

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

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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

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 31st day of January, 2024, I served a copy of the foregoing **NOTICE OF**  
4 **ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

5  
6 Daniel Marks, Esq.  
7 Adam Levine, Esq.  
8 Law Office of Daniel Marks  
9 610 South Ninth Street  
10 Las Vegas, NV 89101

11 Scott Davis, Esq.  
12 Clark County District Attorney's Office  
13 500 S. Grand Central Parkway, Suite 5075  
14 Las Vegas, NV 89155

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17 ISABEL FRANCO  
18 Administrative Assistant II  
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STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

INTERNATIONAL UNION OF ELEVATOR  
CONSTRUCTORS, LOCAL 18,

Complainant,

v.

CLARK COUNTY,

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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.<sup>1</sup> 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.<sup>2</sup>

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).<sup>3</sup> 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

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27 <sup>1</sup> Withdrawing recognition is the same as “decertifying.”

28 <sup>2</sup> 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.

<sup>3</sup> 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).<sup>4</sup> 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 <sup>4</sup> 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. A1-046113, *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.<sup>5</sup> 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.
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28 <sup>5</sup> The Board recognizes that normally ratification mandates are set out in the Bylaws and Articles of Incorporation of the union.



