shall proceed under the
17 procedure that was utilized for conducting the previous election in this matter;

18 It is further ordered that Teamster's Motion to Strike Declaration of Michael Dyer is
19 denied;

20 It is further ordered that this matter be placed on the agenda at the next regularly
21 scheduled Board meeting for further proceedings.

22 DATED this 13th day of January, 2012.

23 LOCAL GOVERNMENT EMPLOYEE-
24 MANAGEMENT RELATIONS BOARD

25
26 BY: 
27 SEATON J. CURRAN, ESQ., Chairman
28

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT, and
EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Respondents.

CASE NO. A1-045735

NOTICE OF ENTRY OF ORDER

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Counter Claimant,

vs.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO, and
CLARK COUNTY SCHOOL DISTRICT,
Counter Respondents.

To: Michael W. Dyer, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson

To: Kristin L. Martin, Esq. and Adam J. Zapala, Esq.
Davis, Cowell & Bowe. LLP

Carlos L. McDade, Esq.
Clark County School District

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
January 13, 2012.

A copy of said order is attached hereto.

DATED this 13th day of January, 2012.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


JOYCE A. HOLTZ, Executive Assistant

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

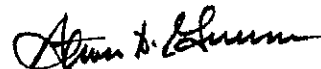
Carlos L. McDade, Esq.
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146

Julie Wallace, Executive Coordinator
Teamsters, Local #14
1250 Burnham Ave., 2nd Floor
Las Vegas, NV 89104

David T. Spurlock, Jr., Esq.
Teamster's Union Local #14
1250 S. Burnham Ave. 2nd Floor
Las Vegas, NV 89104

Adam J. Zapala, Esq.
DAVIS, COWELL & BOWE, LLP
595 Market Street, #1400
San Francisco, CA 94105

000088



CLERK OF THE COURT

1 PET
2 Andrew J. Kahn, SBN 3751
3 Kristin L. Martin, SBN 7807
4 McCRACKEN, STEMERMAN & HOLSBERRY
5 1630 S Commerce St.
6 Las Vegas, NV 89102
7 Tel: (702) 386-5107
8 Fax: (702) 386-9848
9 klm@dcbsf.com
10 ajk@dcbsf.com
11 Attorney for International Brotherhood of Teamsters
12 Local 14

13 EIGHTH JUDICIAL DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 INTERNATIONAL BROTHERHOOD OF
16 TEAMSTERS LOCAL 14, an employee organization,

17 Petitioner,

18 v.

19 EDUCATION SUPPORT EMPLOYEES
20 ASSOCIATION, a Nevada nonprofit corporation;
21 STATE OF NEVADA, LOCAL GOVERNMENT
22 EMPLOYEE-MANAGEMENT RELATIONS
23 BOARD, an agency of the State of Nevada; and
24 CLARK COUNTY SCHOOL DISTRICT, a county
25 school district,

26 Respondents.

INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
LOCAL 14'S VERIFIED SECOND
SUPPLEMENTAL PETITION FOR
REVIEW AND/OR WRIT OF
MANDATE

CASE NO.: A528346

DEPT.: 1

HEARING DATE/TIME:

27 International Brotherhood of Teamsters Local 14 ("Local 14") hereby petitions this Court
28 to review the Local Government Employee-Management Relations Board's ("EMRB") February
9, 2012 Order denying Local 14's Motion to Approve Election Plan for the runoff election
between Local 14 and Education Support Employees Association ("ESEA") ("February 9, 2012
Order"). In the alternative, Local 14 seeks a writ of mandate compelling the EMRB to properly
apply the law in deciding Local 14's motion. A true and correct copy of the February 9, 2012
Order is attached hereto as Exhibit A.

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1 from a majority of all potential voters, regardless of how many votes were cast. Both unions
2 sought review of that order.

3 9. On December 21, 2005, the Supreme Court affirmed the EMRB's decision that
4 there was a good faith doubt regarding whether ESEA had majority support. The Supreme Court
5 also affirmed the EMRB's decision that, in order to prevail, either union must receive votes from
6 a majority of all potential voters. A true and correct copy of the December 21, 2005 Order is
7 attached hereto as Exhibit B and incorporated herein by reference.

8 10. In April and May of 2006, the EMRB conducted a representation election
9 between ESEA, Local 14 and "No Union" by mail ballot. ESEA and Local 14 agreed to the
10 rules about how and when voters were permitted to cast ballots, and filed a stipulated election
11 plan which the EMRB approved. Under the agreed-upon rules, voters were given a period of
12 three weeks to cast ballots by mail.

13 11. When the election was held, less than half of all potential voters cast ballots. A
14 total of 4,797 ballots were cast, of which 2,711 ballots were cast for Local 14; 1,932 ballots
15 were cast for ESEA; and 93 ballots were cast for "No Union." Because neither union received
16 votes from a majority of all potential voters, the results were inconclusive. The EMRB refused
17 to conduct a runoff election.

18 12. Local 14 petitioned for judicial review, and its petition was heard first by the
19 Honorable Kenneth Cory of the Eighth Judicial District Court, followed by the Supreme Court,
20 which issued an Order on December 21, 2009. A true and correct copy of the 2009 Supreme
21 Court Order is attached hereto as Exhibit C and incorporated herein by reference.

