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Electronically Filed
Dec 08 2016 01:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Attorneys for Petitioner

**IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE**

HEAT & FROST INSULATORS AND ALLIED
WORKERS LOCAL 16;

Petitioner,

vs.

LABOR COMMISSIONER OF THE STATE OF
NEVADA; THE UNIVERSITY OF NEVADA,
RENO; CORE CONSTRUCTION; and RENO
TAHOE CONSTRUCTION,

Respondents.

CASE NO.: CV16-00353

DEPT. NO.: 10

NOTICE OF APPEAL

Notice is hereby given that HEAT AND FROST INSULATORS AND ALLIED
WORKERS LOCAL 16, plaintiff above named, hereby appeals to the Supreme Court of Nevada
from the order dismissing the action for lack of jurisdiction pursuant to NRCP 12(b)(1), entered in
this action on the 3rd day of November, 2016.

1 Dated: December 1, 2016

Respectfully submitted,

2 McCracken, Stemerman & Holsberry

3
4 By: 

Eric B. Myers

1630 S. Commerce Street, Suite A-1

Las Vegas, Nevada 89102

5 Tel: 702-386-5107

6 Fax: 702-386-9848

7
8 *Attorneys for Petitioner*

1 **AFFIRMATION PURSUANT TO NRS 239B.030**

2

3 The undersigned hereby affirms that this document does not contain the social security

4 number of any person.

5

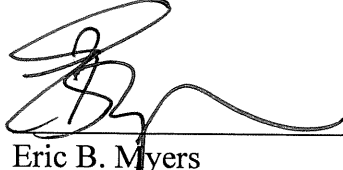
6 Dated: December 1, 2016

McCRACKEN, STEMERMAN & HOLSBERRY

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9 By:


Eric B. Myers
Attorneys for Petitioner

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCF 5(b), I certify that I am an employee of McCracken, Stemerman &
3 Holsberry, and that on the 1st day of December 2016, I served a true copy of **NOTICE OF**
4 **APPEAL** on all parties to this action by E-Filing through the E-Flex filing system addressed as
5 follows:

6 **By Electronic Service Through E-Flex:**

7
8 Bryan L. Wright
9 Assistant General Counsel
10 University of Nevada, Reno
11 1664 N. Virginia Street, MS 550
12 Reno, Nevada 89557-0550
13 *Counsel for University of Nevada, Reno*

14 Melissa L. Flatley
15 Deputy Attorney General
16 Nevada Office of the Attorney General
17 100 North Carson Street
18 Carson City, Nevada 89701
19 *Counsel for Labor Commissioner of the State of Nevada*

20 Eric D. Hone
21 DICKINSON WRIGHT PLLC
22 8363 West Sunset Road, Suite 200
23 Las Vegas, Nevada 89113-2210
24 *Counsel for Core Construction*

25 **By United States Postal Service:**

26 Michael B. Springer
27 LAW OFFICES OF MICHAEL B. SPRINGER, PC
28 9460 Double R Blvd., Suite 103
Reno, NV 89521
Counsel for Reno Tahoe Construction



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1310
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Attorneys for Petitioner

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

HEAT & FROST INSULATORS AND ALLIED
WORKERS LOCAL 16;

Petitioner,

vs.

LABOR COMMISSIONER OF THE STATE OF
NEVADA; THE UNIVERSITY OF NEVADA,
RENO; CORE CONSTRUCTION; and RENO
TAHOE CONSTRUCTION,

Respondents.

CASE NO.: CV16-00353

DEPT. NO.: 10

CASE APPEAL STATEMENT

1. The appellant filing this case appeal statement is HEAT AND FROST
INSULATORS AND ALLIED WORKERS LOCAL 16 (hereinafter "Local 16").

2. The judge who issued the order appealed from is Elliott A. Sattler, district judge of
the Second Judicial District Court in the County of Washoe.

3. Local 16 is the sole appellant. The name and address of appellant's counsel is:
Eric B. Myers and Sarah Varela of McCRACKEN, STEMERMAN & HOLSBERRY,

1 1630 S. Commerce St., Suite A-1, Las Vegas, NV 89102.

