STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

TEAMSTERS LOCAL NO. 14, Complainant, v. LAS VEGAS POLICE PROTECTIVE ASSOCIATION CIVILIAN EMPLOYEES, INC., Respondent.	Case No. 2018-031 **NOTICE OF ENTRY OF ORDER** **ITEM NO. 839-B**

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

TO: Respondent and their attorneys, John Dean Harper, Esq. and the Harper Law Office.

PLEASE TAKE NOTICE that an **ORDER** was entered in the above-entitled matter on May 27, 2020.

A copy of said order is attached hereto.

DATED this 27 day of May 2020.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
MARISU ROMUALDEZ ABELLAR
Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 27 day of May 2020, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Adam Levine, Esq.
Law Office of Daniel Marks
530 South Las Vegas Blvd., Suite 300
Las Vegas, NV 89101

John Dean Harper, Esq.
Harper Law Office
724 S. 9th Street
Las Vegas, NV 89101

MARISU ROMUALDEZ ABELLAR
Executive Assistant

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

TEAMSTERS LOCAL 14, Petitioner, v. LAS VEGAS POLICE PROTECTIVE ASSOCIATION CIVILIAN EMPLOYEES, INC., Respondent.	Case No. 2018-031 **ORDER** **EN BANC** **ITEM NO. 839-B**

On April 28, 2020, this matter came before the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of NRS Chapter 288, the Government Employee-Management Relations Act ("EMRA"); NAC Chapter 288 and NRS Chapter 233B.

Local 14 alleges that the PPACE bargaining unit encompasses both supervisory and nonsupervisory civilian employees under their direction in violation of NRS 288.170(1). Local 14 alleges that after removal of the supervisors from the bargaining unit, a majority of employees within a properly constituted civilian non-supervisory employee bargaining unit would support Local 14. As such, Local 14 requested the Board to separate the alleged illegal bargaining unit and hold a hearing to determine whether it has a good faith doubt as to whether any employee organization is supported by a majority of the non-supervisory civilian employees, and if so hold a representative election pursuant to NRS 288.160. Local 14 also requested the Board to hold a hearing pursuant to NAC 288.146 as Local 14 has additionally sought the withdrawal of recognition of PPACE.

There are approximately 95 job classifications in the PPACE bargaining unit ranging from custodians, law enforcement support technicians, dispatchers, crime analysts to forensic scientists. As of the filing of the Petition in this matter, the bargaining unit consisted of 1464 employees. Local 14

filed its Petition on November 29, 2018. On September 4, 2019, Local 14 filed their authorization forms with the Board. Board staff analyzed the forms and distributed a report on September 23, 2019.

As further detailed below, the Board does not in good faith doubt whether Local 14 is supported by a majority of the local government employees in a particular bargaining unit. Moreover, the Board does not in good faith doubt whether PPACE is supported by a majority of the local government employees in the particular bargaining unit at issue. As such, the Board will not order an election pursuant to NRS 288.160. Moreover, it has not been shown that PPACE has ceased to be supported by a majority of the local government employees in the bargaining unit for which it is recognized pursuant to NAC 288.146.

DISCUSSION

Preliminarily, for the purposes of this Order alone, unless otherwise specifically indicated herein, the Board assumes that the various questions and issues presented by the parties would have been found in favor of Local 14. One example is the removal of the supervisors from the bargaining unit. PPACE also argued that only those authorization cards signed until the filing of Local 14's Petition (filed on November 29, 2018) are valid in the Board's consideration of whether it has a good faith doubt to conduct an election. However, Local 14 asks this Board to order that any authorization cards or forms obtained until the date of production (September 4, 2019) are valid.[1] Other issues presented included which forms should be deemed acceptable and included in the final total including

[1] In a prior order in this case (July 2019), the parties stipulated, and the Board approved, to the compromise of Local 14 producing its cards on the first day of the continued supervisory hearing. Thereafter, the Board reviewed and analyzed the cards in full and determine whether to hold a hearing to determine if the Board in good faith doubts whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit, pursuant to NRS 288.160, and whether to conduct an election. The Board noted that it appeared the statutory supervisor issue may ultimately be irrelevant to this case – for example, if Local 14's showing did not provide the Board with a good faith doubt that any employee organization is supported by a majority of the local government employees pursuant to the plain and unambiguous language of NRS 288.160, even with excluding the proposed statutory supervisors. The Board notes that while Local 14 argues that NRS 288.160(2) allows for it to continue to submit authorization cards even after the filing of the its Petition, the plain language of that provision does not support Local 14's position (*i.e.*, "*and* if the employee organization is recognized by the local government employer"). NRS 288.160(2) (*emphasis* added). It is undisputed that Local 14 has not been recognized by the local government employer. The Board, however, for the purposes of this Order alone, does not discount any forms submitted by Local 14 based on the date of filing.