22 13. The questions before the Supreme Court in 2009 were (a) whether the EMRB was
23 required to hold a runoff election because the results of the 2006 election were inconclusive; and
24 (b) whether the same rule requiring votes from a majority of all potential voters to prevail
25 (regardless of how many votes were cast) would apply in the runoff election. In the 2009 Order,
26 the Supreme Court held that the EMRB must conduct a runoff election between ESEA and Local
27 14 and that the rule requiring the winner to receive votes from a majority of all potential voters
28 would apply in any runoff election unless the parties agreed to a different rule. The Order gives

1 the unions the option of agreeing to a different vote-counting rule. It states, "[w]e recognize that
2 a runoff election may produce similar inconclusive results; however, the parties can agree to an
3 alternative method in which to conduct the runoff election."

4 14. In the proceedings before the Supreme Court, no party raised any issue about how
5 and when voters would be permitted to cast ballots in the runoff election. Because no party
6 raised any issue about these aspects of the election, the Supreme Court did not address them.

7 15. On December 14, 2011, Local 14's attorney contacted ESEA's attorney to discuss
8 a plan for the runoff election. On December 15 and 20, 2011, ESEA's attorney informed Local
9 14's attorney by e-mail that it would not engage in any such discussions. A true and correct
10 copy of that e-mail communication is attached hereto as Exhibit D.

11 16. Since ESEA refused to discuss an election plan, Local 14 drafted a proposed
12 election plan and sought the EMRB's approval of that plan. A true and correct copy of Local
13 14's Election Plan is attached hereto as Exhibit E and incorporated herein by reference. Local 14
14 filed a Motion for Approval of Election Plan with the EMRB on January 6, 2012.

15 17. Local 14's election plan proposes rules about how and when voters will be
16 permitted to cast ballots in the runoff election. The results of the 2006 election were
17 inconclusive because a majority of potential voters did not vote. In its Election Plan, Local 14
18 proposed hiring an Election Management Company ("EMC"), steeped with experience in
19 running union elections, to conduct the runoff election. The EMC will establish and administer a
20 system that will give all voters the option of voting through the internet or by telephone. This
21 method of voting will enable the EMC to keep a running tally of votes, and voting will remain
22 open until one party obtains votes from a majority of all potential voters. These proposed rules
23 will increase voter participation and make it much more likely to produce conclusive results than
24 the rules that the EMRB used in 2006.

25 18. On February 9, 2012, the EMRB denied Local 14's Motion. Local 14 received
26 the EMRB's Order on February 13, 2012. The February 9, 2012 Order contains no reasoning or
27 explanation for why the EMRB denied Local 14's Motion.

28

19. On February 14, 2012, Adam Zapala, counsel for Local 14, telephoned Scott R. Davis, Esq. Mr. Davis is the Deputy Attorney General tasked with providing legal advice to the EMRB. Mr. Zapala sought clarification of the reason why the EMRB denied Local 14's Motion. Mr. Davis informed Mr. Zapala that the EMRB denied Local 14's Motion because the EMRB believed that the 2009 Supreme Court Order required it to do so. Mr. Davis stated that, based on the 2009 Supreme Court Order, the EMRB believed it could only approve an election plan that had (a) been agreed to by the parties, or (b) was the previous election plan. The declaration of Adam Zapala is attached hereto as Exhibit F.

FIRST CAUSE OF ACTION:

PETITION FOR JUDICIAL REVIEW (NRS 233B.125)

21. Local 14 hereby realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 20.

22. The EMRB denied Local 14's Motion because it misunderstood the 2009 Supreme Court Order. The 2009 Supreme Court Order did not limit the EMRB's discretion to establish rules for how and when voters would be permitted to cast ballots in the runoff election, especially when the rules are aimed at increasing voter participation and producing conclusive results. The 2009 Supreme Court Order requires the EMRB to use the same standard as it used in 2006 to determine whether the election results are conclusive (i.e. whether one union has received votes from a majority of all potential voters) unless the parties agree to a different vote-counting standard. But the 2009 Supreme Court Order does not require the EMRB to use the same rules, absent agreement, for how and when ballots are permitted to be cast.

22. Neither NRS Chapter 288 nor NAC Chapter 288 prohibits the EMRB from adopting rules about how and when voters will be permitted to cast ballots in the runoff election. Neither NRS Chapter 288 nor NAC Chapter 288 prohibits the EMRB from adopting rules that are likely to increase voter participation and produce a conclusive result to an election.

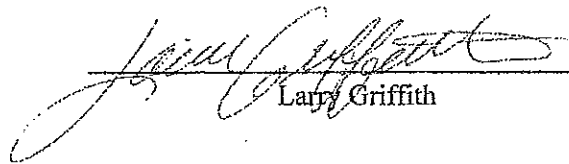
23. In the alternative, the EMRB's order should be vacated because the EMRB's reasoning is not explained at all.

///

VERIFICATION

I, Larry Griffith, am Secretary-Treasurer and CEO of International Brotherhood of Teamsters Local 14, a party in the foregoing action. I have read the foregoing Petition for Judicial Review and/or Writ of Mandate and know the contents thereof. The same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct and was executed on this 7 day of March 2012, at Las Vegas, Nevada.


Larry Griffith


1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of Davis, Cowell & Bowe, LLP, counsel for Petitioner
3 International Brotherhood of Teamsters, Local 14, AFL-CIO, and that on the 8 day of March
4 2012, I deposited for mailing by U.S. Mail, first class postage prepaid, a true and correct copy of
5 the within INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 14'S SECOND
6 SUPPLEMENTAL PETITION FOR REVIEW AND/OR WRIT OF MANDATE - addressed to
7 each of the following persons.

