

FILED

FEB 15 2022

STATE OF NEVADA  
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO,

Complainant,

v.

ESMERALDA COUNTY; ESMERALDA  
COUNTY BOARD OF COMMISSIONERS; DOE  
INDIVIDUALS I through X, inclusive; and ROE  
ENTITIES I through X, inclusive,

Respondents.

Case No. 2020-022

**ORDER ON RESULTS OF THE  
ELECTION**

**EN BANC**

**ITEM NO. 876**

On February 10, 2022, this matter came before the State of Nevada, Government Employee-Management Relations Board (Board) for consideration and decision pursuant to the provisions of the Employee-Management Relations Act (NRS Chapter 288, EMRA) and NAC 288. At issue was certification of the results of the recently held election.

**History**

On September 11, 2020, Complainant filed a Complaint for Unfair Labor Practices, alleging, among other things, that the Respondents had (1) failed to negotiate in good faith regarding mandatory subjects of bargaining; (2) refused to bargain in good faith with the Complainant; (3) interfered, restrained or coerced the members of the union in the exercise of their rights, including dominating and interfering in the administration of the MOU; and (4) engaging in a pattern of conduct designed to ignore contractual rights and rights imposed by state law for the purpose of frustrating the Union's membership. *Complaint, p. 5.*

On November 10, 2020, the Respondents answered the Complaint and filed a Counterclaim for Decertification of the Union. Respondents specifically stated it doubted that the bargaining agent (i.e., the Complainant) represented a majority of the bargaining unit and thus requested a hearing before the

1 Board on this issue and to as well receive written permission of the Board to allow it to withdraw  
2 recognition of the employee organization. *Answer to Complaint and Counterclaim to Decertify*  
3 *Election, p. 4, paragraphs 7-9.*

4 **Activities Before Panel A**

5 The Board thereupon randomly assigned the case to Hearing Panel A, which held a hearing on  
6 August 10, 2021. As detailed in the Second Amended Notice of Hearing, the issues at the hearing were:

7 **Complainant's Statement of Issues**

- 8 1. Did Respondent exclude Complainant from bargaining sessions?  
9 2. Did Respondent fail to negotiate in good faith regarding mandatory subjects of bargaining in  
10 violation of NRS 288.270?  
11 3. Did Respondent refuse to bargain in good faith with the exclusive representative in violation of  
12 NRS 288.150?

13 **Respondents' Statement of Issues**

- 14 1. Has Esmeralda County violated NRS 288.150 by failing or refusing to bargain in good faith  
15 regarding the mandatory issues contained therein?  
16 2. Is the International Union of Operating Engineers, Local 501 supported by a majority of the  
17 local government employees in the bargaining unit for which it is recognized?  
18 3. May Esmeralda County withdraw recognition of International Union of Operating Engineers,  
19 Local 501 pursuant to NRS 288.160(3)?

20 *Second Amended Notice of Hearing, pp. 3-4.* Relevant to this order are Respondents' issues 2  
21 and 3, which question whether the bargaining agent is supported by a majority of the bargaining unit  
22 and requesting whether Esmeralda County may withdraw its recognition.

23 On October 8, 2021, Panel A issued an order, which read in part:

24 After a review of the record, and the post-hearing briefs submitted by the parties, Panel  
25 A of the Board deliberated and decided to recommend an election be held pursuant to  
26 NRS 288.160(4) to determine if the Complainant is still supported by a majority of the  
27 local government employees in the bargaining unit. The Board sitting En Banc at the  
28 November 4, 2021, meeting will render a decision on whether an election will be  
ordered, and how the election, if so ordered, will be conducted. The remaining  
arguments of the parties will be stayed pending the outcome of the election. *Order, p. 1.*

1 **Remand Back to the Full Board**

2 Panel A's recommendation to send the case to the full Board accords with NRS 288.090, which  
3 states in part: (2) Except by a majority of the entire membership of the Board, the Board may not: ... (e)  
4 Grant permission to a local government employer to withdraw recognition from an employee  
5 organization or order an election pursuant to NRS 288.160. *NRS 288.090 (2)(e)*.

