

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-15-
715577-J

Electronically Filed
Nov 30 2016 02:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE

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Counsel for *State of Nevada*
Local Government Employee-
Management Relations Board

Appellant State of Nevada, Local Government Employee-Management Relations Board (“EMRB” or the “Board”), by and through its counsel, Adam Paul Laxalt, Attorney General, Gregory Zunino, Bureau Chief, and Donald Bordelove, Deputy Attorney General, hereby submits its Response to the Nevada Supreme Court’s November 2, 2016 Order to Show Cause (“OSC”).

I. STATEMENT OF PERTINENT FACTS

The apparent jurisdictional defect in this case is attributable to the manner in which the district court has addressed a series of related administrative decisions by the EMRB. In summary, the district court addressed these discrete administrative decisions as though they presented a single case or controversy on judicial review.

On March 19, 2015, Education Support Employees Association (“ESEA”) filed a Petition for Judicial Review (“First Petition”) challenging the Board’s authority under NRS 288.160 to conduct what the Board had characterized as a “second runoff election” between ESEA and the International Brotherhood of Teamsters Local 14 (“Local 14”). Filed under Case Number A-15-715577J, the First Petition was heard by the Honorable Kenneth C. Cory in Department 1 of the Eighth Judicial District Court. Attached hereto as Exhibit “A” is a true and correct copy of the First Petition; Joint Appendix (“JA”) 173-78.

As the Court notes in its OSC, Judge Cory entered an Order of Dismissal dated June 8, 2015 (“Order of Dismissal”). Having summarily disposed of the First Petition on the ground that the stated allegations were not ripe for review, the Order of Dismissal reads like a final judgment in Case No. A-15-715577J. Attached hereto as Exhibit “B” is a true and correct copy of the Order of Dismissal; JA 179-80. Although Judge Cory noted in the Order of Dismissal that it did not “preclude ESEA from seeking judicial review at the conclusion of the election process . . . ,” Judge Cory did not explicitly retain jurisdiction over the case or otherwise express an intention to supervise the conduct of the election process at issue.

On January 20, 2016, ESEA filed a second Petition for Judicial Review (“Second Petition”) under Case No. A-15-715577-J. ESEA filed the Second Petition with a caption indicating that the matter was pending in Department 1 before Judge Cory, thereby mischaracterizing the case as a continuation of the earlier proceeding that concluded with the entry of the Order of Dismissal. Attached hereto as Exhibit “C” is a true and correct copy of the Second Petition; JA 196-200. On May 16, 2016, Judge Cory entered what reads like a second final judgment in Case No. A-15-715577-J (“Order”). Attached hereto as Exhibit “D” is a true and correct copy of the Order; JA 464-69.

On June 9, 2016, the Board filed its Notice of Appeal of the Order and this appeal followed. Attached hereto as Exhibit “E” is a true and correct copy of the Board’s Notice of Appeal; JA 470-72.

II. RESPONSE TO OSC

A. If the Order is Not Reviewable on Appeal as a Final Judgment, then it is Void as the District Court Lacked Jurisdiction to Issue the Order

It is well established that a judgment is void if a court lacks jurisdiction to enter the judgment. *Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011); *State Indus. Ins. System v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984).

The Court appears correct in its assessment that the Order reads like a second final judgment in Case No. A-15-715577-J, the first being the Order of Dismissal. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment); *see also Dredge v. Peccole*, 89 Nev. 26, 27, 505 P.2d 290, 290 (1973 (an order dismissing a case without prejudice is a final judgment); *Alper v. Poison*, 77 Nev. 328, 331, 363 P.2d 502, 503 (1961), *overruled on other grounds in Lee*, 116 Nev. at 426, 996 P.2d at 417. Having previously issued the Order of Dismissal, Judge Cory had no jurisdiction in Case No. A-15-715577-J to grant the relief requested in the Second Petition.¹ *See Dredge Corp.*, 89 Nev. at 27,

¹ Indeed, the filing of an additional petition in the same matter in which the judge had not retained jurisdiction (as evident by the June 8, 2015 Order itself)

