

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOMBARDIER
TRANSPORATATION
(HOLDINGS) INC.,

Appellant,

vs.

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

Respondents.

Supreme Court No.: 71101

Electronically Filed
Apr 20 2017 04:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**APPELLANT'S MOTION TO EXCEED PAGE LIMITS IN ITS
OPPOSITION TO MOTION TO DISMISS**

Appellant Bombardier Transportation (Holdings), Inc., by and through its counsel, Jackson Lewis P.C., hereby moves this Court pursuant to Rule 32(a)(7) of the Nevada Rules of Appellate Procedure ("NRAP") to exceed the page limit for its Opposition to Respondent Nevada Labor Commissioner's Motion to Dismiss the Appeal, which is being filed concurrently with this motion. This Motion is based upon the following memorandum of points and authorities and exhibits thereto.

I. MEMORANDUM OF POINTS AND AUTHORITIES

NRAP 27(d)(2) provides that a response to a motion shall not exceed 10 pages. However, NRAP 32(a)(7) allows a party to exceed the page limit with permission of the Court.

Appellant's Opposition contains 21 pages of text, which is 11 pages more than that allowed by NRAP 27(d)(2). However, good cause exists to allow the Appellant to exceed the page limit by 11 pages. This appeal arises out of a claim made by the International Union of Elevator Contractors (the "Union") that maintenance technicians who performed work for Appellant under a contract with the Clark County Department of Aviation are entitled to prevailing wage rates. The original claim was filed by the Union in 2009 and the Nevada Labor Commissioner conducted a hearing on the matter in 2014. Ultimately, the Labor Commissioner's order was challenged with the filing of a petition for judicial review in the Eighth Judicial District Court. This appeal comes from the underlying petition for judicial review heard by the District Court in the matter *Bombardier Transportation (Holdings) Inc. v. Nevada Labor Commissioner; The International Union of Elevator Constructors; and Clark County*.

In response to the appeal, Respondent Labor Commissioner filed a motion to dismiss based on the argument that this Court lacks subject matter jurisdiction because neither the Labor Commissioner nor the District Court entered a final order. In its Motion, Respondent provided a brief factual and procedural background of this matter. Given the exhaustive and lengthy nature of the administrative proceedings before the Labor Commissioner and the lengthy petition for judicial review process following the Labor Commissioner's decision that form the basis of this appeal,

Appellant believes it is vital for this Court to have a more detailed factual and procedural background when considering the merits of Respondent's Motion. The underlying hearing before the Labor Commissioner lasted 6 days and involved testimony from 16 witnesses resulting in a transcript comprised of approximately 1,150 pages. Therefore, in its Opposition, Appellant has provided a more detailed factual and procedural background for this Court to review. **Exhibit 1 – Declaration of Paul T. Trimmer at ¶ 4.** The factual and procedural background encompasses a large portion of the Opposition.

Additionally, in arguing that this Court lacks subject matter jurisdiction to hear this appeal, Respondent, in its Motion, fails to cite to the statutes and administrative code provisions that govern the Labor Commissioner hearing process. In its Opposition, Appellant has provided a thorough discussion of the applicable provisions of NRS 607, NAC 338, and NRS 233B that are vital in assessing whether this Court has subject matter jurisdiction to hear this appeal. Given Respondent's failure to cite to the applicable statutory and administrative code provisions that govern the Labor Commissioner hearing process, Appellant contends that it is imperative that it has the opportunity to completely detail the reasons why this Court has subject matter jurisdiction to hear this appeal at this time. A thorough and complete discussion of the applicable statutes and administrative

code provisions pertaining to the Labor Commissioner hearing process is vital to that discussion. **Exhibit 1 at ¶ 5.**

Given the complex and lengthy nature of the proceedings below and the multiple legal issues raised in the Opposition, 11 additional pages were necessary in order to adequately and completely explain why dismissing this appeal at this time is not supported by the applicable law and would not serve the interests of judicial economy and efficiency. Therefore, pursuant to NRAP 32(a)(7), and for good cause shown, this Court should allow the Appellant to file its Opposition to Motion to Dismiss Appeal that consists of 21 pages of text.

Dated this 20th day of April, 2017.

JACKSON LEWIS P.C.

/s/ Paul T. Trimmer
GARY C. MOSS, Bar # 4340
PAUL T. TRIMMER, Bar # 9291
3800 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

Attorneys for Appellant/Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Jackson Lewis P.C., and that on this 20th day of April, 2017, 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 MOTION TO EXCEED PAGE LIMITS IN ITS OPPOSITION TO MOTION TO DISMISS to the following:

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>	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>
E. Lee Thomson, Esq. e.thomson@clarkcountyda.com Chief Deputy District Attorney 500 South Grand Central Parkway 5 th Floor Las Vegas, Nevada 89155 (702) 455-4761 (office) (702) 455-4771 (facsimile) <i>Attorneys for Clark County</i>	

/s/ Emily Santiago
Employee of Jackson Lewis P.C.

EXHIBIT 1

EXHIBIT 1

1 **DECLARATION OF PAUL T. TRIMMER IN**
2 **SUPPORT OF APPELLANT'S MOTION TO EXCEED PAGE LIMITS IN**
3 **ITS OPPOSITION TO MOTION TO DISMISS**

4 I, Paul T. Trimmer, declare and state as follows:

5 1. I am over the age of 18 and competent to testify. The following facts
6 are based on my personal knowledge. If called as a witness, I am competent to
7 testify as to these facts. I submit this declaration in support of Appellant
8 Bombardier Transportation (Holdings) Inc.'s Motion to Exceed Page Limits in its
9 Opposition to Respondent Nevada Labor Commissioner's Motion to Dismiss the
10 Appeal.

11 2. I am an attorney at Jackson Lewis P.C. in Las Vegas, Nevada. I
12 currently represent Bombardier Transportation (Holdings) USA, Inc.
13 ("Bombardier") in the appeal filed with the Nevada Supreme Court (Case No.
14 71101). Additionally, I represented Bombardier in the proceedings conducted
15 before the Nevada Labor Commissioner ("Respondent") and the Eighth Judicial
16 District Court that underlie this appeal.

17 3. Appellant's Opposition to Respondent Nevada Labor Commissioner's
18 Motion to Dismiss the Appeal contains 21 pages of text, which is 11 pages more
19 than the limit allowed by NRAP 27(d)(2). However, good cause exists to allow the
20 Appellant to exceed the page limit.

21 4. Given the exhaustive and lengthy nature of the proceedings conducted
22 before the Nevada Labor Commissioner and the Eighth Judicial District Court in
23 the petition for the judicial review of the Labor Commissioner Order, Appellant
24 needs to provide a more comprehensive background section in its Opposition than
25 Respondent provided in its Motion. This detailed factual and procedural
26 background is integral for this Court to understand the legal issues involved in this
27 appeal in order for the Court to rule on the motion to dismiss.
28

5. Additionally, Respondent's motion fails to cite to the statutes and administrative code provisions that govern the Labor Commissioner hearing process. Appellant has provided a discussion of the applicable provisions in NRS 607, NAC 338, and NRS 233B that demonstrate that this Court has subject matter jurisdiction to hear this appeal. A thorough discussion of the applicable statutes and regulations pertaining to the hearing process conducted by the Nevada Labor Commissioner is vital to a determination of whether the Nevada Supreme Court has subject matter jurisdiction of this appeal.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 20th day of April, 2017.

/s/ Paul T. Trimmer
Paul T. Trimmer