

A-20-822704-P

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Filings (Petition)**

**COURT MINUTES**

**May 20, 2021**

---

A-20-822704-P      In the Matter of the Petition of  
Clark County Association of School Administrators and Professional-technical  
Emp

---

**May 20, 2021                      03:00 AM      Minute Order**

**HEARD BY:**      Barisich, Veronica M.      **COURTROOM:** Chambers

**COURT CLERK:** Jackson, Carolyn

**RECORDER:**

**REPORTER:**

**PARTIES PRESENT:**

**JOURNAL ENTRIES**

The Court notes that (1) Respondent Clark County Education Association's ("CCEA") Motion to Dismiss Writ Petition, (2) Respondent Education Support Employees Association's ("ESEA") Motion to Dismiss, or Make Non-Returnable, the Petition for Writ of Prohibition, or in the Alternative, Writ of Mandamus, and (3) Respondents Clark County School District ("CCSD") and Dr. Jesus Jara's ("Jara") Motion to Dismiss Petition for Writ of Prohibition, or in the Alternative, Writ of Mandamus were heard on April 22, 2021. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After carefully considering the evidence and arguments submitted, and good cause appearing, COURT ORDERS that all motions shall be GRANTED.

The case involves the petition for writ of prohibition, or in the alternative, mandamus, by the Clark County Association of School Administrators and Professional-Technical Employees ("CCASAPTE") over the interpretation of NRS 388G.610 in conjunction with NRS 288.150 and the decision of the Employee-Management Relations Board of the State of Nevada ("EMRB"). Specifically, the CCASAPTE seeks to suspend and prohibit the "teacher lottery" system implemented by the CCSD in the middle of 2020. CCASAPTE represents school administrators. CCEA represents school teachers. ESEA represents school support staff. CCASAPTE's main position appears to be that NRS 388G.610 gives the principals an absolute right to select teachers for their schools irrespective of other statutory provisions and/or collective bargaining agreement restrictions.

The facts of the case evolved throughout the course of this case. However, underlying facts of the case involves the use of the teacher lottery. In the summer of 2020, there were open positions in several school precincts. Furthermore, there were licensed teachers, who are subject to collective bargaining agreements between CCSD and CCEA, who were not selected by those schools. Instead of selecting the unassigned licensed teachers, the schools precincts utilized, or planned to utilize, substitute teachers to fill the vacant teaching positions. On or about July 2020, the CCSD implemented the teacher lottery system that is in controversy. The licensed teachers who were not selected were placed into a list and the list was then offered to the school precincts with vacant teacher positions. The school precincts were instructed to fill their vacant teacher positions from the said list. If the school precincts failed to select a licensed teacher from this list, CCSD assigned the licensed teacher from the list to the school precincts.

In the motions and the hearing, it was brought to the court's attention that the teacher lottery

---

**Printed Date: 5/21/2021**

**Page 1 of 5**

Minutes Date:

May 20, 2021

**Prepared by: Carolyn Jackson**

system was no longer in use as of December 11, 2020, when the CCSD voluntarily withdrew it from use.

The relevant provisions of the NRS 388G.610(1) states "the superintendent [Respondent Jara] shall TRANSFER authority to each local school precinct to carry out responsibilities in accordance with this section and the plan of operation approved for the local school precinct." (Emphasis added.) In addition, NRS 388G.610(2) states "the superintendent shall transfer to each local school precinct the authority to carry out the following responsibilities:

- (a) SELECT for the local school precinct the:
  - (1) Teachers;
  - (2) Administrators other than the principal; and
  - (3) Other staff.
 (Emphasis added.)

Moreover, NRS 388G.610(4) states "To the greatest extent possible, the principal of a local school precinct SHALL SELECT teachers who are licensed and in good standing before selecting substitutes to teach at the local school precinct. The principal, in consultation with the organizational team, shall make every effort to ensure that effective licensed teachers are employed at the local school precinct." (Emphasis added.)

In addition, NRS 388G.700(2) states "The principal of the local school precinct shall select staff for the local school precinct as necessary to carry out the plan of operation from a list provided by the superintendent."

NRS 288.150, states, in relevant provisions, as follows:

- (1) Every local government employer shall negotiate in good faith concerning the mandatory subjects of bargaining set forth in subsection 2.
- (2) The scope of mandatory bargaining is limited to:

- (o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements.

- (u) Transfer and reassignment of teachers.

However, the EMRB has the exclusive jurisdiction to hear any dispute over the interpretation of, or performance under, NRS Chapter 288. NRS 288.110(2).

Allegation of breach of the collective bargaining agreement falls within the NRS 288 and thus, the exclusive jurisdiction of the EMRB. Generally, failure to exhaust administrative remedies generally deprives district court of subject matter jurisdiction. *Rosequist v. International Ass'n of Firefighters Local 1908*, 118 Nev. 444, 49 P.3d 651 (2002).

