IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF MESQUITE,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE GLORIA STURMAN, DISTRICT JUDGE,
Respondents,
and
DOUGLAS SMAELLIE,
Real Party in Interest.

No. 75743

ORDER DIRECTING SUPPLEMENTAL BRIEFING

This petition for a writ of mandamus raises the issue of what statute of limitations applies to a local government employee's "hybrid action"—i.e., an action that includes both a claim against the employer for breach of a collective bargaining agreement and a claim against the union for breach of its duty of fair representation. The district court applied the six-year statute of limitations for contract claims to real party in interest Douglas Smaellie's hybrid action. However, petitioner City of Mesquite contends that this was error and relies on federal private-sector labor law to argue that a six-month limitations period applies instead.

Amici, a collection of municipal and county entities, has filed a brief arguing several points not specifically addressed by the parties. These arguments are:

(1) Nevada law provides an administrative process to adjudicate a claim of breach of the duty of fair representation, and NRS 288.110(4) requires the claim be brought before the administrative board (the Employee-Management Relations Board) within six months after it arises. If that claim is not raised within the six-month limitations period, then it, and by necessity any hybrid action relying on that claim, is untimely.

(2) The Employee-Management Relations Board has exclusive original jurisdiction over a claim of breach of the duty of fair representation, and this court has specifically rejected the exception recognized in *Vaca v. Sipes*, 386 U.S. 171, 190 (1967), allowing a private-sector employee to bring a hybrid action in court in the first instance. *See Rosequist v. Int'l Ass'n of Firefighters Local 1908*, 118 Nev. 444, 49 P.3d 651 (2002), *modified by City of Henderson v. Kilgore*, 122 Nev. 331, 336 n.10, 131 P.3d 11, 15 n.10 (2006), *and Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007).

(3) To the extent that this court previously suggested in *Clark County v. Tansey*, Docket No. 68951 (Order of Affirmance, March 1, 2017), that a claim of breach of the duty of fair representation could be adjudicated in district court as part of a hybrid action, that decision was wrong and relied on inapplicable federal private-sector labor law.

Because the parties have not sufficiently addressed these issues, we conclude that supplemental briefing would be of assistance. Accordingly, petitioner shall have 15 days from the date of this order to file and serve a supplemental brief addressing the issues stated above, as well as any other directly related issues. Real party in interest shall have 15 days from service of petitioner's supplemental brief to file and serve a

supplemental answering brief. The supplemental briefs shall comply with the page and type-volume limitations in NRAP 32(a)(7)(A).

It is so ORDERED.

_____, A.C.J.

cc: Hon. Gloria Sturman, District Judge
Erickson Thorpe & Swainston, Ltd.
Law Office of Daniel Marks
Douglas County District Attorney/Minden
Allison MacKenzie, Ltd.
Clark County District Attorney/Civil Division
Eighth District Court Clerk