2 4. The names and addresses of appellate counsel for the respondents are unknown.
3 Respondents and their trial counsel are:

4 Bryan L. Wright
5 Assistant General Counsel
6 University of Nevada, Reno
7 1664 N. Virginia Street, MS 550
8 Reno, Nevada 89557-0550
9 *Counsel for University of Nevada, Reno*

10 Melissa L. Flatley
11 Deputy Attorney General
12 Nevada Office of the Attorney General
13 100 North Carson Street
14 Carson City, Nevada 89701
15 *Counsel for Labor Commissioner of the State of Nevada*

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20 *Counsel for Core Construction*

21 Michael B. Springer
22 LAW OFFICES OF MICHAEL B. SPRINGER, PC
23 9460 Double R Blvd., Suite 103
24 Reno, NV 89521
25 *Counsel for Reno Tahoe Construction*

26 5. All attorneys identified above are licensed to practice law in Nevada.

27 6. Appellant was represented by counsel in the district court.

28 7. Appellant is represented by counsel on appeal.

8. Appellant has not sought and will not seek leave to proceed in *forma pauperis*.

9. The proceedings commenced in the district court with the filing of a Petition for
Judicial Review on February 18, 2016.

10. The action is a petition for judicial review of a decision by the Nevada Labor
Commissioner regarding a prevailing wage issue. The petition was brought pursuant to the Nevada

1 Administrative Procedure Act, NRS 233B.130. The Labor Commissioner filed a motion to
2 dismiss, claiming that an oversight in serving a copy of the petition on the Attorney General
3 created a jurisdictional defect. The district court ruled in favor of the Labor Commissioner and
4 ordered the action dismissed pursuant to NRCP 12(b)(1). The district court's order dismissing the
5 action was entered on November 3, 2016.

6 11. This case has not previously been subject to an appeal to or original writ proceeding
7 in the Supreme Court.

8 12. This appeal does not involve child custody or visitation.

9 13. This appeal does not involve a substantial possibility of settlement.

10 Dated: December 1, 2016

Respectfully submitted,

11 McCRACKEN, STEMERMAN & HOLSBERRY

12
13 By: 

14 Eric B. Myers
15 1630 S. Commerce Street, Suite A-1
16 Las Vegas, Nevada 89102
17 Tel: 702-386-5107
18 Fax: 702-386-9848

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Attorneys for Petitioner

1 **AFFIRMATION PURSUANT TO NRS 239B.030**

2

3 The undersigned hereby affirms that this document does not contain the social security

4 number of any person.

5

6 Dated: December 1, 2016

McCRACKEN, STEMERMAN & HOLSBERRY

7

8 By: 

9 Eric B. Myers

10 *Attorneys for Petitioner*

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of McCracken, Stemerman &
3 Holsberry, and that on the 1st day of December 2016, I served a true copy of **CASE APPEAL**
4 **STATEMENT** on all parties to this action by E-Filing through the E-Flex filing system addressed
5 as follows:

6 **By Electronic Service Through E-Flex:**

7
8 Bryan L. Wright
9 Assistant General Counsel
10 University of Nevada, Reno
11 1664 N. Virginia Street, MS 550
12 Reno, Nevada 89557-0550
13 *Counsel for University of Nevada, Reno*

14 Melissa L. Flatley
15 Deputy Attorney General
16 Nevada Office of the Attorney General
17 100 North Carson Street
18 Carson City, Nevada 89701
19 *Counsel for Labor Commissioner of the State of Nevada*

20 Eric D. Hone
21 DICKINSON WRIGHT PLLC
22 8363 West Sunset Road, Suite 200
23 Las Vegas, Nevada 89113-2210
24 *Counsel for Core Construction*

25 **By United States Postal Service:**

26 Michael B. Springer
27 LAW OFFICES OF MICHAEL B. SPRINGER, PC
28 9460 Double R Blvd., Suite 103
Reno, NV 89521
Counsel for Reno Tahoe Construction



Yien San Juan

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV16-00353****Case Description: HEAT & FROST INSULATORS. VS. LABOR COMM. ETAL(D10)****Case Number: CV16-00353 Case Type: OTHER JUDICIAL REVIEW/APPEAL - Initially Filed On: 2/18/2016****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - ELLIOTT A. SATTLER - D10	Active
AG - Melissa L. Flatley, Esq. - 12578	Active
ATTY - Eric B. Myers, Esq. - 8588	Active
ATTY - Eric Hone, Esq. - 8499	Active
ATTY - Bryan L. Wright, Esq - 10804	Active
ATTY - Sarah Varela, Esq. - 12886	Active
PETR - HEAT & FROST INSULATORS AND ALLIED WORKERS LOCAL 16 - @1288749	Active
RESP - UNIVERSITY OF NEVADA, RENO - @1406	Active
RESP - CORE CONSTRUCTION - @1288747	Active
RESP - LABOR COMMISSIONER OF THE STATE OF NEVADA - @362709	Active
RESP - RENO TAHOE CONSTRUCTION - @1288748	Active