various issues presented therewith and should the forms be released to PPACE. These questions and issues are presumed for the purposes of this Order to be resolved in Local 14's favor unless otherwise expressly stated (for example, the Board does not discount any authorization cards or forms based on obtaining them after the filing of the Petition). As indicated, the Board does not reach these issues as they are not necessary to the Board's determination. *See, e.g., United We Stand – AFT v. Washoe County Sch. Dist.*, Item No. 623C, Case No. A1-045875 (2007); *Jackson v. Clark County*, 2018-007 (2019); Yu *v. LVMPD*, Case No. 2017-025, Item No. 829 (2018); *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 136, 206 P.3d 572, 574 (2009); *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 623, n. 30, 188 P.3d 1092, 1099 (2008); *Gaxiola v. State*, 121 Nev. 638, 651, 119 P.3d 1225, 1234 (2005); *Otak Nevada, LLC v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, 127 Nev. 593, 600, 260 P.3d 408, 412 (2011).

NRS 288.160 provides, in pertinent part:

> If the Board in good faith doubts whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit, it may conduct an election by secret ballot upon the question.

NRS 288.160(4). Further NAC 288.146 provides, in pertinent part:

> … recognition of an employee organization may be withdrawn at the request of another employee organization if the Board has determined, pursuant to a hearing requested during a period specified in subsection 2, that the recognized employee organization has ceased to be supported by a majority of the local government employees in the bargaining unit for which it is recognized.

Local 14 stipulated at the hearing that the percentages shown in Exhibit 1 of dues paying members of PPACE has fluctuated around 80% over the last several years. While the Board agrees that this alone is not dispositive, based on and in conjunction with the facts of this case, as further discussed herein, the Board does not in good faith doubt whether any employee organization is supported by a majority of the local government employees and, pursuant to the hearing, it has not been shown that PPACE has ceased to be supported by a majority of the local government employees in the bargaining unit for which it is recognized.

Local 14 argues that a good faith doubt is shown with a 30% showing of interest pursuant to NLRB standards while PPACE maintained that it is 50% plus one (although Local 14 indicated at the hearing that even if they are under 30%, the Board should still order an election and the standard should

be "uncertainty"). The Board disagrees with both parties that a certain percentage showing of interest must be shown under the EMRA as further explained below. The EMRA is plain and unambiguous as to what standard the Board must use to determine whether to conduct an election (*i.e.*, if the Board in good faith doubts whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit).

PPACE indicated that giving the benefit of the doubt that all forms are acceptable, except Table 5 (as the employees were no longer employed when the Petition was filed), and the denominator does not include the supervisors, the percentages were as follows: Table 3 – 374/1333 = 28%; Table 4 - 372/1333 = 28%.

Local 14 urges the Board to accept all forms produced, signed, and dated up until the date of the production, September 4, 2019. At that point in time, there were 1354 total non-supervisors. If the Board were not to discount any forms, this would put Local 14's percentage just above 30%, specifically 30.7%. If the Board were then to deduct all those forms which were typed and not signed as well as those forms which were undated with no subsequent affidavit, declaration or testimony presented, then Local 14's percentage decreases to just over 26%.[2] As indicated, the Board assumes for the purposes of this order that the denominator excludes alleged statutory supervisors and all forms are otherwise valid.

Regardless, even if Local 14 had barely cleared the NLRB's 30% threshold, with every single issue presumed in its favor, the Board still would not in good faith doubt whether Local 14 is supported by a majority of the local government employees in the subject bargaining unit based on the facts of this case.

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[2] Those forms which are typed and do not have a signature should not be counted, as conceded by Local 14. The general rule is also that the individual authorization must be dated and must be current. *A. Werman & Sons*, 114 NLRB 629 (1956); NLRB Casehandling Manual at Section 11027.3. The requirement for dating the showing may be accomplished by affidavit either submitted with the showing itself or timely filed thereafter. *Dart Container Corp.*, 294 NLRB 798 (1989); *see also Metal Sales Mfg.*, 310 NLRB 597 (1993); NLRB: AN OUTLINE OF LAW AND PROCEDURE IN REPRESENTATION CASES, at Secs. 5-100, 5-500 (2017). As such, the Board discounts the forms that were undated without any further showing.

At the hearing, presumably because it recognized that it may not have meet the 30% NLRB standard, Local 14 argued that the EMRA standard of "good faith doubt" had been addressed in the case of *Allentown Mack Sales & Serv., Inc. v. N.L.R.B.*, 522 U.S. 359, 118 S. Ct. 818, 139 L. Ed. 2d 797 (1998). Local 14 argued that the Board's standard should simply be "uncertainty". However, not only, as further detailed below, does this Board have different election standards than the NLRB, this case is not directly on point. Nonetheless, the Board does agree that "doubt" can be defined as "uncertainty" in connection with the complete standard under the EMRA (*i.e.*, "if the Board [is] in good faith [uncertain] whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit.").

