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State of Nev. Local Gov't Emp. Mgmt. Bd., v. Educ.
Support Emp. Ass'n, 134 Nev. Adv. Op. 86 (Nov. 8,
2018)

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ADMINISTRATIVE AGENCY: ELECTION POWERS

Summary

The Court determined that the plain language application of NRS § 288.160 and Nevada Administrative Code (NAC) 288.110 states that the vote-counting standard is to be determined by the majority of members of the bargaining unit and not by a majority of the votes cast.

Background

In 2001, the International Brotherhood of Teamsters, Local 14 (Local 14) challenged Education Support Employees Association's (ESEA) support among Clark County School District employees (CCSD) and the Local Government Employee-Management Relations Board (Board). The Board decided to hold an election to determine which labor union held the support of the majority of the bargaining unit and which union would represent the CCSD bargaining unit.

Before the election, the Board stated its intent to have support from the majority of the employees in the bargaining unit for a labor union to be certified as the exclusive representative. This interpretation by the Board was affirmed in an unpublished order. The election was held in 2006, and ESEA remained the bargaining agent because neither the ESEA or Local 14 obtained a majority of the members.

A runoff election was then held in 2015 and again the results did not show support for a certain union by a majority of the bargaining unit, and therefore ESEA remained as the exclusive representative. A second runoff election then took place in late 2015 where Local 14 did not gain a majority of the bargaining unit but did receive a majority of the votes cast. Based on this, the Board then stated its intent for Local 14 to be the exclusive bargaining representative for the CCSD employees.

Discussion

Standard of Review

The first step when interpreting a statute or regulation is to look at the statute or regulation's plain and unambiguous language and give effect to that.² The Court looks beyond plain language only when the plain language has ambiguity.³ Moreover, this Court looks to an agency's interpretation of its statutes or regulations if the interpretation is within the language.⁴ Here, the Board's interpretation is used.

NRS 288.160(4) states, "[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

¹ By Amanda Netuschil.

² *UMC Physicians' Bargaining Unit of Nev. Serv. Emps. Union v. Nev. Serv. Emps. Union/SEIU Local 1107, AFL-CIO*, 124 Nev. 84, 88-89, 178 P.3d 709, 712 (2008).

³ *Id.*

⁴ *Wynn Las Vegas, LLC v. Baldonado*, 129 Nev. 734, 738, 311 P.3d 1179, 1182 (2013).

bargaining unit, it may conduct an election by secret ballot upon the question.”⁵ Using the plain language of NRS 288.160(4), the Board is not limited to a single election, and therefore, the Board had the authority to conduct the second runoff election. The plain language of NAC 288.110(7) states that if the results are not conclusive from an election, “the Board will conduct a runoff election.”⁶ The plain language interpretation shows that although one runoff election is required, a second one is not mandated, but under the Board’s discretion to initiate.

The Board did not have the discretion to interpret the statute and regulation to allow a vote-counting standard that allows for an inference of support by the majority of the votes. NRS 288.160 states that the Board may have an election to decide “whether an employee organization is supported by a majority of the local government employees in a particular bargaining unit.”⁷ Under the plain language interpretation of NRS 288.160, the Board cannot use the majority of the votes cast as the standard for vote-counting, but must use the majority of employees in a bargaining unit instead.

The administrative code used by the Board plainly states that an employee organization will be the exclusive agent for the employees within a bargaining unit if the election shows that “the employee organization is supported by a majority of the employees within the particular bargaining unit.”⁸ The governing code for the Board plainly states that the voting method used must adhere to the majority of the bargaining unit and not the majority of the votes cast .

The Board’s interpretation was in error based on the plain language reading of both the statute and regulation.

Conclusion

Applying the plain language of NRS 288.160(4) and NAC 288.110, the Court concluded that the Board could hold a second runoff election but could not interpret the voting method to allow for a majority of the votes cast standard rather than using the correct standard of a majority of the bargaining unit. The Court affirmed the ruling of the district court granting the petition for judicial review.

⁵ NEV. REV. STAT. § 288.160(4) (2017).

⁶ NEV. ADMIN. CODE § 288.110(7) (2017).

⁷ See NEV. REV. STAT. § 288.160.

⁸ NEV. ADMIN. CODE § 288.110(10)(d).