IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.
_____/

Supreme Court No. 70586

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

REPLY IN SUPPORT OF MOTION TO STRIKE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 14'S ANSWERING BRIEF

COMES NOW Respondent, the Education Support Employees Association ("ESEA") and files its Reply in support of its Motion to Strike Respondent, International Brotherhood of Teamsters, Local 14's ("Local 14's") Answering Brief. This Reply is based on Nevada Rule of Appellate Procedure ("NRAP") 27, this Court's July 27, 2016, Order Denying Motion of Local 14 to file Opening and Reply briefs, Docket No. 16-23333 ("July 2016 Order"), and all other pleadings on file herein.

Local 14 requested permission of this Court to file Opening and Reply briefs, as if it were an appellant in this matter, and this Court denied such permission but held that Local 14 could file an answering brief that was limited to "conceding district court error" and that could "not seek to alter the judgment."[1] July 2016 Order at 2. Local 14 filed an "answering" brief on June 20, 2017, that did not answer any of the arguments made by the Appellant, and certainly seeks to alter the judgment of the district court which was that the State of Nevada, Local Government Employee-Relations Board incorrectly interpreted and applied the law to name Local 14 as the recognized bargaining agent of the support staff employees of the Clark County School District. ESEA filed its Motion to Strike the brief on the basis that the brief did not comply with the limitations imposed by this Court in its July 2016 Order.

In its Opposition to ESEA's Motion to Strike, Local 14 acknowledges that, in the July 2016 Order, this Court was making a distinction between "conceding district court error" and "seeking to alter the court's judgment" and claims that its answering brief falls into the first category and does not fall into the second category. However, Local 14 does not analyze the legal authority that this Court cited when it set these

///

---

[1] Local 14 has never explained to this Court why it did not appeal the district court's order. This is especially curious in light of its motion to file an opening and reply brief as if it were an appellant.

limitations, and such analysis clarifies that Local 14's brief falls into that second category.

In its July 2016 Order, after stating that "Local 14 may file an answering brief conceding district court error, but may not seek to alter the judgment," this Court quoted the following holding from *Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994): "[A] respondent who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal." July 2016 Order. The very next sentence in *Showboat* is: "A respondent may, however, without cross-appealing, advance any argument *in support of the judgment* even if the district court rejected or did not consider the argument." *Id.* (emphasis added). Additionally, the opinion later states that "Showboat may argue in its answering brief *in support of the district court's judgment* that the challenged conduct in this case was not outrageous as a matter of law." 110 Nev. at 757 n.5, 877 P.2d at 550 n.5.[2]

Local 14 has not filed an "answering brief *in support of the district court's judgment*" in which it points out court error on a conclusion of law. Local 14 opposes the district court's ultimate judgment. It filed a brief, nearly every word of which

---

[2] Showboat Operating Company had prevailed on summary judgment in the district court against a claim of intentional infliction of emotional distress and sexual harassment, but, after the plaintiff appealed, Showboat cross-appealed to attempt to challenge the district court's conclusion that the issue of "outrageous conduct" was a factual question for the jury.

seeks to alter the judgment, except for, possibly, paying lip service to this Court's July 2016 Order, in the beginning and ending sentences. But, if Local 14 is not an appellant, it cannot be "a little bit of" an appellant, and disguise its attempt to "alter the judgment" with glib phrases such as:

> **Introduction:** "[T]he district court erred in granting Education Support Employees Association's ("ESEA") petition for judicial review. Through this brief, Local 14 provides additional argument in support of the Board's position." Local 14's answering brief at 1.
>
> **Conclusion:** "For all the foregoing reasons, Local 14 agrees with the Board that the District Court erred when it granted ESEA's petition for judicial review and vacated the Board's 2016 Order." Local 14's answering brief at 31.

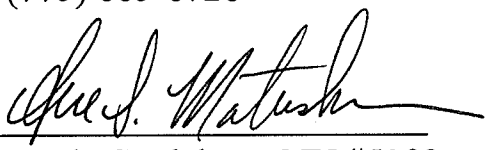
This Court has consistently held that the timely filing of a notice of appeal is mandatory and jurisdictional. *Showboat*, 110 Nev. at 757 n. 4, 877 P.2d at 549 n.4 (*citing Healy v. Volkswagenwerk*, 103 Nev. 329, 741 P.2d 432 (1987); *Holiday Inn v. Barnett*, 103 Nev. 60, 732 P.2d 1376 (1987); *Rust v. Clark Cty., School Dist.*, 103 Nev. 686, 747 P.2d 1380 (1987); *Knox v. Dick*, 99 Nev. 514, 665 P.2d 267 (1983); *Walker v. Scully*, 99 Nev. 45, 657 P.2d 94 (1983); *Morrell v. Edwards*, 98 Nev. 91, 640 P.2d 1322 (1982)). Local 14 did not file a timely appeal or cross-appeal, and this Court concluded that it "is not an appellant." July 2016 Order at 2.

Local 14 asserts that ESEA's motion to strike is frivolous, but ESEA presumes that this Court was not engaging in frivolity, when it stated that "Local 14 may file

an answering brief conceding district court error, but may not seek to alter the judgment," and cited *Ford v. Showboat*. ESEA's Motion to Strike seeks to enforce the Court's July 2016 Order. Local 14 is not an appellant and this Court should not consider its brief which contains only arguments which, glib assertions aside, "seek to alter the judgment."

RESPECTFULLY SUBMITTED this 30th day of June 2017.

DYER, LAWRENCE, FLAHERTY,
DONALDSON & PRUNTY
2805 Mountain Street
Carson City, Nevada 89703
Telephone: (775) 885-1896
Fax: (775) 885-8728

By 

Francis C. Flaherty NV #5303
Sue S. Matuska NV #6051

Attorneys for Respondent ESEA

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, the undersigned hereby certifies that I am an employee of the Dyer Lawrence Law Firm and that on the 30th day of June, 2017, I served a true and correct copy of the **Reply In Support Of Motion to Strike International Brotherhood of Teamsters, Local 14's Answering Brief** by electronic mail to each of the following:

EMRB
2501 East Sahara Avenue, Suite 203
Las Vegas, Nevada 89104
emrb@business.nv.gov; Bsnyder@business.nv.gov

Gregory L. Zunino, Esq.
Bureau Chief
Attorney General's Office
100 N. Carson Street
Carson City, NV 89701
gzunino@ag.nv.gov

Donald J. Bordelove, Esq.
Deputy Attorney General
Attorney General's Office
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101-1068
dbordelove@ag.nv.gov

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.
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146
sgreenberg@interact.ccsd.net

Debora McEachin