The Nevada Attorney General was asked to opine on the extent of the collective bargaining rules limit the principal's autonomy to make teacher placement decisions for a local school precinct within a large school district. The Nevada Attorney General acknowledged that although NRS 388G granted significant autonomy for local school precincts, it did not expressly modify or amend the collective bargaining rules set forth in NRS 288.150, particularly, subsection (2)(u), which deals with transfer and reassignment of teachers. Nevada Attorney General's Opinion, No. 2017-13, 2017 Nev. Op. Atty. Gen. No. 13, 2018 WL 1061279 (Feb. 20, 2018). Furthermore, the Nevada Attorney General opined that the granting of limited autonomy to the school precinct does not conflict with the collective bargaining responsibilities of the school district so long as teachers are employed by the school district in positions other than assignment to a local school precinct. *Id.* It was recognized that the school district retained some of its collective bargaining responsibilities under NRS 288.150,

but the local school precinct acquires the ability to select the teachers who will be assigned directly to the precinct. Thus, a school district does not have the authority to assign a teacher to a local school precinct without the consent of the local school precinct. The authority to select teachers for assignment to those precincts is delegated to the local school precinct. *Id.* Thus, the Nevada Attorney General concluded that any provision in a collective bargaining agreement executed after NRS 388.610 was enacted (in 2017) which would waive or modify a local school precinct's authority to select teachers for assignment to the precinct would be unenforceable against the precinct.

In its ruling dated December 7, 2020, the EMRB ruled that it "does not have the jurisdiction to find a violation of NRS Chapter 388G, breach of contract/collective bargaining agreement, or determine if NRS 388G.610 impacted the parties' negotiated settlements." However, it concluded that NRS 388G.610 "does not appear to conflict with [NRS] Chapter 288 and can be read to render a harmonious result." NRS 288.150(2) provides that the policies for the transfer and assignment of teachers are within the mandatory subjects of bargaining. It concluded that "[h]ad the Legislature intended to exempt NRS 388G.610(2)(a) from the provisions of NRS 288.150, it could have stated so." The EMRB also added "should the Legislature want[ed] to create a specific exception or carve out, they are free to do so." However, because the Legislature failed to do so, the EMRB concluded that it cannot "presume the Legislature intended to do so and instead must follow the plain and unambiguous language of [NRS Chapter 288]." The EMRB opined that NRS 388G.610(2)(a) is plain and unambiguous: the authority to select teachers, administrators and other staff was TRANSFERRED from the superintendent of the CCSD to the each local school precinct. This was interpreted as "transferring that authority [i.e. authority to select the teacher] in all respects including still being subject to bargaining obligations." Thus, NRS 388G.610(2)(a) was interpreted as the transfer of the existing authority, which was subject to negotiations the rights were not "meant to be stropped upon that transfer." Citing to NRS 388G.700(2), where the principal is required to select staff from a list provided by the superintendent, the EMRB ruled that it was "clear the Legislature did not provide for the local school precincts to have unlimited authority and an unfettered right."

In its ruling date December 23, 2020, the EMRB stayed the case pending this Courts review and analysis of NRS 388G.

Under NRS 34.1670, writ of mandamus shall be issued "where there is not a plain, speedy and adequate remedy in the ordinary course of law." Mandamus is an extraordinary remedy and cannot control discretionary action, unless the discretion is manifestly abused or exercised arbitrarily or capriciously. *Mineral Cnty. v. State, Dept' of Conserv.*, 117 Nev. 235, 20 P.3d 800 (2001). Similarly, under NRS 34.330, writ of prohibition shall only be issued "where there is not a plain, speedy and adequate remedy in the ordinary course of law." Prohibition is to prevent courts from transcending the limits of their jurisdiction in the exercise of judicial power. *Mineral Cnty. v. State, Dept' of Conserv.*, 117 Nev. 235, 20 P.3d 800 (2001).

The Court FINDS and CONCLUDES that the CCASAPTE's argument that NRCP 12(b)(5) motions are procedurally defective cannot be accepted. NRCP 12(b)(5) motion must be filed before a filing the responsive pleading. The CCASAPTE cites to NRCP 7(a), which defines "pleadings" as (1) complaint, (2) answer to a complaint, (3) answer to a counterclaim, (4) answer to a crossclaim, (5) third-party complaint, (6) answer to a third-party complaint, and (7) if the court orders one, a reply to an answer. Thus, technically, petition for writ of prohibition or writ of mandamus and response to the petition does not fall under NRCP 7(a). However, the Advisory Committee Note to 2019 Amendment to Rule 3 states that the term "complaint" includes "a petition or other document that initiates a civil action." Thus, it reasons that a response to petition would also be defined as a pleading under NRCP 7(a). Thus, the Court has the jurisdiction to rule on the NRCP 12(b)(5) motions.

