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.
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Supreme Court No. 70586

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

OPPOSITION TO RESPONDENT INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 14'S MOTION FOR RECONSIDERATION OF ORDER STRIKING BRIEF OR, IN THE ALTERNATIVE, FOR LEAVE TO FILE AMICUS BRIEF

COMES NOW Respondent, the Education Support Employees Association ("ESEA") and files its Opposition to Respondent, International Brotherhood of Teamsters, Local 14's ("Local 14's") Motion for Reconsideration of this Court's September 13, 2017, Order Granting ESEA's Motion to Strike Local 14's Answering Brief, or, in the alternative, for Leave to File *Amicus* Brief. This Motion 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), this Court's September 13, 2017, Order Granting ESEA's Motion to Strike Local 14's Answering Brief ("Order Striking Local 14's brief"), and on all other pleadings on file herein.

INTRODUCTION AND BACKGROUND

This matter concerns the State of Nevada, Local Government Employee-Management Relations Board's ("the Board's") attempt to act in contravention of NRS 288.160(4) and the law of this case, as enunciated twice by this Court, that NRS 288.160(4) requires employee representation elections to be determined by an affirmative vote of a majority of all the employees in a bargaining unit and not just a majority of those who vote. In 2015, the Board conducted a representation runoff election, and, in 2016, ordered that Local 14, who had received the affirmative vote of a majority of the employees who cast votes in the election but not the vote of a majority of the bargaining unit, would displace ESEA to become the recognized bargaining agent of the support staff employees of the Clark County School District. ESEA challenged this order by petition for judicial review and the district court agreed holding that the Board did not have the authority to issue such an order because it violated this Court's prior orders in this case. The Board appealed the district court's order; Local 14 did not.

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Notwithstanding its failure to appeal, Local 14 requested leave of this Court to file opening and reply briefs as if it were an appellant. In its July 27, 2016 Order, this Court denied leave to do so, but allowed Local 14 to file an answering brief that "conced[ed] district court error" but did "not seek to alter the judgment." However, Local 14 filed an "answering brief" which clearly "sought to alter" the district court's judgment. ESEA filed a Motion to Strike this brief, and in its Order Striking Local 14's brief, this Court struck Local 14's brief as being in violation of the Court's July 27, 2016, order. Now, without presenting any truly new arguments, Local 14 has filed a motion ("Motion to Reconsider") asking the Court to reconsider its Order Striking Local 14's brief. Alternatively, it has asked the Court to allow it to file essentially the same brief with a different caption, as a brief of an *Amicus Curiae.*

ARGUMENT

A. Motion for Reconsideration of Order Striking Local 14's Brief

The only "new" argument that Local 14 offers in its Motion to Reconsider is that *Ford v. Showboat*, 110 Nev. 752, 877 P.2d 546 (1994) does not prohibit Local 14 from filing a brief which seeks to alter the district court's judgment because *Showboat* merely "adopted the common-sense rule that when one party has filed an appeal, a respondent to that appeal does not need to file a separate appeal" because

the "case is properly before the Court."[1] Motion to Reconsider at 3. *Showboat* is, of course, the very authority upon which this Court relied in its Order Striking Local 14's Brief, and it simply does not stand for the rule that a party who is aggrieved by the district court judgment can simply wait until another aggrieved party properly files an appeal (including paying the filing fees, filing the docketing statement, etc.) and then, nevertheless, participate as if it were an appellant. *Showboat* explicitly states that "a respondent who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal." 110 Nev. at 755; 877 P. 3d at 548. Local 14 seeks to alter the rights of the parties but did not file a notice of cross-appeal. *Showboat* also explicitly states that "timely filing of a notice of appeal is mandatory and jurisdictional with respect to a cross appeal." 110 Nev. at 756, 877 P.3d at 549. This Court correctly struck Local 14's brief pursuant to *Showboat.*

As to Local 14's argument (that was already made in its opposition to ESEA's Motion to Strike) that filing a brief that merely concedes district court error would somehow violate NRAP 28's requirement that answering briefs must contain certain components, including an argument with citation to authorities, ESEA points

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[1] Local 14 failed to provide this analysis or any analysis of *Ford v. Showboat*, 110 Nev. 752, 877 P.2d 546 (1994) when it opposed ESEA's Motion to Strike Local 14's brief, and this Court again relied on *Showboat* when it issued its Order to Strike Local 14's brief. Thus, consideration of this "new" analysis of *Showboat* is really foreclosed, as the issue has already been resolved by this Court.

out that, in its Order Striking Local 14's brief, this Court cited to NRAP 2 *(see* Order at page 2, line 2) which allows the Court to suspend any provision of NRAP as the Court directs.[2] Thus, any concern about the Court's consideration and view of the requirements of NRAP 28 has already been answered by the Court.