In this case, Justice Scalia explained: "Under longstanding precedent of the National Labor Relations Board, **an employer** who believes that **an incumbent union** no longer enjoys the support of a majority of its employees has three options: to request a formal, Board-supervised election, to withdraw recognition from the union and refuse to bargain, or to conduct an internal poll of employee support for the union. *Allentown Mack Sales & Serv., Inc.*, 522 U.S. at 361, 118 S. Ct. at 820 (**emphasis** added). "The Board has held that the latter two are **unfair labor practices** unless the employer can show that it **had a 'good-faith reasonable doubt' about the union's majority support**." *Id.* (**emphasis** added). As such, not only is the standard different (*i.e.* good faith doubt vs. good-faith reasonable doubt), that case presented an entirely different question in a different situation regarding the actions of an employer including unfair labor practices of withdrawal of recognition, employer polling, and employer requested elections (not a showing of interest by a rival union, *see also infra* notes 6, 8, and 11). Indeed, this Board has its own provision for withdrawal of recognition including an unfair labor practice related thereto. *See Int'l Union of Operating Engineers Local 501 v. Esmeralda County*, Case No. 2018-014 (2019) (noting a failure to comply with NRS 288.160(3)'s method for withdrawal or recognition); *see also infra* note 8.

The United States Supreme Court noted: "The question presented for review, therefore, is whether, on the evidence presented to the Board, a reasonable jury could have found that **Allentown lacked a genuine, reasonable uncertainty** about whether Local 724 enjoyed the continuing support of a majority of unit employees [in regards to the employer's decision to poll employees concerning union

support (aka employer polling)]."[3] *Allentown Mack Sales & Serv., Inc.*, 522 U.S. at 367, 118 S. Ct. at 823 (**emphasis** added). As indicated, this case involves the Board's good faith doubt in the context of a rival union challenging the support of another and seeking to displace it – not whether the employer had a reasonable good faith doubt in the context of committing a unfair labor practice in polling its employees or requesting an election instead of unilaterally withdrawing recognition (which is not permissible under the EMRA regardless of a good faith reasonable doubt). In other words, to obtain a RM election, an employer, and not a rival union must demonstrate the above.

Allentown Mack Sales involved "Allentown [being] guilty of an unfair labor practice in its conduct of the polling because it 'ha[d] not demonstrated that it held a reasonable doubt, based on objective considerations, that the Union continued to enjoy the support of a majority of the bargaining unit employees." *Allentown Mack Sales & Serv., Inc.*, 522 U.S. at 367, 118 S. Ct. at 823 (also stating "the Board's 'reasonable doubt' standard for employer polls … [and] unilateral withdrawal of recognition"). This case did involve a showing of interest for holding an election between rival unions for which even the NLRB had different standards. *See also infra* note 11 (explaining why 50% plus one in this case would not be "certainty" under the EMRA's standard and even that of the NLRB's in regards to a showing of interest); *compare Allentown Mack Sales & Serv., Inc.*, 522 U.S. at 369, 118 S. Ct. at 824 (explaining that "certainty" would be "express disavowals" of half of the bargaining unit in the context of that case) *with infra* note 6 and accompanying text (regarding what should be considered in regards to employer polling, unilateral withdrawal, and RM Petitions) and *with infra* note 11

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[3] The United Stated Supreme Court defined "doubt" in regards to the *employer's* good faith uncertainty about majority support concerning *"polling", unilateral withdraw, and RM Petitions* (Representation Petitions for an employer to demonstrate to the NLRB that a union has lost the support of a majority of employees) as opposed to an RC Petition (Certification of Representative Petition which a union files when they have the requisite number of authorization cards signed and seek a secrete ballot election or to challenge the authority of another union to represent a particular bargaining unit). Specifically, "A doubt is an uncertain, tentative, or provisional disbelief. *See, e.g.*, Webster's New International Dictionary 776 (2d ed.1949) (def. 1: "A fluctuation of mind arising from defect of knowledge or evidence; uncertainty of judgment or mind; unsettled state of opinion concerning the reality of an event, or the truth of an assertion, etc."); 1 The New Shorter Oxford English Dictionary 734 (1993) (def. 1: "Uncertainty as to the truth or reality of something or as to the wisdom of a course of action; occasion or room for uncertainty"); American Heritage Dictionary 555 (3d ed.1992) (def. 1: "A lack of certainty that often leads to irresolution"). *Allentown Mack Sales & Serv., Inc.*, 522 U.S. at 367.

(regarding what should be considered in a showing of interest). Furthermore, Local 14 has not presented anything to suggest that the Board's good faith standard is derived from the NLRA. Indeed, such an argument would seem contrary to the Nevada Supreme Court's holdings in *Educ. Support Employees Ass'n*, *infra*.