8 Donna Mendoza-Mitchell, Esq.
9 Office of General Counsel
10 Clark County School District
11 5100 W. Sahara Ave.
12 Las Vegas, NV 89146

13 Michael W. Dyer, Esq.
14 James w. Penrose, Esq.
15 Dyer, Lawrence, Penrose, Flaherty, Donaldson & Prunty
16 2805 Mountain Street
17 Carson City, NV 89703

18 Brian Scroggins
19 Commissioner of Local Government
20 Employee-Management Relations Board
21 2501 E. Sahara Avenue, Ste. 203
22 Las Vegas, NV 89104

23
24
25
26
27
28

Jamie Cantwell

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT, and
EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Respondents.

ITEM NO. 520M

CASE NO. A1-045735

ORDER

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Counter Claimant,

vs.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO, and
CLARK COUNTY SCHOOL DISTRICT,
Counter Respondents.

For Petitioner:

Michael W. Dyer, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson

For Respondents:

Kristin L. Martin, Esq.
Davis, Cowell & Bowe. LLP

Carlos L. McDade, Esq.
Clark County School District

On the 23rd day of October, 2012, 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 NRS and NAC chapters 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's open meeting laws.


Having reviewed the proposed plan for conducting the runoff election in this matter submitted by Commissioner Brian Scroggins, it is hereby ordered that the proposed plan is approved.

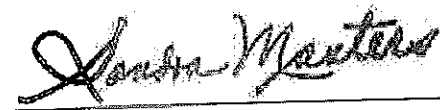
1 A copy of the proposed plan as approved is attached hereto.

2 DATED this 24th day of October, 2012.

3
4 LOCAL GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6
7 BY: 
8 SEATON J. CURRAN, ESQ., Chairman

9
10 BY: 
11 PHILIP E. LARSON, Vice-Chairman.

12
13 BY: 
14 SANDRA MASTERS. Board Member
15
16
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STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT, and
EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Respondents.

CASE NO. A1-045735

NOTICE OF ENTRY OF ORDER

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Counter Claimant,

vs.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO, and
CLARK COUNTY SCHOOL DISTRICT,
Counter Respondents.

To: Michael W. Dyer, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson

To: Kristin L. Martin, Esq.
Davis, Cowell & Bowe. LLP

Carlos L. McDade, Esq.
Clark County School District

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
October 24, 2012.

A copy of said order is attached hereto.

DATED this 24th day of October, 2012.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


JOYCE A. HOLTZ, Executive Assistant

000099

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 24th day of October, 2012, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:


Michael W. Dyer, Esq.
Dyer, Lawrence, Penrose, Flaherty & Donaldson
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

Julie Wallace, Executive Coordinator
Teamsters, Local #14
1250 Burnham Ave., 2nd Floor
Las Vegas, NV 89104

David T. Spurlock, Jr., Esq.
Teamster's Union Local #14
1250 S. Burnham Ave. 2nd Floor
Las Vegas, NV 89104


JOYCE HOLTZ, Executive Assistant

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO,
Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT, and
EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Respondents.

CASE NO. A1-045735

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION,
Counter Claimant,

vs.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14, AFL-CIO, and
CLARK COUNTY SCHOOL DISTRICT,
Counter Respondents.

ELECTION PLAN FOR RUNOFF ELECTION

RUNOFF ELECTION PLAN

This parties to this Plan are the Education Support Employees Association (ESEA), the International Brotherhood of Teamsters, Local 14 (Local 14), and the Clark County School District (the District).

SECTION 1

PURPOSE

The purpose of this election is to determine pursuant to the September 24, 2002, Decision of the Local Government Employee-Management Relations Board (the EMRB) in Case No. A1-045735 and the December 21, 2009 Order of the Nevada Supreme Court in Case No. 51010 whether the ESEA or Local 14 will be the exclusive collective bargaining agent for the unit consisting of all persons employed by the District in that certain bargaining unit (the Bargaining Unit) more fully described as follows:

All full-time, part-time and probationary education support staff employees, excluding all part-time employees who work less than four (4) hours a day or twenty (20) hours per week and all other temporary support staff employees and all other employees of the District.

SECTION II

GOVERNING RULES

All parties shall adhere to the rules of conduct established by the EMRB regarding the representation election process; however, in the event of a conflict, the provisions of NRS Chapter 288 and NAC Chapter 288 shall prevail. The parties also acknowledge the binding effect of the Order of Affirmance entered by the Nevada Supreme Court on December 21, 2005, in the litigation among the parties.

SECTION III

RESERVATION OF RIGHTS

Upon the EMRB's certification of the election results as provided in Section V of this Plan, any party to this Plan may pursue any right or remedy lawfully available to it before the District, the EMRB, and/or any court of competent jurisdiction.

SECTION IV

SECRET BALLOT

A. The election will be by secret ballot under the supervision of the Commissioner of the EMRB. Eligible employees will be allowed to vote without interference, restraint or coercion. The EMRB will mail a ballot to each eligible employee on February 4, 2013. Each ballot shall be delivered through the United States mail, first class postage pre-paid, in an envelope addressed with an address label derived from the *Excelsior* List as provided for in Section V, below. The EMRB shall maintain a list of eligible employees, derived from the *Excelsior* List, with a "key" number placed beside each name on the List. The ballot materials mailed by the EMRB will include a ballot, an envelope marked "Ballot" in which the executed ballot will be placed and sealed, an addressed return envelope, marked with the "key" number of the addressee, with first class postage pre-paid, and an instruction sheet (in the form as set forth at Exhibit "3" to this Plan) on how to complete and properly return the ballot.

