



CASE NO: A-24-888242-J
Department 24

1 PJR
LAW OFFICE OF DANIEL MARKS
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Las Vegas, Nevada 89101
6 (702) 386-0536; FAX (702) 386-6812
Attorneys for Petitioner

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 INTERNATIONAL UNION OF ELEVATOR
11 CONSTRUCTORS, LOCAL 18,

Case No.:
Dept. No.:

12 Petitioner,

13 v.

14 STATE OF NEVADA, GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS
15 BOARD; CLARK COUNTY, NEVADA,

16 Respondents.

17
18 **PETITION FOR JUDICIAL REVIEW**

19 COMES NOW Petitioner, by and through undersigned counsel, Adam Levine, Esq., of the Law
20 Office of Daniel Marks and petitions the Court as follows:

21 1. Petitioner requests judicial review of the Final Decision on Complaint and Counter-
22 Complaint, Findings of Fact, Conclusions of Law and Order of the State of Nevada Government
23 Employee-Management Relations Board dated January 31, 2024 a copy of which is attached hereto as
24 Exhibit "1".

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2. For such further and other relief as the Court deems equitable and just in the premises.

DATED this 18 day of March 2024.

LAW OFFICE OF DANIEL MARKS


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610 South Ninth Street
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Attorneys for Petitioner

EXHIBIT 1

EXHIBIT 1

FILED
January 31, 2024
State of Nevada
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, LOCAL 18,

Complainant,

v.

CLARK COUNTY,

Respondent.

Case No. 2022-018

NOTICE OF ENTRY OF ORDER

EN BANC

ITEM NO. 891

CLARK COUNTY,

Counter-Petitioner,

v.

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, LOCAL 18,

Counter-Respondent,

TO: Complainant and its attorneys, Daniel Marks, Esq. and Adam Levine, Esq., of the Law Office of Daniel Marks; and

TO: Respondent and its attorneys, Scott Davis, Esq. and John Witucki, Esq. of the Office of the Clark County District Attorney;

PLEASE TAKE NOTICE that the **NOTICE OF ENTRY OF ORDER** was entered in the above-entitled matter on January 31, 2024.

A copy of said order is attached hereto.

DATED this 31st day of January, 2024.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY

Isabel Franco

ISABEL FRANCO

Administrative Assistant II


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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 31st day of January, 2024, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Daniel Marks, Esq.
Adam Levine, Esq.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, NV 89101

Scott Davis, Esq.
Clark County District Attorney's Office
500 S. Grand Central Parkway, Suite 5075
Las Vegas, NV 89155



ISABEL FRANCO
Administrative Assistant II

FILED
January 31, 2024
State of Nevada
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, LOCAL 18,

Complainant,

v.

CLARK COUNTY,

Respondent.

Case No. 2022-018

**DECISION ON COMPLAINT AND
COUNTER-COMPLAINT, FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND ORDER**

EN BANC

ITEM NO. 891

CLARK COUNTY,

Counter-Complainant,

v.

INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, LOCAL 18,

Counter-Respondent.

On December 12 and 13, 2023, and again on January 18, 2024, this matter came before the State of Nevada, Government Employee-Management Relations Board (the "Board") for consideration and decision on International Union of Elevator Constructors, Local 18 ("IUEC") Prohibited Practice Complaint and Clark County's Counter Petition to Decertify the IUEC pursuant to the provision of the Government Employee-Management Relations Act (the Act), NRS Chapter 233B, and NAC Chapter 288.

I. BACKGROUND

There are two main issues presented with this case. The first issue is whether Clark County engaged in prohibited practices under NRS 288.270 and 288.280. In the IUEC Complaint, there were

1 two distinct causes of action: (1) that Clark County failed to allow the IUEC members to ratify the
2 Tentative Agreement prior to approval by Clark County which constituted a unilateral change; and
3 (2) Clark County refused to bargain in good faith as required under NRS 288.150 when Clark County
4 refused to return to the bargaining table after IUEC's members had rejected the Tentative Agreement.
5 The second issue before the Board is whether Clark County's Petition to Decertify IUEC is warranted
6 due to lack of support by the members of the bargaining unit.