Regardless, the Board does not have any good-faith or genuine uncertainty whether Local 14 is supported by a majority of the employees in the subject bargaining unit based on the facts of this case, considering the evidence as a whole, including the showing of interest, testimony presented, and language of the forms.[4]

Local 14 also pointed to the 9th Circuit's decision in *Sahara Tahoe Corp. v. N.L.R.B.*, 648 F.2d 553 (9th Cir. 1980). However, not only is this case inapposite but it also, incidentally, supports the determination that an election should not be ordered in this case. In *Sahara Tahoe Corp.*, "[t]he National Labor Relations Board (Board) found that Petitioner, Sahara-Tahoe Corporation, had committed unfair labor practices under 29 U.S.C. s 158(a)(5) and (1) by withdrawing recognition and refusing to bargain with the Union." *Id.* at 554. In the same vein as *Allentown*, this case involved these actions being justified because of a "good faith reasonable doubt". *Id.*

The 9th Circuit explained: "More significantly, however, Sahara-Tahoe additionally showed that a petition which was captioned 'Employees who do not want to belong to any culinary union,' was signed by more than 30% of the employees in the bargaining unit … [and] Sahara-Tahoe was aware of the existence of the petition prior to its refusal to bargain. *Id.* at 555. The 9th Circuit Court of Appeals

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[4] The Board finds testimony credible from Carla Scott, President of PPACE, that PPACE explains to their membership or potential members what their rights are. The Board also notes that only 5 witnesses presented testimony indicating a dissatisfaction with PPACE representation of the roughly 80% membership totals; however, the Board did consider what these 5 witnesses heard with regard to the dissatisfaction or fear of other employees in our determination of good faith doubt. The Board also notes that some of the testimony presented indicated a fear from their employer or department actions as opposed to that of PPACE. For example, Linda Miniaci testified that the "fear" is from "[o]ur boss … "[t]he department". Ronnette Williams testified that she was "pulled into my captain's office with three managers and two supervisors … and berated and told that I don't have any rights because I don't belong to PPACE; so I rejoined after that." Williams then clarified that "the case went to the Labor Board, and Metro settled it before it went in front of [the EMRB]." Moreover, Laure Ouellett simply indicated that "[o]f the 16 people that I specifically work with, 14 – 14 would like a vote", not that they would necessarily vote for Local 14 over PPACE.

still concurred with the NLRB's conclusion that under the facts of the case the petition relied upon by the employer did not "unequivocally indicate that the union support had declined to a minority." *Id.* at 557.

Furthermore, this case sought the issue of employee decertification of their bargaining representative by filing a petition with the Board alleging that "a substantial number of employees" assert the union is no longer supported, which the Board has determined to mean "at least 30%" per their own administrative rule. *Id.* at 555-56. [5] This 30% filing might "justify an employer's refusal to bargain" *Id.* at 556. "[T]he petition had been signed by 83 employees; and it had been informed by Wolchow that approximately 70 more employees out of the 250-280 total bargaining unit members were also in favor of the Petition." *Id.* at 556-57. **Thus, the decertification petition had approximately 54%** support. *See id.* The 9th Circuit **still** concurred with the NLRB's conclusion under the facts of the case to discount the significance of the petition, with the NRLB stating: "In our view, the employee petition **here is a slender thread which, by itself, is an inadequate consideration to support a good faith doubt. The petition is signed by barely 30 percent of the unit; it is undated**; the wording, as noted by the Administrative Law Judge **does not unambiguously indicate a desire not to be represented by the Union**; and, although more than 2 weeks elapsed between the

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[5] Under the NLRA, whenever a petition is filed by an labor organization "alleging that a substantial number of employees (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a) [subsection (a) of this section] … the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof." 29 U.S.C. § 159(c), § 9(c). As discussed below, the Board has a different standard in the EMRA than that set out in the NLRA. Local 14 cites the NLRB Casehandling Manual at Section 11181 (Nature and Objective of Hearing) for the proposition that the Board's purpose is to adduce record evidence on the basis of which the Board "may discharge its duties under Section 9 of the Act." While the Board agrees with this general proposition, the Board's standards are not the same as Section 9 and are plainly provided for in the EMRA. Moreover, the NLRB Casehandling Manual at Section 11184 notes that the showing of interest "is a purely administrative matter, wholly within the discretion of the Agency", "[a]rgument at the hearing on the adequacy of the interest is not permitted", and "the results of either investigation are administrative matters not subject to attack by the parties." Finally, the NLRA does not provide any discretion in whether to hold an election (*i.e.*, "shall direct an election", Sec. 9(c)) while the EMRA does not provide the same (*i.e.*, "may conduct an election", NRS 288.160(4)). *See also infra* note 9.

expiration of the last collective bargaining agreement and the Respondent's withdrawal of recognition, no attempt was made to refile the petition with the Board. We therefore cannot accord much weight to this insubstantial factor in absence of other probative evidence to support a doubt of majority." *Id.* at 557 (**emphasis** added).[6]

Regardless of the distinctions, based on the facts of this case, the Board does not have a good faith or genuine "uncertainty" as to whether Local 14 is supported by a majority of the local government employees in the particular bargaining unit. In connection with the analysis of the forms submitted by Local 14 above, many forms expressly indicate that the signor is not dropping membership in PPACE while others are silent to a desired continued representation by PPACE. Forms indicating a desire to revoke prior authorization (even just generally, as opposed to specifically PPACE) only amounted to just under 5% (again discounting for those undated or without a signature pursuant to the above).