B. If the EMRB is contacted by a prospective voter who reports that he or she has not received a ballot kit or has lost or spoiled the ballot or envelope, the following will occur:

(1) If the records of the EMRB show that the prospective voter has never been sent a ballot kit, a ballot kit will be sent, the name inserted on a Supplemental List, and one of a new series of "key" numbers will be assigned.

(2) If the voter has moved, a duplicate ballot kit bearing the old key number plus "(dupl)" will be mailed to the voter and the fact that a duplicate ballot kit was sent will be noted on the eligibility list maintained by the EMRB.

(3) If the voter has lost or spoiled the ballot or ballot envelope, the voter will be sent a duplicate kit bearing the old "key" number plus "(dupl)." In the event both the original and the duplicate envelopes are received from an employee to whom a duplicate was mailed, only the ballot in the envelope having the earlier postmark will be counted. In the event

1 postmarks are not discernable, only the envelope bearing the earlier date stamp will be counted.
2 In the event two or more ballots are received in one envelope, none of the ballots in the envelope
3 will be counted.

4 (4) A voter who falls into the categories specified in (1) - (3) above, may
5 personally pick the ballot up at the offices of the EMRB at 2501 East Sahara Avenue, Suite 203,
6 Las Vegas, Nevada between 9:00 a.m. and 4:00 p.m., Monday through Friday and excluding any
7 legal holidays, through February 28, 2013. The voter will be required to produce a driver's
8 license or other government-issued picture identification and to provide his or her mailing
9 address. A voter who physically picks up a ballot kit from the EMRB offices must mail the
10 ballot in the envelope provided in the ballot kit, and the envelope containing the ballot must be
11 deposited into the Post Office Box(es) rented by the EMRB by the deadline provided for in
12 Paragraph F below.

13 C. The ballots shall be returned, via the United States mail, to one or more Post Office
14 Boxes rented by the EMRB.

15 D. The EMRB shall retrieve the ballots from the Post Office Box(es) at regular intervals,
16 if necessary, pre-announced to the parties to this Agreement. A representative from each party
17 may be present when the ballots are retrieved.

18 E. Upon retrieval from the Post Office Box(es), the ballots will be placed by the EMRB,
19 unopened and in their return envelopes, into a locked ballot box at the offices of the EMRB and
20 the ballots so collected shall remain under lock until the date of the tally as set forth in Paragraph
21 H, below.

22 F. The last date and time for the retrieval of ballots from the Post Office Box(es) shall be
23 March 5, 2013, at 8:30 am Pacific Standard Time. Any ballot not physically deposited into the
24 Post Office Box(es) by that time and date shall not be counted in the tally as provided for in
25 Paragraph H, below.

26 G. Immediately after the final retrieval of ballots as set forth in Paragraph F, above, all
27 ballots shall be transported by the EMRB in the presence of a representative from each party to
28 this Plan to the State of Nevada Sawyer Building, 555 East Washington, Room 1100, Las Vegas,

1 ~~NK~~ The facility shall have adequate space and resources to accommodate the tallying of the
2 ballots as set forth in Paragraph H, below. The EMRB may inspect the facility and determine if
3 the facility is inadequate for the purposes set forth in this Plan.

4 H. Upon arrival at the District facility, the ballots shall be tallied under the supervision
5 and direction of the Commissioner of the EMRB. The actual tally shall be conducted by at least
6 eight (8) teams of volunteer counters, under the supervision and direction of the Commissioner
7 of the EMRB. The volunteer counting teams shall each be comprised of four (4) persons, two of
8 whom shall be designated by ESEA and two (2) of whom shall be designated by Local 14. The
9 parties to this Plan may designate one (1) observer each to be stationed with each ballot counting
10 team.

11 I. The EMRB shall publish the results of the tally as soon as practicable after the count is
12 concluded.

13 SECTION V

14 ELECTION PARTICULARS

15 A. Those Bargaining Unit employees eligible to vote shall be employees holding a
16 Bargaining Unit position as of November 30, 2012. The names of employees eligible to vote
17 appear on the *Excelsior* List that will be provided by the District to the EMRB, ESEA and Local
18 14. The *Excelsior* List must be provided by the District to the EMRB, ESEA and Local 14 no
19 later than December 14, 2012. The *Excelsior* List shall contain the District's last known address
20 of each employee on the List. The names and addresses of persons who do not appear on the
21 *Excelsior* List, but who receive ballots pursuant to Paragraph IV(B), above, will be placed on a
22 Supplemental List. No names may be placed on or added to the Supplemental List unless the
23 person has been provided with a ballot kit by 4:00 pm Pacific Standard Time on February 28,
24 2013. The EMRB will provide the Supplemental List to the District, ESEA and Local 14 by
25 4:00 pm Pacific Standard Time, on February 28, 2013. ESEA or Local 14 may challenge the
26 eligibility to vote of any person on either the *Excelsior* List or the Supplemental List, as provided
27 for in Paragraph D, below. Among those ineligible to vote are employees who have quit or have
28 been terminated after November 30, 2012, and who have not been rehired or reinstated prior to

1 the date of the election. On or before March 4, 2013, the District shall provide Local 14, ESEA
2 and the EMRB Commissioner a list of all employees who have quit or who have been terminated
3 and are not eligible to vote in accordance with this paragraph.

