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JENKINS & CARTER
ATTORNEYS AT LAW
501 Hammill Lane
Reno, Nevada 89511-1004
(775) 829-7800 Fax (775) 829-0511

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

JOHN LAPOINTE; JOHN P. BYRNE; TED
J. HERZCHEL; GENE MOWREY; AND
JAMES LEONARD,

Case No. 3:08-cv-00225-LRH-RAM

Plaintiffs,

vs.

**ORDER GRANTING JOINT MOTION
FOR CONDITIONAL
CERTIFICATION OF CLASS,
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AGREEMENT,
AND APPROVAL OF NOTICE TO
CLASS MEMBERS**

The ELECTRICAL WORKERS PENSION
TRUST FOR NORTHERN NEVADA; THE
TRUSTEES of the ELECTRICAL
WORKERS PENSION TRUST FOR
NORTHERN NEVADA, FRAN
McDERMOTT, MATT FRAZER, ROBERT
MUELLER, STEVEN COMBS, RAOUL
DOUCETTE, and JOHN SEYMOUR; and
DOES 1 -100;

Defendants.

AND RELATED ACTIONS

This matter comes before the Court on the Joint Motion for Conditional Certification of
Class, Preliminary Approval of Class Settlement Agreement, and Approval of Notice to Class

1 Members (#38) (the “Motion”) filed by Plaintiffs John LaPointe, John P. Byrne, James Leonard,
2 Ted J. Herzchel, and Gene Mowrey (collectively, “Plaintiffs”) and Defendants The Electrical
3 Workers Pension Trust for Northern Nevada (the “Trust”), and the Trustees of the Electrical
4 Workers Pension Trust for Northern Nevada, Fran McDermott, Matt Frazer, Robert Mueller,
5 Steven Combs, Raoul Doucette, and John Seymour (collectively, “Defendants”). Plaintiffs
6 appeared by and through their counsel, Nathan M. Jenkins, Esq. and Jerry C. Carter, Esq., of
7 Jenkins & Carter, Jonathan J. Whitehead, Esq., of Whitehead & Whitehead, and Joseph A.
8 Garofolo, Esq., of ERISA Law Partners, LLP. Defendants appeared through their counsel,
9 Jeffrey N. Clayton, Esq., of Callister, Nebeker & McCullough, and Mark H. Lipton, Esq., of
10 Neyhart, Anderson, Flynn & Grosboll. The Court has reviewed and considered the moving
11 papers and exhibits thereto. In addition, the Court considered the evidence and argument of the
12 parties. Based upon said consideration, and for the reasons set forth below and during the
13 October 15, 2009 hearing, it is:

14 ORDERED that the Motion is granted, and:

15 (1) This action brought under the Employee Retirement Income Security Act of 1974,
16 as amended (“ERISA”), is conditionally certified as a class action under Fed. R. Civ. P. 23(b)(1)
17 and Fed. R. Civ. P. 23 (e);

18 (2) The class of persons described in paragraph 24 of Plaintiffs’ First Amended
19 Complaint is hereby conditionally certified as the Class pursuant to Fed. R. Civ. P. 23(b)(1);

20 (3) The “Class” is defined as all persons living as of December 31, 2008 who are
21 vested annuitants, joint and survivor annuitants, defined contribution plan participants, and /or
22 former defined contribution plan participants of the Trust, or their designated beneficiaries if
23 such vested annuitants, joint and survivor annuitants, defined contribution plan participants,
24 and/or former defined contribution plan participants of the Trust are deceased on or after
25 December 31, 2008; however, the Class does not include any individual on whose behalf all
26 contributions made to the Trust were transferred to another ERISA trust pursuant to a reciprocity
27 agreement;

28 (4) The named Plaintiffs, John LaPointe, John P. Byrne, James Leonard, Ted J.

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1 Herzchel, and Gene Mowrey, are hereby conditionally certified as representatives of the Class
2 and their counsel of record is hereby certified as counsel for the Class;

3 (5) The proposed Class Action Settlement Agreement attached to the Motion as
4 Exhibit A is preliminarily approved as it is within the range of possible approval sufficient to
5 warrant the conditional certification of the settlement Class, the scheduling of the final approval
6 hearing, and the circulation of notice to the Class, each as provided for in this Order, and, further,
7 it appears to have been achieved in good faith after arms-length negotiations;

8 (6) The form of the Notice of Proposed Class Action Settlement (the "Notice")
9 attached to the Motion as Exhibit B is hereby approved, as revised to reflect the final hearing date
10 and other dates set forth below, and the Trust is authorized and directed to mail the Notice to all
11 members of the Class; and

12 (7) The Trust shall mail the Notice to Class members via first class mail on or before
13 November 6, 2009. The last day for filing objections to the Motion shall be January 15, 2010.
14 The moving papers in support of final approval of the settlement and application for attorneys'
15 fees and costs and incentive awards shall be filed on or before January 25, 2010. A final
16 approval hearing on the Motion is set for February 25, 2010, at the time of 9:30 a.m.


17 DATED: October 20, 2009.



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21 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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23 SUBMITTED October 19, 2009

24 JENKINS & CARTER

25 By: 
26 Nathan M. Jenkins, Esq.
27 Jerry C. Carter, Esq.
28 Counsel for Plaintiffs

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Approve Disapprove

Approve Disapprove

WHITEHEAD & WHITEHEAD

**CALLISTER NEBEKER &
McCULLOUGH**

By: /s/ Jonathan J. Whitehead
Jonathan J. Whitehead, Esq.
and
ERISA LAW PARTNERS, LLP
Joseph A. Garofolo, Esq.
Counsel for Plaintiffs

By: /s/ Jeffrey N. Clayton
Jeffrey N. Clayton, Esq.
and
**NEYHART, ANDERSON, FLYNN
& GRSBOLL**
Mark H. Lipton, Esq.
Counsel for Defendants

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