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Electronically Filed
Sep 12 2016 03:25 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Attorneys for Appellant
Bombardier Transportation (Holdings) USA, Inc.

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOMBARDIER
TRANSPORTATION
(HOLDINGS) INC.,

Appellant,

vs.

NEVADA LABOR
COMMISSIONER; THE
INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS; and
CLARK COUNTY,

Respondents.

Supreme Court No.: 71101

District Court No.: A-14-698764-J

**APPELLANT/PETITIONER'S
DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement pursuant to NRAP 14(a). The purposes of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for *en banc*, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time pursuant to NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This Court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 240, 344, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Judicial District of the State of Nevada

Department: 15

County: Clark

Judge: Joe Hardy

District Court Case No.: A-14-698764-J

2. Attorney(s) filing this docketing statement:

Attorney: Paul T. Trimmer

Telephone: (702) 921-2460

Firm: Jackson Lewis P.C.

Address: 3800 Howard Hughes Parkway, Las Vegas, Nevada 89169

Client(s): Bombardier Transportation (Holdings) Inc.

3. Attorney(s) representing respondents:

Attorney: Robert E. Werbicky, Esq. and Adam Paul Laxalt, Esq.

Telephone: (775) 684-1218

Firm: Bureau of Business and State Services

Address: 100 North Carson Street, Carson City, Nevada 89701

Client(s): Nevada Office of the Labor Commissioner

Attorney: Richard G. McCracken, Esq. and Andrew J. Kahn, Esq.

Telephone: (702) 386-5107

Firm: McCracken, Stemerma & Holsberry

Address: 1630 South Commerce, Suite A-1, Las Vegas, Nevada 89102

Client(s): International Union of Elevator Constructors

Attorney: E. Lee Thompson, Esq.

Telephone: (702) 455-4761

Firm: Chief Deputy District Attorney

Address: 500 South Grand Central Parkway, 5th Floor, Las Vegas,
Nevada 89155

Client(s): Clark County

4. Nature of disposition below:

Review of agency determination.

Petitioner's Petition for Judicial Review was Denied.

5. Does this appeal raise issues concerning any of the following (Child custody, venue, termination of parental rights)?

No.

6. Pending and prior proceedings in this court:

None.

7. Pending and prior proceedings in other courts:

None other than the proceeding which forms the basis of the instant appeal and identified in Section 1 of this Docketing Statement.

8. Nature of the action:

Petitioner sought judicial review of a final decision of the Nevada Labor Commissioner dated March 6, 2014, holding that the maintenance contract for the Automated Transit System at McCarran International Airport, (Contract identified as CBE-552), is a public works project subject to NRS Chapter 338's prevailing wage requirements, and that certain work performed under its terms must be compensated at prevailing wage rates. The district court upheld the Labor Commissioner's decision.

9. Issues on appeal:

a. Whether the Labor Commissioner's conclusion that the work performed pursuant to CBE-552 is a "project" within the meaning of NRS 338.010(16) should be vacated because it is contrary to the plain meaning of the statute and not supported by substantial evidence.

b. Whether the Labor Commissioner's conclusion that CBE-552 is not directly related to the normal operation of the Airport because it is possible for the Airport to "function" without the automated train system, and that NRS 338.011(1) therefore does not apply, should be vacated because it is both contrary to the plain meaning of the statute and not supported by substantial evidence.

c. Whether the Labor Commissioner's conclusion that CBE-552 is not directly related to the normal maintenance of the Airport, and that NRS 338.011(1) therefore does not apply, should be vacated because it is both contrary to the plain meaning of the statute and not supported by substantial evidence.

d. Whether the Labor Commissioner's determination that Bombardier is not a "railroad company" and therefore exempt under NRS 338.080, despite the fact that more than 50% of its revenue is derived from the manufacture, operation and/or sale of railroad vehicles and railroad equipment, should be vacated because it is contrary to the plain meaning of the statute and not supported by substantial evidence.

10. Pending proceedings in this Court raising the same or similar issues:

None.

11. Constitutional issues:

None.

12. Other issues:

- a. A substantial issue of first impression; and
- b. An issue of public policy.

13. Assignment to the Court of Appeals or retention in the Supreme Court.

Pursuant to NRAP 17(b)(4), this case is presumptively assigned to the Court of Appeals.

14. Trial:

N/A

15. Judicial disqualification:

Petitioner does not desire judicial disqualification.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or Order appealed from:

The District Court's Findings of Fact, Conclusions of Law and Order affirming the Labor Commissioner's March 6, 2014 Order was filed on dated July 11, 2016.

17. Date written Notice of entry of judgment or order was served:

Notice of Entry of Order was served on July 19, 2016 via electronic service.