6 Thereupon, on December 9, 2021, the full Board ordered the holding of a representation  
7 election, including the adoption of the election plan as proposed by the Commissioner. Section 1.04 of  
8 the Election Plan detailed the standard to be used in deciding the result of the election; namely:

9 The decision of the Nevada Supreme Court in Case No. 70586, in the case of EMRB v.  
10 Education Support Employees Association; the International Brotherhood of Teamsters,  
11 Local 14; and the Clark County School District, filed on November 8, 2018 shall control  
12 as to the standard to be used in this election; namely a majority of the bargaining unit  
(i.e., a majority of the votes that could have been cast) versus a majority of the votes  
cast. *Election Plan, p. 2, Section 1.04.*

13 The election closed on January 19, 2022, with the votes tallied as follows: 1 vote in favor of  
14 representation by IUOE, Local 501, 3 votes against representation; and 9 eligible voters not having  
15 voted. *Tally of Ballots*. Section 5.01 of the Election Plan allowed any party to file objections as to the  
16 conduct of the election. None were filed.

17 Thus, according to the standard used for determining the outcome of the election, it is evident  
18 that Complainant, with 1 vote out of thirteen eligible voters in the bargaining unit, did not receive votes  
19 from a majority of the bargaining unit.<sup>1</sup> Accordingly, the Board holds that, with respect to Respondents'  
20 issue #2, the International Union of Operating Engineers, Local 501, is not supported by a majority of  
21 the employees in the bargaining unit. With respect to Respondents' issue #3, the Board is of the opinion  
22 that Esmeralda County may withdraw recognition of the International Union of Operating Engineers,  
23 Local 501 pursuant to NRS 288.160(3).

24 **ORDER**

25 Based on the foregoing, it is hereby DECLARED that the International Union of Operating  
26 Engineers, Local 501, is not supported by a majority of the bargaining unit in question.

27  
28 <sup>1</sup> It should be noted that even if the standard were to be a majority of the votes cast, Complainant still did not receive such a majority.

1 It is also ORDERED that the Board grants permission to Esmeralda County to withdraw  
2 recognition of the International Union of Operating Engineers, Local 501, and if it elects to do so, it  
3 shall then file with the Board a document giving notice to this effect, and that its withdrawal of  
4 recognition will be effective upon the filing of said document.

5 That it is further ORDERED that if any party believes there are any remaining issues to be  
6 pursued in this case, that the party who so believes shall, within ten (10) days of the Notice of Entry of  
7 Order, file a document with this Board listing what it believes are the unresolved issues. If no party files  
8 such a document by the deadline then the Commissioner may administratively close the case. If any  
9 party files such a document by the deadline, then the case shall be remanded back to Panel A for further  
10 proceedings.

11 DATED this 15 day of February 2022.

12 GOVERNMENT EMPLOYEE-  
13 MANAGEMENT RELATIONS BOARD

14 By:   
15 BRENT ECKERSLEY, ESQ., Chair

16 By:   
17 SANDRA MASTERS, Vice-Chair

18 By:   
19 GARY COTTINO, Board Member

20 By:   
21 BRETT HARRIS, ESQ., Board Member

22 By:   
23 MICHAEL J. SMITH, Board Member

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E.M.R.B.

RELATIONS BOARD

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO,

Case No. 2020-022

Complainant,

**NOTICE OF ENTRY OF ORDER**

v.

ESMERALDA COUNTY; ESMERALDA  
COUNTY BOARD OF COMMISSIONERS; DOE  
INDIVIDUALS I through X, inclusive; and ROE  
ENTITIES I through X, inclusive,

Respondents.

TO: International Union of Operating Engineers Local 501, AFL-CIO and its attorney, Justin M. Crane of The Myers Law Group, APC;

TO: Esmeralda County, Other Named Respondents and their attorney, Robert E. Glennen III, Esq., of the Esmeralda District Attorney's Office;

PLEASE TAKE NOTICE that the **ORDER ON RESULTS OF THE ELECTION** was entered on the 15th day of February 2022, a copy of which is attached hereto.

DATED this 15 of February 2022.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY: 

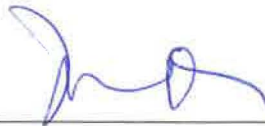
MARISU ROMUALDEZ ABELLAR  
Executive Assistant

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management Relations  
3 Board, and that on the 15th day of February 2022, I served a copy of the foregoing **NOTICE OF**  
4 **ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

5  
6 Justin M. Crane, Esq.  
7 The Myers Law Group, APC  
8 9327 Fairway View Place, Suite 100  
9 Rancho Cucamonga, CA 91730

10 Esmeralda District Attorney  
11 Robert E. Glennen III, Esq.  
12 233 Crook St., P.O. Box 339  
13 Goldfield, NV 89013



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MARISU ROMUALDEZ ABELLAR  
Executive Assistant