4 B. The Wording on the Ballot. Except as otherwise provided in this paragraph, the
5 ballot shall be worded as shown in Exhibit "1," attached hereto and incorporated by reference
6 herein. The order in which Local 14 and ESEA appear on the ballot shall be determined by coin
7 toss, to be conducted by the Commissioner of the EMRB at 10:00 am Pacific Standard Time on
8 December 7, 2012, or at such other time and date as may be designated by the Commissioner
9 with prior notice to Local 14 and ESEA. Local 14 and ESEA may each designate one
10 representative to witness the coin toss.

11 C. Election Observers Appointed by the Parties.

12 1. Each party may designate eight (8) observers and three (3) alternate
13 observers.

14 2. These observers shall:

- 15 a. Act as monitors at the District facility where the counting occurs;
- 16 b. Challenge for good cause voters and ballots;
- 17 c. Observe the counting of ballots; and
- 18 d. Otherwise assist the Commissioner and/or his designee.

19 D. Challenged Voters. An agent of the EMRB or an authorized observer may
20 challenge for good cause the eligibility of any employee to vote in the election. Any vote
21 challenged by an observer shall be impounded by the Commissioner and placed in the
22 Challenged Ballot Envelope. If the number of challenged ballots is outcome-determinative, the
23 Commissioner will then ascertain the validity of such ballots.

24 E. Objections to the Conduct of the Election. The parties may file objections to the
25 procedural conduct of the election, to conduct in violation of this Agreement or such other
26 conduct (including any claimed violation of either NRS Chapter 288 or NAC Chapter 288)
27 which may have improperly affected the results of the election. Any such objection must be
28 filed with the EMRB within 5 business days after the election. Objections must be in writing and

1 contain a brief statement of facts upon which the objections are based. A sworn original and four
2 copies of the objections must be signed and filed with the EMRB. The party filing the objections
3 shall serve a copy upon each of the other parties. The investigation and determination of any
4 challenges and/or objections will be in accordance with the EMRB's rules and regulations.

5 F. Certification of Election. The EMRB shall issue a certification of the election
6 results once it concludes its investigation into and issues a final ruling upon any and all
7 challenges to eligibility and objections as provided for in Paragraphs D and E, above.

8 G. Party Representatives. On or before 4:00 pm Pacific Standard Time on March 4,
9 2013, each party will notify the other parties and the EMRB of the names of the party's election
10 observers and alternates. If any employee of the District is named as an observer by either party,
11 the District shall arrange for the appropriate release time to allow that observer to be present
12 during the election process.

13 H. Election Notices. A single election notice (Exhibit "2"), will be issued by the
14 EMRB on or before February 4, 2013. The Election Notice shall be sent to each eligible voter
15 along with his/her ballot and the District shall cause the Election Notice to be posted at such
16 work site bulletin boards that are normally utilized by the District to post notices to the
17 Bargaining Unit employees.

18 I. Campaigning:

19 1. There shall be no campaigning by representatives and employees from either
20 ESEA or Local 14 on District property. In this regard, it is recognized that ESEA personnel shall
21 have access to District property for the purpose of and in furtherance of their representational
22 duties, provided, however, that ESEA representatives shall not engage in campaigning with
23 regard to the election while on District property in connection with their representational
24 purposes.

25 2. There shall be no distribution of campaign material or literature on District
26 property, including breakrooms, employee lounges, etc., by the employees or representatives of
27 either ESEA or Local 14, provided, however, there shall be no bar to the distribution of
28 campaign materials or literature from or on other non-District public property (e.g. public

1 sidewalks or entrances to parking lots, etc.). The provisions of this paragraph 2 apply only to
2 persons who are not employees of the District and members of the Bargaining Unit.

3 3. Bargaining Unit employees shall (i) be allowed to solicit one another with regard
4 to this election before work, after work and on their regularly scheduled break times, provided
5 that the employee doing the solicitation and the employee being solicited are on their regularly
6 scheduled break or are off duty and transiting to or from their work stations; (ii) be allowed to
7 exchange literature on school property during such non-working times in non-working areas; and
8 (iii) be allowed to wear buttons, t-shirts, jackets or other insignia of either ESEA or Local 14,
9 provided that such buttons, t-shirts, jackets, etc., do not convey the message "vote for..." or "vote
10 against..." either ESEA or Local 14.

11 SECTION VI

12 JUDICIAL REVIEW OF ELECTION; AMENDMENT OF AGREEMENT

13 The parties retain all rights to seek judicial review of this election pursuant to NRS
14 288.160(4) and NAC 288.110. This Plan may be amended only upon written agreement of the
15 parties and approval of the EMRB.

16 SECTION VII

17 ELECTION DOCUMENTS

18 Notwithstanding any other provision of this Plan to the contrary, the form of election
19 notice, the instructions for completing the ballots and the ballot must be printed in English and
20 Spanish, in substantially the form set forth in Exhibits 1, 2, and 3 hereto, respectively.

