Exhibit B

ORIGINAL

TRANS

IN THE SUPREME COURT OF NEVADA

CARSON CITY, NEVADA

EDUCATION SUPPORT EMPLOYEE ASSOCIATION, Appellant, vs. STATE OF NEVADA LOCAL GOVERNMENT EMPLOYEE MANAGEMENT RELATIONS BOARD, et al., Respondents.	)	Case Nos. 42315 and 42338

TRANSCRIPT OF RECORDED PROCEEDINGS
OF
ORAL ARGUMENT
BEFORE THE HONORABLES CHIEF JUSTICE MARK GIBBONS,
JUSTICE A. WILLIAM MAUPIN, AND JUSTICE JAMES W. HARDESTY
THE HONORABLE JUSTICE A. WILLIAM MAUPIN PRESIDING
VOLUME 1

Wednesday, September 21, 2005

At Supreme Court of Nevada

201 South Carson Street

Carson City, Nevada 89701

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

APPEARANCES:

For the Education Support Employees Association:	MICHAEL W. DYER, ESQ. Dyer, Lawrence, Penrose, Flaherty & Donalson 2805 North Mountain Street Carson City, Nevada 890703
For the State of Nevada Local Government Employee Management Relations Board:	DIANNA M. HEGEDUIS, ESQ. Attorney General's Office 555 East Washington Avenue Suite 3900 Las Vegas, Nevada 89101
For the International Brotherhood of Teamsters, Local 14, AFL-CIO:	KRISTIN L. MARTIN, ESQ. McCracken, Stemerman, Bowen & Holsberry 1630 South Commerce Street Suite A-1 Las Vegas, Nevada 89102
For the Clark County School District, Civil Division:	BILL HOFFMAN, ESQ. General Counsel Clark County School District 5100 West Sahara Avenue Las Vegas, Nevada 89146

JUSTICE GIBBONS: Ms. Hegeduis, on that majority issue, I certainly understand your position, and I'm reading Subsection 4. I'm trying to think of the practical consequences, and, you know, I'm just thinking about it.

If we had that rule for electing governors and senators, nobody would ever get elected because you have but a 50- or 60-percent turnout and then of the registered voters.

And then maybe in Iraq or something or Saddam Hussein could get the bill when he was in power, but I don't think anybody else here in a democracy could, so what would be the practical effect? Would a Greek kind of an anarchy here as far as this union situation right now? I --

MS. HEGEDUIS: You know, and I don't believe so. In the elections that I have participated in with the EMRB -- I've been their attorney since 1999 -- what we do is we -- and I believe in this instance we were even going to open a gymnasium at a school, so they are right there. They can come and vote.

JUSTICE GIBBONS: Okay.

MS. HEGEDUIS: We were going to do a mail-in. There were various other ways to accommodate this. I believe in prior elections like with Metro we gave people time off to come and vote which is not what you find when you vote for senators, you know, congressmen, governors.

We have a situation totally different with this situation where the employer, the school district, has stated on the

record we want a union to represent the employees. We don't know which union has the support.

We want one, though, to ensure that labor stability, and they were going to bend over backwards to make sure that these individuals would have a chance to come and vote.

Again, you would need 50 percent plus one of the membership to vote for that one particular unit. And although the parties may not think that people will show up, but I believe in light of the measures that could be taken you would have a voter turnout.

If you look at the Elko case that was attached to one of the briefs, 85 went one way, 85 went the other way. That was an indication that the entire bargaining unit except for one person came and voted, so Metro had a very good turnout.

Again, the parties could have stipulated, too, to a different number. But without any kind of an agreeing between themselves, the board had to come up with a solution, so --

JUSTICE GIBBONS: Okay. Thank you.

MS. HEGEDUIS: So there --

JUSTICE GIBBONS: You --

MS. HEGEDUIS: There are ways to resolve that.

JUSTICE GIBBONS: You answered --

JUSTICE MAUPIN: And --

JUSTICE GIBBONS: -- my question.

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Lisa L. Cline

Lisa L. Cline, Transcriptionist

02/11/08

Date

Exhibit A

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.

08-09155

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

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[1]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 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).

[2]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).

[3]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 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

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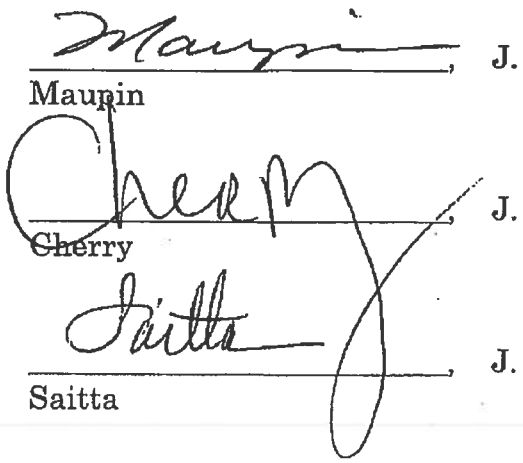
[4]Id.; NRAP 3A(b)(1).

[5]See 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]



Maupin, J.

Cherry, J.

Saitta, J.

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

---

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

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

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

EDUCATION SUPPORT EMPLOYEES ASSOCIATION; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 14; AND CLARK COUNTY SCHOOL DISTRICT,

Respondents.