More importantly, even if not "express disavowal or an "unambiguous [] desire to not be represented" (which is not this Board's standards under the EMRA), considering this case also presents the issue of whether the Board in good faith doubts whether Local 14 is supported by a majority of the bargaining unit (not whether the employer has a good faith reasonable doubt to seek an election), the forms presented which indicate even just possibly a desire to be represented by Local 14 (for example, including the dues checkoff form CAA (the remaining forms with the exception of PRRE clearly indicate a desire to be represented by Local 14)), again discounting for those unsigned and undated, amount to just over 21%. A seminal NLRB decision, cited by both parties, *Potomac Electric Co.*, 111

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[6] Again, while these cases applied different standards for different purposes and are thus not directly on point, numerous forms in the case before this Board did not unambiguously indicate a desire to be not be represented by PPACE (a further showing of the distinction in the NLRB line of cases involving unilateral withdrawal of recognition, employer polling, and RM petitions vs. satisfactory showing of interest in an RC Petition – in other words, the showing of interest did not have to unambiguously indicate a desire not to be represented by PPACE). Moreover, numerous forms did not indicate a desire to even be represented by Local 14 generally (to be clear – the Board does not require an "unambiguous" or "express" indication, or any magic words for that matter, to satisfy our good faith doubt determination either). The Board considered the language on the forms as a whole in its conclusions herein that we do not in good faith doubt whether Local 14 is supported by a majority of the local government employees in a particular bargaining unit.

NLRB 553 (1955) is instructive. Local 14 argues this case stands for the proposition that if the forms "merely asked the Board to conduct an election … [it] suffice[s] as evidence of interest." Brief of Local 14 Regarding Remaining Issues, at 4. However, this fails to cite the complete standard. *Potomac Electric* specifically held that the cards at issue "express[ed] the desire of the signatories for an election **so that the Petitioner 'may be certified as the sole bargaining agency'** of the Employer's employees." *Id.* at 554 (**emphasis** added). Yet, the PRRE form does not indicate such in any sense. The NLRB held: "Unless there is magic in the use of particular words--a suggestion which we emphatically reject--the above-quoted cards, **by expressing a desire that the Petitioner be certified,** necessarily encompass within that expression **a desire that the Petitioner act as their representative.** Such cards, accordingly, satisfy the requirement of the Board's Statements of Procedure." *Id.* at 555-55 (**emphasis** added). The PRRE form is titled "Petition Requesting a Representative Election", states the signor is not dropping PPACE, and, more importantly, simply states: "I wish for an election be scheduled so I can vote on who I wish to be represented by, Teamsters or PPACE." This fails to meet even the liberal requirements announced in *Potomac*. NLRB: AN OUTLINE OF LAW AND PROCEDURE IN REPRESENTATION CASES, at Sec. 5-200 (2017) (stating the same). As such, the Board discounts these forms.

The Board also notes that if Local 14 wishes this Board to have parallel elections standards to the NLRB, then its petition is to the Nevada Legislature, not this Board. The Nevada Supreme Court decision in *Local Gov't Employee-Mgmt. Relations Bd. v. Educ. Support Employees Ass'n*, 134 Nev. 716, 429 P.3d 658 (2018) is instructive. In this case, ESEA was the recognized bargaining agent for the CCSD bargaining unit. Local 14 challenged ESEA's support among the employees. The Board held that NRS 288.160(4) permitted it to use the NLRB's majority of the votes cast standard in determining the outcome of an election. However, the Nevada Supreme Court disagreed, holding that "[p]er the statute's plain language, the standard is support by a *majority of employees in a bargaining unit.*" *Id.* at 720 (emphasis in original).

This was despite the fact that the EMRA was modeled after the NLRA, the EMRA contained similar language as the NLRA regarding election standards, the Board had historically used the majority of the votes cast standard since its inception, the Nevada Supreme noted this statutory standard

must be used even if "the statute is impractical", and there was no indication in the legislative history that the EMRA sought to impose a new and unheard of aberration from election standards (or any objective evidence to impose such a heightened standard).[7] In the same vein, the standard for determining whether to hold an election is plainly provided for in the EMRA (*i.e.*, "If the Board in good faith doubts whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit") – the Board is required to use this standard as held by the Nevada Supreme Court. The Board is not required to use the NLRB's 30% standard as urged by Local 14 or the 50% plus one standard sought by PPACE.[8] *See also Weiner v. Beatty*, 121 Nev. 243, 249, 116 P.3d 829, 832 (2005) ("We have held that precedent interpreting the federal statutes is persuasive in interpreting the EMRA."); *see also Truckee Meadows Fire Prot. Dist. v. Int'l Ass'n of Fire Fighters, Local 2487*, 109 Nev. 367, 375, 849 P.2d 343, 348 (1993) (noting that "NLRB precedent is persuasive in interpreting statutes concerning the public sector that are fashioned on the NLRA."), *citing Truckee Meadows Fire Prot. Dist. v. Int'l Ass'n of Fire Fighters, Local 2487*, 109 Nev. 367, 374, 849 P.2d 343, 348 (1993).