505 P.2d at 291 (holding that “the lower court was without jurisdiction to alter the judgment dismissing appellant’s action ‘without prejudice,’ and its later order purporting to do so was void.”); *SFPP, L.P. v. Second Judicial Dist. Court*, 123 Nev. 608, 612, 173 P.3d 715, 717 (2007) (explaining that “once a final judgment is entered, the district court lacks jurisdiction to reopen it”); *Smith v. Emery*, 109 Nev. 737, 741, 856 P.2d 1386, 1389 (1993) (holding that “the district court’s actions taken after that date [it lacked jurisdiction] are hereby reversed as void for lack of jurisdiction.”); *see, e.g., Smith v. W. Las Vegas Surgery Ctr., LLC*, No. 68383, 2016 WL 4423367, at *1 (Nev. App. filed Aug. 17, 2016) (unpublished disposition) (holding that “we conclude that the court erred by permitting respondent to file a complaint in intervention and that the orders that resulted from respondent’s intervention are void.”)².

Assuming there is a jurisdictional defect in this case, it is traceable to ESEA’s filing of the Second Petition in Case No. A-15-715577-J. If the Court concludes that Judge Cory was without jurisdiction to address the Second Petition

circumvented the random assignment process in the Eighth Judicial District Court. *See Margold v. Eighth Judicial Dist. Court In & For Cty. of Clark*, 109 Nev. 804, 806–07, 858 P.2d 33, 35 (1993) (requiring random assignment in conformity with Eighth District Court Rule 1.60). As this is a fundamental requirement, failure to adhere presumably divested the court of jurisdiction for this reason as well.

² The Board cites to this unpublished decision of the Court of Appeals of Nevada pursuant to amended NRAP 36(c)(3) (permitting citation to an unpublished disposition issued by this court on or after January 1, 2016). *See also* NRAP 1(e) (defining “Court” to include the Court of Appeals).

on its merits, it must declare the Order void because there was no basis for Judge Cory to retain jurisdiction over the case following the issuance of the Order of Dismissal. If the Order is void, the Board's decision must stand despite any dismissal of this appeal.

B. If the Order is Not Void for Lack of Jurisdiction, this Appeal Should Proceed as the Order is Properly Characterized as a Final Judgment Superseding the Order of Dismissal

If the Court finds that the Order is not void for lack of jurisdiction, then it must logically be considered a final judgment and this Court may entertain the subject appeal.

Moreover, the Order may be considered a final judgment despite the court's use of the word "remand" in the Order. Importantly, on April 14, 2008, this Court entered an Order Denying Motion to Dismiss ("Appellate Order") in the related matter of *International Brotherhood of Teamsters, Local 14 v. Education Support Ass'n et al.*, Docket No. 51010. Attached hereto as Exhibit "F" is a true and correct copy of the Appellate Order.

As the Appellate Order explained, in pertinent part:

Typically, an order of remand is not appealable as a final judgment because it resolves neither the claims nor the rights and liabilities of any party.³ As we noted in a related matter,⁴ however, in this

³ See e.g., Ayala v. Caesars Palace, 119 Nev. 232, 71 P.3d 490 (2003); Clark County Liquor v. Clark, 102 Nev. 654, 657-58, 730 P.2d 443, 446 (1986); Pueblo of Sandia v. Babbitt, 231 F.3d 878, 880 (D.C. Cir. 2000); see also Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (clarifying that a final

instance, the district court's order apparently resolved all of the issues before the court, which concerned appellant's substantive rights stemming from the EMRB election results certified in June 2006, including whether those results showed a conclusive win or were instead inconclusive, so as to require a runoff election under NAC 288.110. Thus, the order 'remands' to the EMRB not for any further substantive action with respect to the 2006 election results, but rather, for a new election.⁵ Consequently, because the district court's order resolved all of the issues before the court and did not remand the matter to the EMRB for further substantive proceedings with respect to those issues, it is appealable as a final order.⁶

So too here, the Order resolved all of the issues pending before the district court in regards to the conduct, outcome and import of the second runoff election between ESEA and Local 14. Indeed, the district court only "remanded to the Board to make the determination as to what, **if any**, further action is appropriate." Exhibit D; JA, at 469 (**emphasis added**). Assuming, *arguendo*, that the district court had jurisdiction to enter the Order, the Order did not "remand" with instructions to make concrete findings or perform specified tasks (let alone remand

judgment disposes of all the issues presented in the case, leaving nothing for future consideration of the court, except for certain post-judgment issues).

⁴ See Int'l Bhd. of Teamsters v. Dist. Ct. (Educ. Support Employees Ass'n), Docket No. 50998 (Order Denying Petition for Writ of Certiorari, Mandamus, or Other Extraordinary Relief, February 11, 2008).