7 II. DISCUSSION

8 A. Clark County's Petition to Decertify IUEC.

9 NRS 288.160 provides instances when a local government employee may withdraw recognition
10 from an employee organization.¹ NRS 288.160(c)(3) specifically states that recognition may be
11 withdrawn when the employee organization "ceases to be supported by a majority of the local
12 government employees in the bargaining unit for which it is recognized." The process to withdraw
13 recognition is governed by NAC 288.145(2) which states:

14 2. Except as otherwise provided in NAC 288.146, a local government
15 employer must request a hearing before the Board and receive the written
16 permission of the Board before withdrawing recognition of an employee
organization for any reason other than voluntary withdrawal.²

17 The Board held a hearing as required under NAC 288.145(2). During the hearing held on
18 December 12 and 13, 2023, there was conflicting testimony presented regarding whether the employees
19 wished to remain with IUEC or not. The Board subsequently decided that it wished to hear from the
20 remaining employees to determine whether IUEC lacked majority support as provided under NRS
21 288.160(c)(3).³ A hearing was held on January 18, 2024, and the remaining eighteen (18) employees of
22 the unit testified. The documentary evidence also consisted of multiple Petitions signed by almost all
23 members of the unit indicating the desire to have another organization represent the employees. Based
24 on the evidence presented, it was abundantly clear to the Board that the overwhelming majority of the
25 Automated Transit System ("ATS") Shop members no longer wanted the IUEC to represent them. It is

26
27 ¹ Withdrawing recognition is the same as "decertifying."

28 ² NAC 288.146 relates only Petitions to withdraw recognition that are filed by other employee organizations and accordingly this provision does not apply in this case.

³ The Board heard from all employees of the bargaining unit.

1 similarly clear that the dissatisfaction expressed by a majority of the ATS shop members regarding
2 IUEC's performance predated the facts which gave rise to the prohibited practices complaint in
3 this matter.

4 IUEC cited to *Lee Lumber* from the National Labor Relations Board ("NLRB") for the
5 proposition that the Board cannot grant a Petition to Withdraw Recognition if the employer had
6 engaged in unfair labor practices within one year from the request to decertify. *Lee Lumber and*
7 *Building Material Corp.*, 334 NLRB 399, 400 (2001).⁴ In *Lee Lumber*, the NLRB stated that when an
8 employer has unlawfully refused to bargain with a recognized union any employee disaffection arising
9 during the course of the unlawful conduct will be presumed to have been caused by that conduct. *Id.*
10 Furthermore, absent unusual circumstances, the presumption can be rebutted only if the employer can
11 show the disaffection arose after it resumed bargaining without committing more unfair labor practices
12 that would adversely affect bargaining. *Id.*

13 However, *Lee Lumber* is quite factually distinct from the case before this Board. Thus, the
14 Board expressly declines to adopt the holding in *Lee Lumber* on the grounds that: (1) this case involves
15 an interpretation of Nevada law and not federal law as was the case in *Lee Lumber*, and as such any
16 decision from the NLRB is not binding on the Board; (2) the circumstances in *Lee Lumber* are not
17 relevant to the matter before the board because the prohibited practices in *Lee Lumber* were
18 contemporaneous in time with the employee dissatisfaction whereas in this case the evidence
19 overwhelmingly suggests that dissatisfaction with the IUEC arose long before the facts which give rise
20 to IUEC's prohibited practice claims.

21 Furthermore, this Board recently granted a request to decertify a union in circumstances very
22 similar to this case. See EMRB Item 876, Case No. 2022-022, *International Union of Operating*
23 *Engineers, Local 501, AFL-CIO v. Esmeralda County; Esmeralda County Board of Commissioners,*
24 *DOE Individuals I through X, inclusive; and ROE Entities, I through X, inclusive* (2022). In the
25 Esmeralda County case, the Board granted a Motion to Decertify the union despite the existence of
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27 ⁴ Full Cite follows: *Lee Lumber and Building Material Corp. and Carpenter Local No.*
28 *1027, Mill-Cabinet Industrial Division, A/W The United Brotherhood of Carpenters and Joiners of*
America, Chicago and Northeast Illinois District Council of Carpenters, AFL-CIO, 334 NLRB 399
(N.L.R.B. 2001).

1 prohibited practice complaints being included in the same case. The main difference between this case
2 and *Esmeralda* is that in *Esmeralda* the Board required the union members to vote to provide proof of
3 their dissatisfaction, whereas in this case the Board simply heard testimony about whether there was
4 dissatisfaction with IUEC and how long that dissatisfaction had been felt.

5 Based on the forgoing, including the overwhelming testimonial and documentary evidence of
6 long-term dissatisfaction with IUEC, the Board finds that Clark County's Petition to Decertify should
7 be granted.