Supreme Court No. 70586
District Court Case No. A715577

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 14'S REQUEST FOR JUDICIAL NOTICE

International Brotherhood of Teamsters Local 14 requests that the Court take judicial notice of (a) this Court's April 14, 2008 order in *International Bhd. of Teamsters Local 14 v. Education Support Employees Assn.*, Case No. 51010 (Exh. A hereto); and (b) the following statements made by Counsel for the EMRB at the oral argument before this Court in *Education Support Employees Ass'n v. State of*

Nevada, Local Gov't Employee Management Relations Bd. et al., Case Nos. 42315 and 42338 (Dec. 21, 2005) (hereinafter "*ESEA*") (Exh. B hereto):

Justice Gibbons: [EMRB Counsel] Ms. Hegeduis, on that majority issue, I certainly understand your position, and I'm reading Subsection 4. I'm trying to think of the practical consequences, and, you know, I'm just thinking about it.

If we had that rule for electing governors and senators, nobody would ever get elected because you have but a 50- or 60-percent turnout and then of the registered voters.

And then maybe in Iraq or something or Saddam Hussein could get the bill when he was in power, but I don't think anybody else here in a democracy could, so what would be the practical effect? Would a Greek kind of an anarchy here as far as this union situation right now? I—

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Justice Gibbons: Okay.

Ms. Hegeduis: We were going to do a mail-in. There were various other ways to accommodate this. I believe in prior elections like with Metro we gave people time off to come and vote which is not what you find when you vote for senators, you know, congressmen, governors.

We have a situation totally different with this situation where the employer, the school district has

> stated on the record we want a union to represent the employees. We don't know which union has the support.
>
> We want one, though, to ensure that labor stability, and they were going to bend over backwards to make sure that these individuals would have a chance to come and vote.
>
> Again, you would need 50 percent plus one of the membership to vote for that one particular unit. And although the parties may not think that people will show up, but I believe in light of the measures that could be taken you would have a voter turnout.
>
> If you look at the *Elko* case that was attached to one of the briefs of the briefs, 85 went one way, 85 went the other way. That was an indication that the entire bargaining unit except for one person came and voted, so Metro had a very good turnout.
>
> Again, the parties could have stipulated, too, to a different number. But without any kind of an agreeing between themselves, the Board had to come up with a solution, so . . . There are ways to resolve that.

Trans. 50:1-51:22 (September 21, 2005) (transcript attached hereto as Exh. B).

"A judge or court shall take judicial notice if requested by a party and supplied with the necessary information." NRS 47.150(2). The statements that EMRB Counsel made meet this standard because a transcript made of the Court's audio file made by a certified transcriptionist and a supporting declaration by the transcriptionist are being provided to the Court.

These statements are also appropriate for judicial notice. "A judicially noticed fact must be: . . . (b) Capable of accurate and ready determination by resort to the sources whose accuracy cannot reasonably be questioned." NRS 47.130(2)(b). Courts routinely take judicial notice of statements made by counsel at oral argument. *See, e.g.*, *Engine Manufacturers Ass'n v. South Coast Air Quality Management Dist.*, 498 F.3d 1031, 1039 n.2 (9th Cir. 2007) (granting request for judicial notice of the transcript of the Supreme Court's oral argument in same case); *Williams v. Warden for Nevada Women's Correctional Facility*, 489 F.Supp.2d 1171, 1174 n.9 (D. Nev. 2007) (taking judicial notice of audio file of oral argument before the Court of Appeals). Similarly, this Court has previously taken judicial notice of records in related proceedings. *In re Amendola*, 111 Nev. 785, 787 n.2 (1995) (taking judicial notice of pleadings filed in other court cases); *Ainsworth v. Combined Ins. Co. of America*, 105 Nev. 237, 267 n.20 (1989) (taking judicial notice of state district court proceeding); *Occhiuto v. Occhiuto*, 97 Nev. 143, 145 (1981) (taking judicial notice of the parties' prior divorce proceeding due to the close relationship between that proceeding and the current case).

ESEA is closely related to this case. That case required this Court to judge the legality of a new vote-counting rule adopted by the EMRB before the EMRB conducted an election between two of the parties in that case (Local 14 and ESEA). The Court upheld that vote-counting rule after holding oral argument. At that

argument, Counsel for the EMRB was asked about the "practical consequences" of low voter turnout, and she told this Court that voter turnout would not be a problem: "[A]lthough the parties may not think that people will show up, but I believe in light of the measures that could be taken you would have a voter turnout. . . . So there are ways to resolve that." After the initial and run-off the elections were held, the EMRB concluded that its experimental vote-counting rule is unworkable because it cannot produce a conclusive winner. EMRB Counsel's representations to the Court in *ESEA* are directly relevant to the issue that is again before this Court.

Dated: June 20, 2017

MCCRACKEN STEMERMAN & HOLSBERRY, LLP

/s/ Kristin L. Martin

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Attorneys for Respondent International Brotherhood of Teamsters, Local 14

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the McCracken, Stemerman & Holsberry, LLP and that on the 20th day of June 2017 I served the foregoing **INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 14'S REQUEST FOR JUDICIAL NOTICE** via electronic service to the following:

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