⁵ See Bally's Grand Hotel v. Reeves, 112 Nev. 1487, 1488-89, 929 P.2d 936, 937 (1996) (noting that this court takes a functional view of remanding for further substantive proceedings, an order that resolves the signal issue before the court, regarding substantive rights, and remands for a mere calculation of benefits, is appealable as a final judgment).

⁶ Id.; NRAP 3A(b)(1).

for a new election – a directive that would properly be deemed a final judgment nonetheless, as indicated in the Appellate Order, quoted above). *See also, e.g., Wells Fargo Bank, N.A. v. O'Brien*, 129 Nev. Adv. Op. 71, 310 P.3d 581, 582 (2013) (stating that “in the administrative context, a district court order remanding a matter to an administrative agency is not an appealable order, unless the order constitutes a final judgment on the merits and remands merely for collateral tasks, such as calculating benefits found due”); *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994) (noting that “[t]his court determines the finality of an order or judgment by looking to what the order or judgment actually does, not what it is called.”).

Therefore, if this Court concludes that the Order survived a jurisdictional defect in the proceedings by virtue of waiver or some similar equitable doctrine⁷, it must entertain this appeal. Alternatively, it must dismiss the appeal, thus allowing the Board’s decision to stand.

III. CONCLUSION

For the foregoing reasons, Appellant State of Nevada, Local Government Employee-Management Relations Board respectfully requests that the Court

⁷ Importantly, “subject matter jurisdiction cannot be waived and may be raised at any time, or *sua sponte* by a court of review.” *Vaile v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 118 Nev. 262, 276, 44 P.3d 506, 515–16 (2002); *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990) (subject matter jurisdiction “cannot be conferred by the parties”).

declare the Order void if it concludes that the district court lacked jurisdiction to enter a second final judgment in Case No. A-15-715577-J. In the alternative, assuming the Court finds that there was no jurisdictional defect in the proceedings before the district court, the Board requests that the Court entertain this appeal.

Dated: November 30, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ Donald J. Bordelove
Donald J. Bordelove (Bar. No. 12561)
Deputy Attorney General

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 30th day of November, 2016 I served the foregoing **APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE** via Eflex Electronic Service to the following:

Francis C. Flaherty, Esq.
Sue Matuska, Esq.
Dyer Lawrence Flaherty Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703

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

Kristin Martin, Esq.
McCracken Stemmerman & Hoslberry
1630 S. Commerce St., Suite A-1
Las Vegas, Nevada 89102

/s/ Marilyn Millam
An Employee of the
Office of the Attorney General

EXHIBIT A

EXHIBIT A

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 Association, 3505 East Flamingo, Suite 2, Las Vegas, Nevada 89121 (702) 794-2537</u> | Defendant(s) (name/address/phone): <u>State of Nevada, Local Government Employee-Management Relations Board, International Brotherhood of Teamsters Local 14, Clark County School District</u> |
| Attorney (name/address/phone): <u>Francis C. Flaherty & Sue M. Matuska Dyer, Lawrence, Flaherty, Donaldson & Prunty, 2805 Mountain Street, 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 <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <input type="checkbox"/> Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <input type="checkbox"/> 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 Warrant <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 |

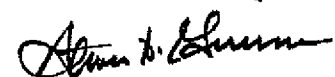
Business Court filings should be filed using the Business Court civil coversheet.

3/19/15

Date

FrCPM
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
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12 fflaherty@dyerlawrence.com

Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

10 EDUCATION SUPPORT
11 EMPLOYEES ASSOCIATION,
12 an employee organization

Petitioner;

13 vs.

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

Respondents.

A-15-715577-J
Case No.