Indeed, the NLRB generally holds: "In our view, the purpose of a showing of interest is to save the Board from expending time and money on needless elections." *Covenant Aviation Security, LLC*, 349 NLRB 699 (2007). "The purpose of this requirement [of the NLRB's administrative rule that 30% constitutes a substantial number] is to enable the Board to determine whether or not the filing of a

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[7] In that case, Local 14 even obtained 82% of vote in an election; however, Local 14 did not obtain a majority of employees in the unit and, as such, the Nevada Supreme Court held Local 14 could not be certified as the exclusive representative.

[8] The Nevada Supreme Court further noted: "NRS 288.160 provides different means by which an employee organization may obtain recognition as the exclusive bargaining agent of government employees in a bargaining unit. *See, e.g.*, NRS 288.160(2) (providing that if an organization is recognized by the government employer and if the organization 'presents a verified membership list showing that it represents a majority of the employees in a bargaining unit,' the organization is the exclusive, recognized bargaining agent); NRS 288.160(5) (providing for a representative election, pursuant to the parties' agreement, to determine whether an organization represents the majority of the employees in the bargaining unit). Each method requires support by, or representation of, the *majority of employees in the bargaining unit* before an organization is recognized as the exclusive bargaining agent. *See generally* NRS 288.160." *Id.* at 702-21 (emphasis in original). "The statute and administrative code also provide methods by which an organization's recognition may be withdrawn. *See, e.g.*, NRS 288.160(3); NAC 288.146." *Id.* at note 3.

petition warrants the holding of an election without the needless expenditure of Government time, efforts, and funds." NLRB: AN OUTLINE OF LAW AND PROCEDURE IN REPRESENTATION CASES, at Sec. 5 (Showing of Interest) (2017); *citing River City Elevator Co.*, 339 NLRB 616 (2003); *Pike Co.*, 314 NLRB 691 (1994); *S. H. Kress & Co.*, 137 NLRB 1244 (1962); *O. D. Jennings & Co.*, 68 NLRB 516 (1946). The EMRA has imposed a more demanding standard in determining the outcome of elections than the NLRA (regardless of whether it is employer or union initiated), at least in regard to local government employees.[9]

Further, the Board's precedent is instructive in this regard. For example, in *United We Stand – AFT v. Washoe County Sch. Dist.*, Item No. 623C, Case No. A1-045875 (2007), United filed a complaint challenging recognition of WESP as the proper employee organization and requested an election. The Board held: "That although a serious question has been raised that WESP may not be supported by a majority of EEs, UWS failed to demonstrate that it has majority support." *Id.* at 3. The testimony presented found that UWS "did not have majority support and as such the Board finds it did not have a good faith doubt as to which organization should represent the employees at issue". *Id.* Thus, the Board did not order an election.[10] *Id.*; *see also United We Stand Classified Employees v. Washoe County Sch. Dist*, Item No. 549, Case No. A1-045760 (2003) (failure to show majority of the bargaining unit members and provide evidence which would create a good faith doubt as to the bargaining unit's representative); *Teamsters Local No.14 vs. City of Las Vegas*, Item No. 76, Case No.

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[9] Recently, the EMRA was amended to extend collective bargaining rights to state employees and provides for the universal majority of the votes cast standard solely for state employees, leaving the standard for local government employees unchanged. NRS 288.530. Indeed, for state employees, the EMRA expressly stated: "Any other labor organization that … files with the Board a written request to be placed on the ballot for the election and includes with the written request a list of its membership or other evidence showing that the labor organization has been authorized to serve as a representative by at least 30 percent of the employees within the bargaining unit". *Id.* The Nevada Legislature in 2019, however, chose to retain the current standards for elections involving local government employees as clarified in *Educ. Support Employees Ass'n*, 134 Nev. 716, 429 P.3d 658 (2018).

[10] The Board further provided: "Given the apparent legislative intent of NRS Chapter 288 to promote labor peace and certainty, under the circumstances of this case and in light of the incumbent association being historically in place, the existence of a credible collective bargaining agreement and the good faith recognition of WESP by the employer, the Board finds it should not exercise its discretion to order an election under NRS 288.160, paragraph 4."). *Id.* at 4.

A1-045307 ("No evidence was presented to indicate, and in fact the parties concede, that the City Employee's Association is supported by a majority of the employees in the non-uniformed bargaining unit. Thus, no good faith doubt exists in our minds and no election is warranted.").