21 ///

22 ///

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EXHIBIT 1

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

ESTADO DE NEVADA
JUNTA DE RELACIONES DE EMPLEADOS-PATRONALES DEL GOBIERNO LOCAL
(*"Employee-Management Relations Board," siglas en inglés, EMRB*)

OFFICIAL SECRET BALLOT PAPELETA SECRETA DE VOTACIÓN OFICIAL

FOR EMPLOYEES OF
CLARK COUNTY SCHOOL DISTRICT
EMPLOYED IN THE SUPPORT BARGAINING UNIT ONLY

SOLO PARA LOS EMPLEADOS DEL
DISTRITO ESCOLAR DEL CONDADO DE CLARK
QUE TRABAJAN EN LA UNIDAD DE NEGOCIACIÓN DEL PERSONAL DE SOPORTE

Do you wish to be represented for the purposes of collective bargaining by:
A los fines de la negociación colectiva, deseo estar representado(a) por:

| | |
|--|--|
| Union Contestant (Name to be inserted Following coin toss by EMRB Commissioner) | Union Contestant (Name to be inserted Following coin toss by EMRB Commissioner) |
| <input type="checkbox"/> | <input type="checkbox"/> |

DO NOT SIGN YOUR NAME TO THIS BALLOT. After marking the ballot in the square of your choice, fold, insert into the ABallot® envelope and seal the "Ballot" envelope. Then insert the sealed Ballot in the return-addressed envelope and deposit the return-addressed envelope in the mail. The postage has been pre-paid, so you do not need to affix any additional postage to the return-addressed envelope. Any ballot deposited into the EMRB=s post office box(es) after **8:30 am on March 5, 2013** will be deemed ineligible and will not be included in the final count. DO NOT ALTER THE RETURN ADDRESS AS THIS WILL INVALIDATE THE BALLOT.

NO FIRME SU NOMBRE EN ESTA PAPELETA. Después de marcar la papeleta en el cuadro de su elección, dóblela, insértela en el sobre marcado "Ballot" y séllelo. Luego inserte la papeleta sellada en el sobre con la dirección de retorno, y deposítelo en el correo. El franqueo del sobre con la dirección de retorno ya está pagado, por lo que no necesita ponerle estampillas de correo. Toda papeleta de votación que se deposite en el apartado de correos de la EMRB después de las **8:30 am del March 5, 2013**, se considerará invalidada y no será incluida en el conteo final. NO MODIFIQUE DE NINGUNA FORMA EL SOBRE DE RETORNO, ESTO INVALIDARÁ EL VOTO.

If you spoil or lose this ballot, contact the EMRB Commissioner at 2501 E. Sahara, #203, Las Vegas, Nevada, (702) 486-4504, for a new one.

Si estropea o pierde esta papeleta de votación, comuníquese con el Comisionado de la EMRB en 2501 E. Sahara Ave. # 203, Las Vegas, Nevada, o por teléfono en el (702) 486-4504 para obtener una nueva.

000109

EXHIBIT 2

STATE OF NEVADA LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

**ESTADO DE NEVADA
JUNTA DE RELACIONES DE EMPLEADOS-PATRONALES DEL GOBIERNO LOCAL**
(*"Employee-Management Relations Board," siglas en inglés, EMRB*)

OFFICIAL ELECTION NOTICE AVISO OFICIAL DE ELECCIÓN

The purpose of this election is to determine whether the **EDUCATION SUPPORT EMPLOYEES ASSOCIATION** or the **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 14**, will represent the employees in the Support Staff bargaining unit employed by the **CLARK COUNTY SCHOOL DISTRICT**.

VOTING UNIT

Included: All full time, regular part time and probationary support staff employees currently employed by the Clark County School District as of November 30, 2012.

Excluded: All support staff employees who work (i) less than four hours a day or (ii) 20 hours per week, and all other temporary support staff employees and all other employees of the Clark County School District.

ELECTION TO BE CONDUCTED BY MAIL-IN BALLOT

EMRB TO MAIL BALLOTS: February 4, 2013

ALL BALLOTS DUE BACK TO POST OFFICE BOX: (Information about PO BOX here) on or before 8:30 AM. on March 5, 2013.

**** NOTE ****

Ballots must be deposited in Post Office Box (include PO Box information) no later than 8:30 AM on March 5, 2013, or your vote will not be counted.

COUNTING OF BALLOTS

DATE: March 5, 2013

TIME: 8:30 am

PLACE: State of Nevada Sawyer Building
555 East Washington #1100
Las Vegas, Nevada

El proposito de esta elección es determinar si la **ASOCIACIÓN DE EMPLEADOS DE SOPORTE DE EDUCACIÓN (EDUCATION SUPPORT EMPLOYEES ASSOCIATION)** o **LOS TEAMSTERS, LOCAL 14 (INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 14)**, representarán a los empleados de la unidad de negociación de personal de soporte en el **DISTRITO ESCOLAR DEL CONDADO CLARK**.

UNIDAD DE VOTACIÓN

Incluidos: Todos los empleados a tiempo complete, regulares a tiempo parcial y a prueba actualmente contratados por el Distrito Escolar del Condado Clark hasta el November 30, 2012.

Excluidos: Todos los empleados de soporte que trabajen (i) menos de cuatro horas diarias o (ii) 20 horas semanales, y todos los demás empleados del Distrito Escolar del Condado Clark.

LA ELECCIÓN SE HARÁ POR MEDIO DE UNA PAPELETA DE VOTACIÓN ENVIADA POR CORREO

LA EMRB ENVIARÁ LAS PAPELETAS POR CORREO EL: February 4, 2013
TODAS LAS PAPELETAS TIENEN QUE ESTAR EN EL APARTADO POSTAL [hay que poner la información y los datos del apartado aquí] en o antes de las 8:30 AM del March 5, 2013.

**** NOTA ****

Las papeletas de votación se tienen que depositar en el Apartado Postal [hay que poner la información y los datos del apartado aquí] a más tardar a las 8:30 am del March 5, 2013, o su voto no sera contado.