Dept. No. I

PETITION FOR JUDICIAL REVIEW

21 COMES NOW Petitioner, EDUCATION SUPPORT EMPLOYEES ASSOCIATION
22 ("ESEA"), by and through its undersigned counsel, and hereby petitions this Court for judicial
23 review of the ORDER on Certification of Election Results and Implications of Election Results (the
24 "Order"), issued on February 17, 2015, by Respondent NEVADA, LOCAL GOVERNMENT
25 EMPLOYEE-MANAGEMENT RELATIONS BOARD ("the EMRB"). A copy of the Order is
26 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

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

000174

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

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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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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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

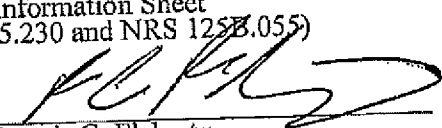
-or-

☐ 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 19, 2015


Francis C. Flaherty
Attorney for Petitioners

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2805 Mountain Street
Carson City, Nevada 89703
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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:

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2501 East Sahara Avenue, Suite 203
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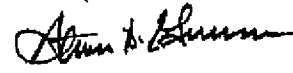
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Debora McEachin

EXHIBIT B

EXHIBIT B



CLERK OF THE COURT

ORDR

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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 DATED this 4 day of June, 2015.

16
17
18 
19 DISTRICT COURT JUDGE

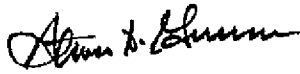
20 Respectfully submitted by:
21 ADAM PAUL LAXALT
22 Attorney General

23 By: 

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

EXHIBIT C

EXHIBIT C


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,
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13 Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

14 EDUCATION SUPPORT
15 EMPLOYEES ASSOCIATION,
16 an employee organization

Case No. A-15-715577-J

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 BROTHERHOOD OF
23 TEAMSTERS LOCAL 14, an employee organization; and
24 CLARK COUNTY SCHOOL DISTRICT,
25 a county school district,

26 Respondents.

PETITION FOR JUDICIAL REVIEW

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

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

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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 ///


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WHEREFORE, Petitioner prays for judgment as follows:

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

Dated this 20th day of January, 2016.

DYER, LAWRENCE, FLAHERTY,
DONALDSON & PRUNTY

By: 

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

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:

☒ 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

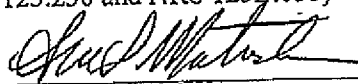
-or-

☐ 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
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Las Vegas, NV 89102

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S. Scott Greenberg, Esq.
Office of General Counsel
Clark County School District
5100 W. Sahara Ave.
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sgreenberg@interact.ccsd.net

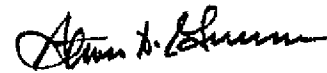
Scott R. Davis, Esq.
Deputy Attorney General
Attorney General's Office
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101-1068

sdavis@ag.nv.gov


Debora McBachin

EXHIBIT D

EXHIBIT D


CLERK OF THE COURT

1 NOE
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

Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

10 EDUCATION SUPPORT
11 EMPLOYEES ASSOCIATION,
12 an employee organization

Case No. A-15-715577-J

Petitioner,

Dept. No. I

13 vs.

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

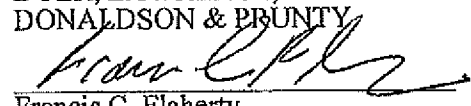
Respondents.

NOTICE OF ENTRY OF ORDER

21 PLEASE TAKE NOTICE that on May 17, 2016, the Court in the above-entitled matter
22 entered its Order Granting Petition for Judicial Review. A true and correct copy of the Order is
23 attached hereto as Exhibit 1 and incorporated herein by reference.

24 DATED this 17th day of May, 2016.

DYER, LAWRENCE, FLAHERTY
DONALDSON & PRUNTY


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

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000464

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(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 17th day of May, 2016, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING 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

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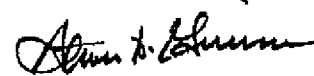
27

28

EXHIBIT 1

EXHIBIT 1

000466


CLERK OF THE COURT

1 ORDER
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
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13 Attorneys for Petitioner

14
15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 EDUCATION SUPPORT
18 EMPLOYEES ASSOCIATION,
19 an employee organization

Case No. A-15-715577-J

20 Petitioner;

Dept. No. I

21 vs.

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

Respondents.

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

Petitioner Education Support Employees Association's ("ESEA") Petition for Judicial Review, filed January 20, 2016, came before the Court on April 20, 2016. Respondent State of Nevada, Local Government Employee-Management Relations Board ("the Board") and the International Brotherhood of Teamsters, Local 14 ("Local 14") filed separate oppositions. ESEA was represented by Francis C. Flaherty, Esq., who appeared before the Court. Local 14 was represented by Kristin L. Martin, Esq. and Thomas Pitaro, Esq., and the Board was represented by Gregory Zunino, Esq., Bureau Chief of the Office of Attorney General, who all appeared before the

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1 Court. The Clark County School District ("the District") is represented by S. Scott Greenberg, Esq.,
2 who did not file a responsive pleading or appear before the Court at this particular hearing.