18. If the time for filing of the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59):

N/A.

19. Date Notice of Appeal filed:

District Court: August 16, 2016

Supreme Court: August 23, 2016

20. Specify statute or rule governing the time limit for filing the Notice of Appeal, e.g., NRAP 4(a) or other:

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

a. NRS 233B.150 and NRAP 3A(b)(1).

b. Explain how each authority provides a basis for appeal from the judgment or order:

1) NRS 233B.150 provides that an “[a]n aggrieved party may obtain a review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction

pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution. The appeal shall be taken as in other civil cases.”

- 2) To the extent that an order denying a Petition for Judicial Review is a “final judgment” as the term is used in NRAP 3A(b)(1), and not otherwise preempted by NRS 233B.150, NRAP3A(b)(1) also provides jurisdiction.

22. List all parties involved in the action or consolidated actions in the District Court:

a. Parties:

1) Petitioner:

- i. Bombardier Transportation (Holdings) USA, Inc.

2) Respondents:

- i. Nevada Labor Commissioner;
- ii. The International Union of Elevator Constructors; and
- iii. Clark County.

- b. If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g. formally dismissed, not served, or other:

All parties in the district court are parties hereto.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim:

a. Petitioner: Review of Agency Determination

b. Respondents: None

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes

25. If you answer "No" to question 24, complete the following:

N/A

26. If you answered "No" to any part of question 25, please explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

a. The latest-filed complaint, counterclaims, cross-claims, and third-party claims:

Exhibit 1 - Petitioner's Petition for Judicial Review

b. Any tolling motion(s) and order(s) resolving tolling motion(s):

N/A

- c. Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal:

N/A

- d. Any other order challenged on appeal:

Exhibit 2 – Findings of Fact, Conclusion of law and Order entered on July 11, 2016, Denying Petitioner’s Petition for Judicial Review and upholding Respondent’s Nevada Labor Commissioner’s decision of March 6, 2014.

Exhibit 3 – Office of the Labor Commissioner’s Decision of March 6, 2014.

- e. Notices of entry for each attached order:

Exhibit 4 – Notice of Entry of Order filed July 19, 2016 – Findings of Fact, Conclusion of law and Order entered on July 11, 2016, Denying Petitioner’s Petition for Judicial Review.

VERIFICATION

I declare under penalty of perjury that I have read this Docketing statement, that the information provided in this Docketing Statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this Docketing Statement.

Name of Appellant: Bombardier Transportation (Holdings) USA, Inc.

Date: September 12, 2016

State and County Where Signed: Nevada, County of Clark

Name of Counsel of Record: Paul T. Trimmer

JACKSON LEWIS P.C.

A handwritten signature in dark ink, appearing to read 'G. C. Moss', is written over a horizontal line.

GARY C. MOSS, ESQ.

Nevada Bar No. 4340

PAUL T. TRIMMER, ESQ.

Nevada Bar No. 9291

3800 Howard Hughes Parkway

Suite 600

Las Vegas, Nevada 89169

Attorneys for

Appellants/Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Jackson Lewis P.C., and that on this 12th day of September, 2016, I caused to be served via the Nevada Supreme Court's electronic filing and service system, a true and correct copy of the above foregoing **APPELLANT'S DOCKETING STATEMENT** to the following:

<p>Robert E. Werbicky, Esq. Deputy Attorney General mflatley@ag.nv.gov Adam Paul Laxalt, Esq. Bureau of Business and State Services Business and Taxation Division 100 North Carson Street Carson, City, Nevada 89701 (775) 684-1218 (office) (775) 684-1156 (facsimile) <i>Attorneys for State of Nevada Office of the Labor Commissioner</i></p>	<p>Richard G. McCracken, Esq. rmccracken@dcbsf.com Andrew J. Kahn, Esq. ajk@dcbsf.com McCracken, Stemerman & Holsberry 1630 South Commerce Street Suite A-1 Las Vegas, Nevada 89102 (702) 386-5107 (office) (702) 386-9848 (facsimile) <i>Attorneys for The International Union of Elevator Constructors</i></p>
<p>E. Lee Thompson, Esq. e.thomson@clarkcountyda.com Chief Deputy District Attorney 500 South Grand Central Parkway 5th Floor Las Vegas, Nevada 89155 (702) 455-4761 (office) (702) 455-4771 (facsimile) <i>Attorneys for Clark County</i></p>	<p>Ara H. Shirinian, Esq. 10651 Capesthorne Way Las Vegas, Nevada 89135 <i>Supreme Court Settlement Judge</i></p>

/s/ Evelyn Jackson
Employee of Jackson Lewis P.C.