CONTEO DE LAS PAPELETAS DE VOTACIÓN

FECHA: March 5, 2013

HORA: 8:30 am

LUGAR: State of Nevada Sawyer Building
555 East Washington #1100
Las Vegas, Nevada

000110

EXHIBIT 3

INSTRUCTIONS FOR COMPLETING BALLOT

Enclosed is the ballot for the election between the Education Support Employees Association and the International Brotherhood of Teamsters, Local 14, along with two envelopes.

- Mark ballot with only a single mark, such as an X, inside one box. Ballots with multiple markings will be deemed invalid.
- Do not sign the ballot.
- Seal the marked ballot in the envelope labeled BALLOT.
- Place "BALLOT" envelope inside the return-addressed envelope and seal to be valid.
- Place the return-addressed envelope in the mail in sufficient time so that it can be deposited into the EMRB's Post Office Box(es) on or before 8:30 am on March 5, 2013.
- Do not alter the return mail envelope in any way as this could render it invalid.

The mailing envelope with the ballot enclosed can only be sent via US Postal Service.

All ballots must be deposited into Post Office Box [box number to be inserted by EMRB], Las Vegas, NV, prior to 8:30 am on March 5, 2013. Any ballot received after this time will not be included in the final count.

If you have any questions regarding this process, please feel free to contact the staff at the EMRB, 486-4504.

INSTRUCCIONES PARA LLENAR LA PEPELETA DE VOTACIÓN

Se adjuna la papeleta de votación para elegir entre la Asociación de Empleados de Soporte de Educación (Education Support Employees Association (ESEA)) y Los Teamsters, Local 14 (International Brotherhood of Teamsters, Local 14), con dos sobres.

- Llene la papeleta con una sola marca, tal como una X, en un solo cuadro. Las papeletas con más de una marca se considerarán anuladas.
- No firme la papeleta.
- Coloque la papeleta marcada dentro del sobre designado "BALLOT," y sellelo.
- Coloque el sobre designado "BALLOT" dentro del sobre con la dirección de retorno y sellelo para que sea válido.
- Ponga en el correo el sobre con la dirección de retorno on tiempo suficiente para lo depositen en al Apartado Postal de la EMRB en o antes de las 8:30 am March 5, 2013.
- No modifique de ninguna forma el sobre de retorno, porque esto podría invalidar el voto.

El sobre con la papeleta de votación se puede enviar por el Servicio Postal de los EE.UU.

Todas las papeletas de votación tienen que estar depositadas en el Apartado Postal [la información que pertenece al Apartado se incluirá en este lugar] antes de la 8:30 am del March 5, 2013 . En el conteo final no se incluirá ninguna papeleta de votación que reciba despues de esa hora y fecha.

Si tiene alguna pregunta sobre este proceso, siéntase en libertad de comunicarse con el personal de EMRB en el teléfono (702) 486-4504.

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ESEA/TEAMSTERS ELECTION PROCEDURE FOR PROCESSING BALLOTS

For the sake of clarity, the following terms are used here consistently:

- "ballot" means the ballot itself
- "ballot envelope" means the envelope bearing the word "ballot," in which the ballot is to be inserted
- "return envelope" means the envelope addressed to the EMRB, in which both the ballot envelope and ballot are to be inserted
- "Commissioner" means the Commissioner of the EMRB and any member, employee or agent of the EMRB who is assisting the Commissioner in the ballot-counting process
- "Trouble-shooting team" means a group comprised of representatives of the Teamsters and ESEA, all of whom have been designated as such by their respective principals, and each of whom serves as a liaison or point of contact between the Commissioner and the relevant party.

1. Retrieval and delivery of return envelopes and "undeliverable" ballot kits.

Representatives of the parties and their respective counsel, observers, counters and alternates will meet with the Commissioner in the counting room at the Sawyer Building, Room 1100 at 8:00 am Pacific Standard Time on March 5, 2013. The Commissioner will outline the procedure to be followed for processing ballots and review the functions of the counters, observers and alternates.

All the return envelopes then at the post office will be retrieved by the Commissioner from the post office promptly at 8:30 am Pacific Standard Time on March 5, 2013. The Teamsters and ESEA are each entitled to have one representative present when the return envelopes are retrieved, but the retrieval will not be delayed if either or both representatives are not present for any reason. If permitted to do so by employees of the Postal Service, the Commissioner will check the area of the post office where the return envelopes have been kept to verify that no return envelopes are left behind at the post office. The Commissioner will count the boxes or trays containing the return envelopes before they are loaded into the transport vehicle. (Ref: EA Sec. IV(D), (F), as modified by the agreement of counsel.)¹

Upon retrieval from the post office, all the return envelopes and any ballot kits returned by the Postal Service as "undeliverable" will be transported by the Commissioner, unopened, to the ballot counting site at the Sawyer Building. One representative of each party may accompany the delivery from the post office to the counting site, but (again) the delivery will not be delayed if one or both representatives are not present.

The party representatives who witness the retrieval may not wear any clothing that would permit the concealment of return envelopes (e.g., long-sleeved shirts, coats, sweaters, jackets, vests, ponchos or parkas), nor may they carry any bags, purses, briefcases, pens, markers, food or drink. The return envelopes will be loaded into the transport vehicle by the Commissioner (and members of his staff) and neither the trays containing the return envelopes nor the envelopes themselves are to be handled by any other person until they have reached the counting room at the Sawyer Building. The party representatives are permitted to keep the return envelopes under observation at all times from their retrieval at the post office until they arrive in the counting room. (Ref: EA Sec. IV(G), as modified by the agreement of counsel.)