"The purpose of requiring a preliminary showing of interest in a representation proceeding is to enable the Board to determine whether 'the conduct of an election serves [a] useful purpose under the statute.'" *Potomac Elec. Power Co.*, 111 NLRB 553, 554 (1955).[11] As indicated above, an election here would not serve a useful purpose under the EMRA, nor do the facts of this case justify the expenditure of Government time, efforts, and funds, as the Board does not in good faith doubt whether any employee organization is supported by a majority of the local government employees in the subject bargaining unit considering the evidence as a whole.

FINDINGS OF FACT

1. There are approximately 95 job classifications in the PPACE bargaining unit ranging from custodians, law enforcement support technicians, dispatchers, crim analysts to forensic scientists.

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[11] As indicated, the Board does not order that a good faith doubt can only be shown by a showing of interest of 50% plus one of the entire bargaining unit. Local 14 argued that if it were to meet that 50% plus one showing, that would be "certainty" and it would be recognized. *But see supra* note 8 and accompanying text (the Nevada Supreme Court also noted that NRS 288.160(2) pertains to situations where only one employee organization requests recognition without any competitors whereas NRS 288.160(4) recognizes situations when more than one employee organization seeks recognition); *see also supra* note 6 and accompanying text and Discussion regarding *Allentown Mack Sales & Serv., Inc., supra*. The Board notes that even in that case, with a rival union, an election would still serve a useful purpose and simply a 50% plus one showing of interest would not establish "certainty" that Local 14 is "is supported by a majority of the local government employees in a particular bargaining unit", as clarified in *Educ. Support Employees Ass'n*, 134 Nev. 716, 429 P.3d 658 (2018). For example, Local 14 argues that the NLRB holds that cards which have been revoked or withdrawn are still counted in a showing of interest or cards signed for more than one labor organization may also be counted in determining a showing of interest. *General Dynamics Corp.*, 175 NLRB 1035 (1969); *see also Allied Chemical Corp.*, 165 NLRB 235 fn. 2 (1967); *Vent Control, Inc.*, 126 NLRB 1134 (1960); *Brooklyn Gas Co.*, 110 NLRB 18, 20 (1955) ("There is no reason why employees, if they so desire, may not join more than one labor organization."). As such, a 50% plus one showing of interest does not always establish with "certainty" that a union is supported by a majority of employees in the bargaining unit as employees, for example, may support more than one union. Again, while not dispositive, PPACE's membership has fluctuated around 80% so the Board would not have simply certified Local 14 as the exclusive representative even if Local 14's showing had been above 50%, without an election. *See also* Discussions, *supra*, regarding "certainty" in NLRB unilateral withdrawal, employers polling, and RM Petition cases.

2. On November 29, 2018, the bargaining unit consisted of 1464 employees.

3. Members of PPACE has fluctuated around 80% over the last several years.

4. On September 4, 2019, there were 1354 total non-supervisors.

5. If the Board were not to discount any forms, this would put Local 14's percentage just above 30%, specifically 30.7%.

6. If the Board were then to deduct all those forms which were typed and not signed as well as those forms which were undated with no subsequent affidavit, declaration or testimony presented, then Local 14's percentage decreases to just over 26%.

7. PPACE explains to their membership or potential members what their rights are.

8. Some testimony presented indicated a fear from the employer or department actions as opposed to that of PPACE.

9. Laure Ouellett simply indicated that "[o]f the 16 people that I specifically work with, 14 – 14 would like a vote", not that they would necessarily vote for Local 14 over PPACE.

10. Many forms expressly indicate that the signor is not dropping membership in PPACE while others are silent to a desired continued representation by PPACE.

11. Forms indicating a desire to revoke prior authorization (even just generally, as opposed to specifically PPACE) only amounted to just under 5%.

12. The forms presented which indicate even just generally a desire to be represented by Local 14 (for example, including the dues checkoff form CAA (the remaining forms with the exception of PRRE clearly indicate a desire to be represented by Local 14)), amount to just over 21%.

13. The PRRE form is titled "Petition Requesting a Representative Election", states the signor is not dropping PPACE, and, more importantly, simply states: "I wish for an election be scheduled so I can vote on who I wish to be represented by, Teamsters or PPACE."

14. PRRE form does not indicate or express a desire to be represented by Local 14 or for an election so that Local 14may be certified as the sole bargaining agency.

15. If any of the foregoing findings is more appropriately construed as a conclusion of law, it may be so construed.

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CONCLUSIONS OF LAW

1. The Board is authorized to hear and determine petitions arising under the Government Employee-Management Relations Act.

2. The Board has exclusive jurisdiction over the parties and the subject matters of the Petition on file herein pursuant to the provisions of NRS Chapter 288.

3. The EMRA is plain and unambiguous in this regard as to what standard the Board must use to determine whether to conduct an election: If the Board in good faith doubts whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit, it may conduct an election by secret ballot upon the question.

4. "Doubt" can be defined as "uncertainty" in connection with the complete standard under the EMRA (*i.e.*, "if the Board [is] in good faith [uncertain] whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit.").