3 The Petition for Judicial Review challenged the Board's 2016 Board Order wherein the
4 Board certified the results of a second runoff representation election between ESEA and Local 14
5 based on a majority-of-the-votes-cast standard and declared that Local 14 would become the
6 recognized bargaining agent of the support staff employees of the District. ESEA argued that the
7 Board had no authority to hold such second runoff election to be determined by a majority of the
8 votes cast because of two prior Nevada Supreme Court Orders in this case.¹ Local 14 and the Board
9 argued that the Supreme Court orders are not controlling, do not limit the EMRB's discretion to
10 resolve the good-faith doubt about whether ESEA or Local 14 has majority support that caused the
11 EMRB to order an election, and that exceptions, including for "manifest injustice", to the law of the
12 case doctrine apply.

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27 ¹ See *Education Support Employees Ass'n. v. Employee-Management Relations Board*,
28 Docket Nos. 42315/42338 (December 21, 2005) ("2005 Order"); *International Brotherhood of Teamsters, Local 14 v. Education Support Employees Ass'n.*, Docket No. 51010 (December 21, 2009) ("2009 Order").

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1 Having considered the pleadings and arguments of counsel presented at the April 20, 2016,
2 hearing, IT IS HEREBY ORDERED:

3 1. The Petition for Judicial Review is GRANTED, and the 2016 Board Order is
4 VACATED.

5 2. The matter is remanded to the Board to make the determination as to what, if any,
6 further action is appropriate.

7 DATED this 14 day of May, 2016.

8
9 
10 DISTRICT COURT JUDGE

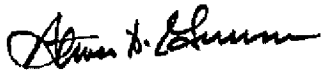
11 Submitted by:
12 DYER, LAWRENCE, FLAHERTY,
13 DONALDSON & PRUNTY

14 By: /s/ Francis C. Flaherty

15 Francis C. Flaherty
16 Nevada Bar No. 5303
17 Sue S. Matuska
18 Nevada Bar No. 6051
19 Attorneys for Petitioner
20
21
22
23
24
25
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27
28

EXHIBIT E

EXHIBIT E



CLERK OF THE COURT

1 **NOAP**
2 ADAM PAUL LAXALT
3 Nevada Attorney General
4 GREGORY L. ZUNINO
5 Bureau Chief
6 Nevada State Bar No. 4805
7 DONALD J. BORDELOVE
8 Deputy Attorney General
9 Nevada Bar No. 12561
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Attorneys for *State of Nevada*
Local Government Employee-
Management Relations Board

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 **EDUCATION SUPPORT EMPLOYEES**
13 **ASSOCIATION,**

14
15 **Petitioner,**

16 **v.**

17 **STATE OF NEVADA, LOCAL**
18 **GOVERNMENT EMPLOYEE-**
19 **MANAGEMENT RELATIONS BOARD;**
20 **INTERNATIONAL BROTHERHOOD OF**
21 **TEAMSTERS LOCAL 14; and CLARK**
22 **COUNTY SCHOOL DISTRICT**

23 **Respondents.**

Case No.: A-15-715577-J

Dept. No.: I

24 **NOTICE OF APPEAL**

25 NOTICE IS HEREBY GIVEN that Respondent STATE OF NEVADA, LOCAL
26 GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD hereby appeals to the
27 Nevada Supreme Court from the final order entered in this action on the 17th day of May, 2016
28

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

1 and served by mail on or about May 17, 2016.

2 DATED this 9th day of June, 2016

3 ADAM PAUL LAXALT
4 Attorney General

5 By: /s/ Donald J. Bordelove
6 Gregory L. Zunino
7 Bureau Chief
8 Donald J. Bordelove
9 Deputy Attorney General
10 *Attorneys for the State of Nevada,*
11 *Local Government Employee-Management*
12 *Relations Board*
13
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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 9th day of June, 2016, I served the foregoing Notice of Appeal by serving a copy via Wiznet Electronic Service to the following:

Francis C. Flaherty, Esq.
Sue Matuska, Esq.
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Kristin Martin, Esq.
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sgreenberg@interact.ccsd.net

/s/ Marilyn Millam
An Employee of the Attorney General's Office

EXHIBIT F

EXHIBIT F

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

APR 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION TO DISMISS

This is an appeal from a district court order granting in part and denying in part a petition for judicial review and remanding the matter to the Employee Management Relations Board (EMRB) for a runoff election.