Local 14 has presented absolutely no basis for this Court to reconsider its Order Striking Local 14's Brief. Local 14's Motion to Reconsider must be denied.

B. Motion for Leave to File an *Amicus* Brief

Local 14 makes the bold, if not frivolous, alternative argument that it can do an end-run around the Court's Order Striking Local 14's brief by merely filing an Amicus Brief. NRAP 29 allows an *Amicus Curiae* to file a brief with leave of court. However, it is clear that the definition of *Amicus Curiae* limits the term to a non-party. "Means, literally, friend of the court. A person with strong interest in or views on the subject matter of an action, *but not a party to the action.*" *Black's Law Dictionary* 82 (6th ed. 1990) (Emphasis added). "A party *that is not involved in litigation* but gives expert testimony when the court asks." TheLawDictionary.Org, http://thelawdictionary.org/amicus-curiae/ (last visited September 25, 2017) (Emphasis added). "Latin for 'friend of the court,' a party or an organization

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[2] Local 14 explicitly and gladly acknowledges the authority of NRAP 2 when it argues that the Court should rely on it to allow Local 14 to file a late *Amicus* brief, despite being a party to the suit. Motion for Reconsideration at 5.

interested in an issue which files a brief or participates in the argument *in a case in which that party or organization is not one of the litigants*." Law.com, http://dictionary.law.com/Default.aspx?selected=2400 (last visited September 25, 2017) (Emphasis added). "A party *uninvolved in a particular litigation* but allowed to advise the court on a matter of law concerning the litigation." *American Heritage College Dictionary* 43 (3rd ed. 1977) (Emphasis added). "One (as a professional person or organization) *that is not a party to a particular litigation* but that is permitted by the court to advise it in respect to some matter of law that directly affects the case in question." Merrian Webster's Collegiate Dictionary 37 (10th ed. 1993) (Emphasis added). "The term 'amicus curiae' means friend of the court, not friend of a party." *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997) (*citing United States v. Michigan*, 940 F.2d 143, 164-65 (6th Cir. 1991)); *see also Idaho v. Couer d'Alene Tribe*, 2014 U.S. Dist. LEXIS 74243 (D. Idaho May 29, 2014).

If the rules allowed for a party to file an Amicus brief, that would mean a party could file its brief that complied with the page and volume limits set by NRAP 32, and then simply file another brief, styled as an *Amicus* brief to continue its argument. This clearly is not what the Appellate Rules allow. The Appellate Rules are clear: NRAP 28 governs the briefs of the parties, and NRAP 29 governs the briefs of non-parties, who, with leave of the Court, are assisting the Court. If this Court had desired

the "assistance" of Local 14, it would not have struck Local 14's brief in the first place. The motion for leave to file an *Amicus* brief has no merit and is really an affront to the Appellate Rules and this Court's Order Striking Local 14's brief. Local 14 claims that its "decision" not to be an appellant in this matter is about preserving judicial resources. Motion to Reconsider at 4, lines 7-8. The motion for reconsideration and suspect motion for leave to file an *Amicus* brief belies the assertion that Local 14 values the Court's time and resources; this motion should be denied outright.

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There is no question that Local 14 blatantly continues to "seek to alter the judgment" without having filed a notice of appeal. Its Motion for Reconsideration provides no new or persuasive argument to compel reconsideration and its argument in its Motion for Leave to file an *Amicus* brief is preposterous. Respectfully, therefore, ESEA urges this Court to deny Local 14's Motion for Reconsideration and to deny its Motion for Leave to file an *Amicus* brief.

RESPECTFULLY SUBMITTED this 25th day of September 2017.

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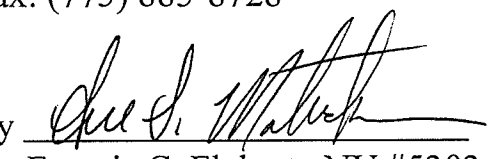
By 

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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 25th day of September, 2017, I served a true and correct copy of the **Opposition to Respondent International Brotherhood of Teamsters Local 14's Motion for Reconsideration of Order Striking Brief or, in the Alternative, For Leave to File Amicus Brief** by electronic mail to each of the following:

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