8 **B. Prohibited Practices Complaint.**

9 Given the fact the Board has decided to grant Clark County's Petition to Decertify, IUEC's
10 prohibited practice claims have been rendered moot. However, the Board notes that a government
11 employer should wait to approve an agreement with its employees to ensure that the agreement reflects
12 the will of the employees. *See e.g., EMRB Item No. 809, Case No. AI-046113, Education Support*
13 *Employees Association and Police Officers Association of the Clark County School District v. Clark*
14 *County School District (2015)*. There was ample evidence presented that having the ATS employees
15 ratify the agreement before Clark County approved it was normal practice. In addition, Clark County
16 provided space at the airport for the employees to ratify the contract which cuts against any claim that
17 IUEC was not intending to ratify the contract. It is inconceivable to this Board that a government entity
18 would want to approve and enforce a contract which the employees ultimately reject because doing so
19 only creates ill will.⁵ The purpose of the bargaining process that is set out in the Government
20 Employee-Management Relations Act is to reach an agreement that all find acceptable. Thus, having
21 the government approve a contract that was ultimately rejected by its employees defeats the purpose of
22 the Act.

23 **III. FINDINGS OF FACT**

24 1. The Board has determined the following facts based on a preponderance of evidence.

25 2. There was overwhelming documentary and testimonial evidence indicating that a
26 majority of unit members no longer wanted IUEC to represent them.

27
28 ⁵ The Board recognizes that normally ratification mandates are set out in the Bylaws and
Articles of Incorporation of the union.

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. _____
(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): International Union of Elevator Constructors, Local 18 3301 Spring Mountain Rd., Suite 1 Las Vegas, Nevada 89102	Defendant(s) (name/address/phone): Employee Management Relations Board; 3300 W. Sahara Ave., #260, Las Vegas, NV 89102 Clark County, 500 S. Grand Central Pkwy. Las Vegas, NV 89155;
Attorney (name/address/phone): Adam Levine, Esq., Nevada Bar No. 004673 Law Offices of Daniel Marks 610 S. Ninth Street, Las Vegas, Nevada 89101 Tel: (702) 386-0536	Attorney (name/address/phone):

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

<p style="text-align: center;">Real Property</p> <p>Landlord/Tenant</p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p>Title to Property</p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <p>Other Real Property</p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p style="text-align: center;">Torts</p> <p>Other Torts</p> <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	
<p style="text-align: center;">Probate</p> <p>Probate <i>(select case type and estate value)</i></p> <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 <p>Estate Value</p> <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	<p style="text-align: center;">Construction Defect & Contract</p> <p>Construction Defect</p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p>Contract Case</p> <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	<p style="text-align: center;">Judicial Review/Appeal</p> <p>Judicial Review</p> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p>Nevada State Agency Appeal</p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p>Appeal Other</p> <input type="checkbox"/> Appeal from Lower Court <input checked="" type="checkbox"/> Other Judicial Review/Appeal
Civil Writ	Other Civil Filing	
<p>Civil Writ</p> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<p>Other Civil Filing</p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	<p><input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ</p>

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

03/01/2024

Date

Signature of initiating party or representative

See other side for family-related case filings.



1 IAFD
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7 Attorneys for Petitioner

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8 DISTRICT COURT
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14 EMPLOYEE-MANAGEMENT RELATIONS
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15 Respondents.

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17 **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)**

18 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
19 parties appearing in the above-entitled action as indicated below:

New Complaint Fee	1 st Appearance Fee
<input type="checkbox"/> \$1530 <input type="checkbox"/> \$520 <input type="checkbox"/> \$299 <input checked="" type="checkbox"/> \$270.00	<input type="checkbox"/> \$1483.00 <input type="checkbox"/> \$473.00 <input type="checkbox"/> \$223.00
Name: International Union of Elevator Constructors Local 18	
<input type="checkbox"/> \$30	

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\$30

Total of Continuation Sheet Attached

\$_____

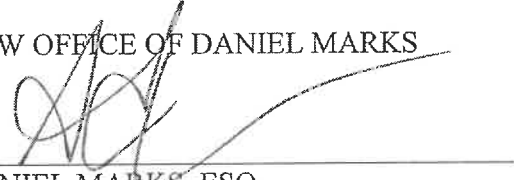
TOTAL REMITTED: (Required)

Total Paid

\$ 270.00

DATED this 15th day of March 2024.

LAW OFFICE OF DANIEL MARKS



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