5. The Board is not required to use the NLRB's 30% standard or a 50% plus one standard.

6. The EMRA has imposed a more demanding standard in determining the outcome of elections than the NLRA, at least with regard to local government employees.

7. NAC 288.160 is also plain and unambiguous.

8. For the purposes of this Order alone, unless otherwise specifically indicated herein, the Board assumes that the various questions and issues presented by the parties would have been found in favor of Local 14

9. The Board assumes for the purposes of this order that the denominator excludes alleged statutory supervisors.

10. The Board included all forms and deems them acceptable unless otherwise indicated.

11. Those forms which are typed and do not have a signature should not be counted.

12. The general rule is that the individual authorization must be dated and must be current.

13. The requirement for dating the showing may be accomplished by affidavit either submitted with the showing itself or timely filed thereafter.

14. The Board discounts the forms that were not dated with no subsequent affidavit, declaration or testimony presented.

15. *Potomac Electric* specifically held that the cards at issue "express[ed] the desire of the signatories for an election **so that the Petitioner 'may be certified as the sole bargaining agency'** of the Employer's employees."

16. Unless there is magic in the use of particular words--a suggestion which we emphatically reject--the above-quoted cards, by expressing a desire that the Petitioner be certified, necessarily encompass within that expression a desire that the Petitioner act as their representative.

17. *Allentown Mack Sales & Serv., Inc. v. N.L.R.B.*, 522 U.S. 359, 118 S. Ct. 818, 139 L. Ed. 2d 797 (1998) is not directly on point.

18. This case did involve a showing of interest for holding an election between rival unions for which even the NLRB had different standards.

19. The current matter involves the Board's good faith doubt in the context of a rival union challenging the support of another and seeking to displace it – not whether the employer had a reasonable good faith doubt in the context of committing a unfair labor practice in polling its employees or requesting an election instead of unilaterally withdrawing recognition (which is not permissible under the EMRA regardless of a good faith reasonable doubt).

20. The Board does not have any good-faith or genuine uncertainty whether Local 14 is supported by a majority of the employees in the subject bargaining unit based on the facts of this case, considering the evidence as a whole, including the showing of interest, testimony presented, and language of the forms.

21. There is a distinction in the NLRB lines of cases involving unilateral withdrawal of recognition, employer polling, and RM petitions vs. satisfactory showing of interest in an RC Petition – in other words, the showing of interest did not have to unambiguously indicate a desire not to be represented by PPACE.

22. The Board considered the language on the forms as a whole in its conclusions herein that we do not in good faith doubt whether Local 14 is supported by a majority of the local government employees in a particular bargaining unit.

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23. Based on the facts of this case, the Board does not have a good faith or genuine "uncertainty" as to whether Local 14 is supported by a majority of the local government employees in the particular bargaining unit.

24. The Board also notes that if Local 14 wishes this Board to have parallel elections standards to the NLRB, then its petition is to the Nevada Legislature, not this Board.

25. The Nevada Supreme Court decision in *Local Gov't Employee-Mgmt. Relations Bd. v. Educ. Support Employees Ass'n*, 134 Nev. 716, 429 P.3d 658 (2018) is instructive.

26. The Nevada Legislature in 2019 choose to retain the current standards for elections involving local government employees as clarified in *Educ. Support Employees Ass'n.*

27. *United We Stand – AFT v. Washoe County Sch. Dist.*, Item No. 623C, Case No. A1-045875 (2007) is instructive here. *See also United We Stand Classified Employees v. Washoe County Sch. Dist*, Item No. 549, Case No. A1-045760 (2003); *Teamsters Local No.14 vs. City of Las Vegas*, Item No. 76, Case No. A1-045307.

28. The Board does not in good faith doubt whether PPACE is supported by a majority of the local government employees in the particular bargaining unit at issue.

29. The Board does not in good faith doubt whether Local 14 is supported by a majority of the local government employees in a particular bargaining unit.

30. Even if Local 14 had barely cleared the NLRB's 30% threshold, with every single issue presumed in its favor, the Board still would not in good faith doubt whether Local 14 is supported by a majority of the local government employees in the subject unit based on the facts of this case.

31. The Board will not order an election pursuant to NRS 288.160.

32. An election here would not serve a useful purpose under the EMRA, nor do the facts of this case justify the expenditure of Government time, efforts, and funds, as the Board does not in good faith doubt whether any employee organization is supported by a majority of the local government employees in the subject bargaining unit.

33. It has not been shown that PPACE has ceased to be supported by a majority of the local government employees in the bargaining unit for which it is recognized pursuant to NAC 288.146.

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34. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it may be so construed.

DATED this 27 day of May 2020.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: _____
BRENT ECKERSLEY, ESQ., Chair

By: _____
SANDRA MASTERS, Vice-Chair

By: _____
GARY COTTINO, Board Member

By: _____
BRETT HARRIS, ESQ., Board Member