¹ References are to the Election Agreement ("EA") and the NLRB's *Casehandling Manual* ("CHM").

2. Formation of counting teams.

When the return envelopes have arrived at the counting site, the counting teams and their respective observers will be "paired up" by the Commissioner and designated as Counting Team 1, Counting Team 2, etc., through Counting Team 8, so that each counting team consists of six persons: two pairs of "counters" (with one member of each pair representing the Teamsters and ESEA) and two observers (one each from the Teamsters and ESEA). If enough representatives of the two parties are present to permit the formation of additional counting teams, the Commissioner may do so, after ensuring that the representatives are instructed in the requirements of the ballot processing procedure. (Ref: EA Sec. IV(H).)

After formation of the counting teams, the Commissioner will provide each observer and counter with two copies of the *Excelsior* list and supplemental list, reflecting the names of all prospective voters and the key number assigned to each voter. As discussed below, one copy of each list will be arranged sequentially by key number, while the second copy will be arranged alphabetically according to the last name of each person on the list. If any prospective voter has been sent a duplicate ballot kit by the EMRB, that fact must be noted on each copy of the *Excelsior* and supplemental list distributed to counters and observers. The name of any person on the list provided by the Clark County School District pursuant to Section V(A) of the Election Agreement (i.e., any person who has quit or been terminated after November 30, 2012, and has not been rehired or reinstated prior to the date of the election) must be identified on the *Excelsior* list and supplemental list, if he appears on either, as "TERMED/QUIT."

3. Segregation of "undeliverable" ballot kits.

Any ballot kits returned by the Postal Service as "undeliverable" will be segregated and preserved by the Commissioner, unopened, for display to the parties. They will be destroyed by the Commissioner after each member of the trouble-shooting team has approved their destruction. (Ref: CHM, § 11336.4(a))

4. Processing of return envelopes.

All the return envelopes will initially be divided by the Commissioner into batches of more or less equal size and each batch will be distributed to a counting team by the Commissioner. The return envelopes distributed to each team will be contained in one or more boxes. Each counting team will also be provided with boxes in which to deposit: (1) the return envelopes of any voters whose eligibility to vote is challenged; (2) any return envelopes bearing a "dupl." key number or otherwise received from a voter who has been sent a duplicate ballot kit; (3) the ballot envelopes after they have been extracted from the return envelopes and (4) the return envelopes of any voter who quit or was terminated after the eligibility date.

Each counting team will process the return envelopes in the following manner. One "pair" of counters (one from ESEA and one from the Teamsters) will be seated next to each other at one end of the counting table, with the other pair seated across the table at the other end. The two observers will be on opposite ends and sides of the table. The following diagram illustrates the seating arrangement at each table:

| | | |
|-----------------------|-------------------------------|-------------------------------|
| Observer (Org. A) | Counter 2 (Organization B) | Counter 1 (Organization A) |
| Counting Table | | |
| Counter 3 (Org. B) | Counter 4 (Organization A) | Observer(Organization B) |

(Note that a counter will periodically "trade off" with the other counter in his pair, so that they take turns performing the functions described here.) The first counter ("Counter 1") will retrieve the return envelopes, one at a time, from the box containing all the unopened return envelopes. Counter 1 will announce to the other persons seated at the table the key number on the envelope and display the envelope so that the second counter ("Counter 2") can verify it.

Counter 2 will check the key number against the *Excelsior* list and supplemental list provided to him by the Commissioner, using the copies of these lists sorted by key number. Having matched the key number with a name, Counter 2 will announce to the other persons seated at the table the name of the voter ("Susie Smith") associated with that key number and will also announce whether that voter was sent a duplicate ballot kit. As he does so, Counter 2 will place a check mark next to the key number on his list, to denote the fact that Susie Smith has returned a ballot.

Each of the remaining counters ("Counter 3" and "Counter 4") and each observer will have an *Excelsior* list and a supplemental list, sorted alphabetically according to the last name of each prospective voter. Except as otherwise provided in the next paragraph, if either observer disputes the eligibility of the prospective voter to vote, he may state that the voter is challenged; *if no challenge to eligibility is asserted at that time, it is deemed waived*. Any observer may maintain a separate list of employees he intends to challenge. (The observer asserting the challenge should note the fact of the challenge on his separate list (or the *Excelsior* list or supplemental list) so that he has a record of the challenge.) If the eligibility of the prospective voter is challenged, Counter 1 will write "challenged" on the back of the return envelope and place the envelope, unopened, in the box designated for challenged return envelopes.

If a return envelope is received from any person who is designated as "TERMED/QUIT" on the *Excelsior* list or supplemental list, any such envelope will not be opened and, except as otherwise provided in this paragraph, will be segregated by Counter 1 for delivery to the Commissioner. If either observer believes that any such person is improperly designated as "TERMED/QUIT," he may object to the exclusion of the return envelope, in which event Counter 1 will place the return envelope, unopened, in the box designated for challenged return envelopes. *If no such objection is asserted at that time, it is deemed waived*.

If the eligibility of the prospective voter is not challenged, but the return envelope bears a "dupl." key number or the *Excelsior* list or supplemental list reflects that the voter has been sent a duplicate ballot kit by the EMRB, Counter 1 will place the return envelope, unopened, in the box designated for potential duplicate return envelopes. All such envelopes will be processed separately