

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA LOCAL
GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KENNETH C. CORY, DISTRICT
JUDGE, DISTRICT JUDGE,

Respondents,

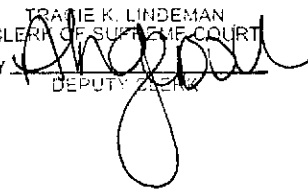
and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 14; EDUCATION
SUPPORT EMPLOYEES
ASSOCIATION; AND CLARK COUNTY
SCHOOL DISTRICT,
Real Parties in Interest.

No. 62719

FILED

DEC 18 2013

TRAMIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION

This is a petition for a writ of mandamus, or in the alternative, for a writ of certiorari to vacate a district court's order. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

A district court reviewed an administrative agency's chosen election procedure prior to the election's commencement. Dissatisfied with the agency's choice, the court instructed the agency to adopt a procedure that was reasonably calculated to produce a definitive result. We conclude

that the district court lacked jurisdiction to conduct a pre-election review of the agency's chosen election procedure.

FACTS

The Local Government-Employee Management Board (EMRB) held a representative election to determine whether the International Brotherhood of Teamsters, Local 14 (Local 14), or the Education Support Employees Association would be recognized as the bargaining agent for the Clark County School District's non-certified employees' bargaining unit. The EMRB determined that the election's results were inconclusive and planned to hold a runoff election.

Local 14 objected to the EMRB's chosen procedure for the runoff election, and proposed a different method; but, the EMRB denied it. Local 14 then filed a petition for judicial review of the EMRB's chosen election procedure. The district court granted the petition and remanded the case to the EMRB to develop an election procedure that was reasonably calculated to produce a definitive result.

The EMRB claims that the district court lacked jurisdiction to consider a pre-election petition for judicial review and now seeks a writ of mandamus, or in the alternative, of certiorari to vacate the district court's order.

DISCUSSION

A writ of mandamus is available only when the petitioner does not have a plain, speedy and adequate remedy at law. *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

Here, writ relief is appropriate because the EMRB cannot appeal the district court's remand order. The district court's order did not

constitute a final judgment because the remand did not dispose of the case's underlying issue. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). Consequently, the district court's order is not appealable. *See State, Taxicab Auth. v. Greenspun*, 109 Nev. 1022, 1025, 862 P.2d 423, 424 (1993). Thus, the EMRB does not have an adequate remedy at law and mandamus relief is appropriate. *See Haley v. Eighth Judicial Dist. Court*, 128 Nev. __, __, 273 P.3d 855, 858 (2012).

District courts can review an administrative agency's decision only when a statutory provision expressly allows it. *Crane v. Cont'l Tel. Co. of Cal.*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989) (citing *Lakeview Vill., Inc. v. Bd. of Cnty. Comm'rs*, 659 P.2d 187, 192 (Kan. 1983)). Local 14 asserts that NRS 288.160(4) and NRS 233B.130 allowed the district court to review the EMRB's decision. Thus, we must review these statutes to determine if either one expressly authorizes a district court to conduct a pre-election review of an administrative agency's election procedure.

Under NRS 288.160(4),

[i]f 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. Subject to judicial review, the decision of the Board is binding upon the local government employer and all employee organizations involved.

NRS 288.160(4) did not give the district court the authority to review the EMRB's election plan. The statute authorizes the district court to determine whether the EMRB had a good faith doubt as to whether a majority of the bargaining unit's members supported a particular employee organization. However, the statute does not expressly provide the district court the power to conduct a pre-election review of the EMRB's

election procedure. Thus, the district court could not have reviewed the EMRB's election procedure under NRS 288.160(4).

Under NRS 233B.130,

1. Any party who is:

(a) Identified as a party of record by an agency in an administrative proceeding; and

(b) Aggrieved by a final decision in a contested case,

is entitled to judicial review of the decision. Where appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute. Any preliminary, procedural or intermediate act or ruling by an agency in a contested case is reviewable if review of the final decision of the agency would not provide an adequate remedy.


Local 14 is an aggrieved party, but the EMRB's chosen election procedure does not constitute a final decision. Choosing the election's procedure is an intermediate step in the election process. Only the EMRB's determination of the election's results would constitute a final decision. Thus, under NRS 233B.130, the district court could have conducted a pre-election review of the EMRB's election procedure only if this matter qualified as a contested case and a judicial review of the EMRB's determination of the election's results would not have provided Local 14 with an adequate remedy.

NRS 233B.130 did not provide the district court the power to review the EMRB's election procedure. This matter is not a contested case because the controlling regulations do not require notice and an opportunity for a hearing at which the parties can present evidence supporting their respective arguments. See NRS 233B.032 (defining a


"contested case"); see also *Citizens for Honest & Responsible Gov't v. Sec'y of State*, 116 Nev. 939, 951-52, 11 P.3d 121, 129 (2000). Specifically, NAC 288.110 governs runoff elections, and it does not require a district court to hold a hearing to address a party's pre-election challenges. Rather, the regulation provides an opportunity for a hearing only after the election has concluded. Additionally, judicial review of the EMRB's decision concerning the election's results would provide Local 14 with an adequate remedy. Thus, judicial review of the EMRB's chosen election method under NRS 233B.130 is improper.

Neither NRS 288.160(4) nor NRS 233B.130 vested the district court with the authority to conduct a pre-election review of the EMRB's chosen election procedure. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order granting Local 14's petition for judicial review.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Kenneth C. Cory, District Judge
Attorney General/Las Vegas
Clark County School District Legal Department
Dyer, Lawrence, Penrose, Flaherty, Donaldson & Prunty
McCracken, Stemerman & Holsberry
Eighth District Court Clerk