

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOMBARDIER TRANSPORTATION  
(HOLDINGS) USA, INC.,

Appellant,

vs.

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

Respondents.

No. 71101

**FILED**

JUL 17 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER DENYING MOTION TO DISMISS*

This is an appeal from the denial of a petition for judicial review of a decision of the Nevada Labor Commissioner. Respondent Nevada Labor Commissioner has filed a motion to dismiss this appeal for lack of jurisdiction on the ground that the challenged district court order is not a final appealable judgment. Appellant has submitted an opposition to the motion and the Labor Commissioner has submitted a reply.<sup>1</sup>

Respondent International Union of Elevator Constructors (IUEC) filed a prevailing wage complaint against appellant. After IUEC and appellant filed objections to the Clark County Department of Aviation's (DOA) second amended determination in regard to the prevailing wage complaint, the matter was set for hearing before the Labor Commissioner. The Labor Commissioner issued an order wherein he determined the following: the project at issue is a public works project

---

<sup>1</sup>Cause appearing, appellant's motion to file an opposition in excess of the page limitation is granted. NRAP 27(d)(2). The clerk of this court shall file the opposition received on April 20, 2017, and the reply received on May 4, 2017.

subject to payment of a prevailing wage; technicians who performed work on the project's automated transit system (ATS) were not properly compensated; ATS technicians should have been paid the 2007-2008 prevailing wage rate for Elevator Constructors; 20% of the work performed by ATS technicians on the project must be paid at the 2007-2008 prevailing wage rate for Elevator Constructors; and the DOA shall calculate the 20% due to the ATS technicians in a manner consistent with the order and provide the calculation within 30 days. Appellant filed a petition for judicial review of the Labor Commissioner's order. The district court affirmed the Labor Commissioner's order in its entirety and remanded "solely for supervision and jurisdiction by the Labor Commissioner over the payment by [appellant] pursuant to calculation to be performed by the [DOA]" as ordered in the Labor Commissioner's decision.

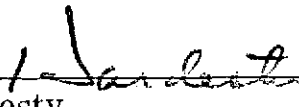
In his motion to dismiss, the Labor Commissioner initially argues that the district court lacked subject matter jurisdiction over appellant's petition for judicial review because his order was not final, as it left issues unresolved. *See Pub. Serv. Comm'n of Nev. v. Cmty. Cable TV*, 91 Nev. 32, 42-43, 530 P.2d 1392, 1398-99 (1975). We disagree. The Labor Commissioner's order found that the project was subject to payment of a prevailing wage, found that the ATS technicians should have been paid the appropriate prevailing wage for Elevator Constructors, and found that 20% of the work performed by ATS technicians on the project must be paid at the appropriate prevailing wage rate. Thus, all issues raised by the prevailing wage complaint were resolved and the order was final. The calculation of the percentage owed is a task collateral to the resolution of the issues raised.


Second, the Labor Commissioner argues that because the district court partially remanded the matter to the Labor Commissioner, this court lacks jurisdiction over the district court's order denying the petition for judicial review and affirming the Labor Commissioner's order. Again, we disagree.


In the administrative context, the use of the word "remand" does not "compel a conclusion that the order of the district court is not a final, appealable judgment," and it "does not preclude an appeal from a proper final judgment." *Bally's Grand Hotel & Casino v. Reeves*, 112 Nev. 1487, 1488, 929 P.2d 936, 937 (1996). Here, the district court's order was a final judgment as it affirmed the Labor Commissioner's order in its entirety. The remand was solely related to the calculation of the payment of the prevailing wage as ordered by the Labor Commissioner. *See e.g., Wells Fargo Bank v. O'Brien*, 129 Nev. 679, 680-81, 310 P.3d 581-82 (2013) (a district court's final judgment on the merits that "remands merely for collateral tasks, such as calculating benefits found due," is appealable).

Accordingly, we deny the Labor Commissioner's motion to dismiss and we reinstate the briefing schedule in this appeal. Appellant shall have 30 days from the date of this order to file and serve the opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.

 J.  
Hardesty

 J.  
Parraguirre

 J.  
Stiglich

cc: Jackson Lewis P.C.  
Attorney General/Carson City  
McCracken, Stemerman & Holsberry  
Attorney General/Las Vegas  
Clark County District Attorney/Civil Division