The Court FINDS and CONCLUDES that although the CCSD and Jara argue that the petition is now moot because the teacher lottery is no longer in use, this argument cannot be accepted. Placement of teachers from the disputed teacher lottery in the current school precincts makes the purported harm from the disputed teacher lottery ongoing. Furthermore, the teacher lottery system was voluntarily withdrawn, not ordered to be discontinued. Thus, matter is not moot.

The Court FINDS and CONCLUDES that the argument that the CCASAPTE should be required to exhaust the administrative remedies also cannot be accepted. The applicable administrative agency, the EMRB, has already ruled that its jurisdiction is limited to hearing, determining, or interpreting the disputes that arises out of NRS 288. Thus, the EMRB cannot make a determination as to whether there was a violation of NRS Chapter 388G or if NRS 388G.610 impacted the collective bargaining agreements between the CCSD and CCASAPTE, CCEA or ESEA. Thus, the EMRB correctly deferred the ruling as to NRS 388G.610 to this Court. Thus, the CCASAPTE has the standing to seek a writ of prohibition or mandamus.

The Court FINDS and CONCLUDES that the argument that the CCASAPTE must also exhaust its contractual remedies under its own collective bargaining agreement is irrelevant to the dispute over NRS Chapter 388G.

The Court FINDS and CONCLUDES that this Court is not bound by the analysis and conclusions by the EMRB or the Nevada Attorney General as to whether NRS 388G.610 and NRS 288.150 can be read harmoniously. However, a review of the statutes and relevant case laws also indicates to this Court agrees with their analysis that NRS 388G.610 and NRS 288.150

The Court FINDS and CONCLUDES that even if the Court reviews NRS 388G.610 in a vacuum, as the CCASAPTE urges, without considering its impact on NRS 288.150, there is insufficient rationale to grant its petition.

The Court FINDS and CONCLUDES that the declarations submitted in support of the petition are deficient. Declaration of Lori Sarabyn, Jennifer Jaeger, Antonio Rael, and Tam Larnerd (who were principals at various school precincts) all showed that they refused to make a selection from the teacher lottery system and instead wished to fill the vacant position with unlicensed substitute teachers. However, the declarations failed to sufficiently show how the declarants planned to meet their obligation under NRS 388G.610(4), which states "to the greatest extent possible, the principal shall select teachers who are licensed and in good standing before selecting substitutes to teach at the local school precinct."

The Court FINDS and CONCLUDES that the declaration of Kent Roberts, who is the principal at the Green Valley High School, shows that his school precinct was not impacted by the teacher lottery. The teacher who was placed for the school via teacher lottery retired before the school began. Thus, he could not articulate a cognizable current harm which impacted his school precinct.

The Court FINDS and CONCLUDES that the local school precincts were indeed were given the authority to select teachers, administrators and other staff under NRS 388G.610(2)(a). However, this authority was not unlimited. Each local school precinct only enjoys authority that was transferred from the superintendent of the CCSD. NRS 388G.610(2)(a) uses the word "select". The memorandum to the school principals from Nadine Jones, Chief Human Resources Officer for the CCSD, dated July 13, 2020, gave the principals with vacant positions within their local school precincts a list of licensed teachers, provided the principals with a notice and opportunity to interview and select teachers for their vacant positions and the principals were to SELECT the teacher for the vacant position. Thus, the teacher lottery used

did not violate the plain language of NRS 388G.610(2)(a).

The Court FINDS and CONCLUDES that at the hearing, the CCASAPTE's counsel appeared to have argued that the choice offered in the teacher lottery was a Hobson's choice. However, there was insufficient evidence presented in the pleadings in support of such allegation. Thus, even at a motion to dismiss stage, the Court cannot accept this argument.

The Court FINDS and CONCLUDES that based on the allegations made in the Petition, the CCASAPTE failed to make a sufficient showing under NRS 34.1670 and 34.330 that there is not a plain, speedy and adequate remedy in the ordinary course of law. Specifically, there was insufficient showing that Respondents CCSD and Jara manifestly abused or exercised their discretion arbitrarily or capriciously in the use of the teacher lottery or that they transcended the limits of their authority. Petitioner failed to meet the heavy burden of NRS 34.1670 and 34.330. Accordingly, Respondents and Intervenors' respective motions to dismiss should be granted. However, the Court must note that the facts of the Petition evolved tremendously over the course of this case and should the Petitioner, based on the recent factual allegations, seeks to file a complaint for declaratory relief and/or injunction, it is free to do so.

The COURT ORDERS that Respondents' and Intervenors' respective motions shall be GRANTED.

Counsel for the Respondents CCSD and Jara is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. All other counsels are to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 14 days consistent with AO 21-03 and EDCR 7.21.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 05/20/21