Respondent has moved to dismiss this appeal for lack of jurisdiction, arguing that (1) because the district court's order remands the matter for additional proceedings, the order is not appealable as a final judgment, and (2) appellant is not aggrieved by the order. Appellant has opposed the motion. Because we conclude that we have jurisdiction over this appeal, we deny the motion to dismiss.

The district court's order is a final judgment

Typically, an order of remand is not appealable as a final judgment because it resolves neither the claims nor the rights and liabilities of any party.¹ As we noted in a related matter,² however, in this instance, the district court's order apparently resolved all of the issues before the court, which concerned appellant's substantive rights stemming from the EMRB election results certified in June 2006, including whether those results showed a conclusive win or were instead inconclusive, so as to require a runoff election under NAC 288.110. Thus, the order "remands" to the EMRB not for any further substantive action with respect to the 2006 election results, but rather, for a new election.³ Consequently, because the district court's order resolved all of the issues before the court and did not remand the matter to the EMRB for further

¹See, e.g., Ayala v. Caesars Palace, 119 Nev. 232, 71 P.3d 490 (2003); Clark County Liquor v. Clark, 102 Nev. 654, 657-58, 730 P.2d 443, 446 (1986); Pueblo of Sandia v. Babbitt, 231 F.3d 878, 880 (D.C. Cir. 2000); see also Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (clarifying that a final judgment disposes of all the issues presented in the case, leaving nothing for the future consideration of the court, except for certain post-judgment issues).

²See Int'l Bhd. of Teamsters v. Dist. Ct. (Educ. Support Employees Ass'n), Docket No. 50998 (Order Denying Petition for Writ of Certiorari, Mandamus, or Other Extraordinary Relief, February 11, 2008).

³See Bally's Grand Hotel v. Reeves, 112 Nev. 1487, 1488-89, 929 P.2d 936, 937 (1996) (noting that this court takes a "functional view of finality," seeking to avoid piecemeal litigation, and thus, unlike an order remanding for further substantive proceedings, an order that resolves the single issue before the court, regarding substantive rights, and remands for a mere calculation of benefits, is appealable as a final judgment).

substantive proceedings with respect to those issues, it is appealable as a final order.⁴

Appellant was “aggrieved” by the district court’s order

Under NRAP 3A(a), only a party “aggrieved” by a district court’s order may appeal. Respondents argue that appellant was not aggrieved by the district court’s order here because appellant sought the very relief granted—a runoff election—and because appellant’s personal or property rights were not affected by the order.⁵

But based on the documents before this court, it appears that, while appellant acknowledged that a runoff election was one of EMRB’s two possible options, it did not actively seek a runoff election. Instead, appellant apparently primarily argued that the runoff election option was inappropriate because the election results were conclusive and subject to a reasonable interpretation. Only if no reasonable interpretation was available, appellant ostensibly argued, should the EMRB have held a runoff election. Thus, while appellant might have conceded that a runoff election was proper if the results could not be interpreted, it primarily argued that the results could be interpreted and consequently sought relief in that respect—an order compelling the EMRB to declare it or “no union” the winner of the 2006 election. Further, because the district court

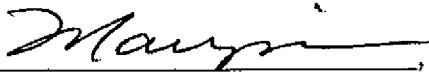
⁴Id.; NRAP 3A(b)(1).

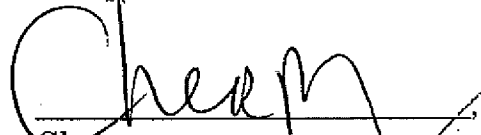
⁵See Las Vegas Police Prot. Ass’n v. Dist. Ct., 122 Nev. 230, 239-40, 130 P.3d 182, 189 (2006).


denied appellant the relief it primarily sought, it was aggrieved by the district court's order.⁶

Accordingly, as we have jurisdiction, we deny respondent's motion to dismiss this appeal.

It is so ORDERED.⁷


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

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

⁶See *id.* (explaining that a person is also aggrieved by a court order that imposes an injustice or denies an equitable or legal right).

⁷We defer ruling on appellant's April 2, 2008 request for judicial notice.