Disposed Hearings

- 1 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 5/6/2016 at 16:19:00
Extra Event Text: MOTION TO DISMISS FOR LACK OF JURISDICTION PURSUANT TO NRCP 12(b)(1)
Event Disposition: S200 - 6/30/2016
- 2 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 5/6/2016 at 13:14:00
Extra Event Text: MOTION TO DISMISS FOR LACK OF JURISDICTION PURSUANT TO NRCP 12(B)(1) FILED 04/15/16
Event Disposition: S200 - 5/9/2016
- 3 Department: D10 -- Event: HEARING... -- Scheduled Date & Time: 8/19/2016 at 10:00:00
Extra Event Text: HEARING ON MOTION TO DISMISS FOR LACK OF JURISDICTION (2 HOURS)(COURT REPORTER REQUESTED BY ALL PARTIES)
Event Disposition: D840 - 8/19/2016
- 4 Department: D10 -- Event: Request for Submission -- Scheduled Date & Time: 8/19/2016 at 11:01:00
Extra Event Text: (MOTION TO DISMISS TAKEN UNDER ADVISEMENT AT THE CONCLUSION OF THE HRG ON 8/19/16.)
Event Disposition: S200 - 11/3/2016

Actions

- | | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|---|--------------------|----------|--|
| 1 | 2/18/2016 | - | \$3550 - \$Pet for Judicial Review
Additional Text: Transaction 5374064 - Approved By: MCHOLICO : 02-18-2016:09:57:08 |
| 2 | 2/18/2016 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of \$260.00 was made on receipt DCDC530718. |
| 3 | 3/18/2016 | - | 1067 - Affidavit of Service
Additional Text: SERVED STACEY NEVE OBO RENO TAHOE CONSTRUCTION ON 3/17/16 |

Report Does Not Contain Sealed Cases or Confidential Information

- 22 4/26/2016 - 2645 - Opposition to Mtn ...
Additional Text: PETITIONER'S OPPOSITION TO MOTION TO DISMISS - Transaction 5485497 - Approved By: YVILORIA : 04-26-2016:14:37:22
- 23 4/26/2016 - 1520 - Declaration
Additional Text: DECLARATION OF SARAH VARELA IN SUPPORT OF PETITIONER'S MOTION FOR EXTENSION OF TIEM TO SERVE PETITION - Transaction 5485497 - Approved By: YVILORIA : 04-26-2016:14:37:22
- 24 4/26/2016 - 2075 - Mtn for Extension of Time
Additional Text: MOTION FOR EXTENSION OF TIME TO SERVE PETITION - Transaction 5485497 - Approved By: YVILORIA : 04-26-2016:14:37:22
- 25 4/26/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5485531 - Approved By: NOREVIEW : 04-26-2016:14:39:23
- 26 4/27/2016 - 1067 - Affidavit of Service
Additional Text: OFFICE OF THE ATTORNEY GENERAL OF NEVADA ON 04/25/16 - Transaction 5488299 - Approved By: SWOLFE : 04-27-2016:16:43:52
- 27 4/27/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5488318 - Approved By: NOREVIEW : 04-27-2016:16:44:40
- 28 5/6/2016 - 3790 - Reply to/in Opposition
Additional Text: Reply to Motion to Dismiss for Lack of Jurisdiction Pursuant to NRCP 12(b)(1) - Transaction 5504163 - Approved By: MCHOLICO : 05-06-2016:16:12:24
- 29 5/6/2016 - 3860 - Request for Submission
Additional Text: MOTION TO DISMISS FOR LACK OF JURISDICTION PURSUANT TO NRCP 12(b)(1) - Transaction 5504163 - Approved By: MCHOLICO : 05-06-2016:16:12:24
PARTY SUBMITTING: MELISSA FLATELY, ESQ.
DATE SUBMITTED: 05/06/16
SUBMITTED BY: MCHOLICO
DATE RECEIVED JUDGE OFFICE:
- 30 5/6/2016 - 3860 - Request for Submission
Additional Text: MOTION TO DISMISS FOR LACK OF JURISDICTION PURSUANT TO NRCP 12(B)(1) FILED 04/15/16 - Transaction 5504171 - Approved By: SWOLFE : 05-06-2016:15:08:08
PARTY SUBMITTING: MELISSA L. FLATLEY, DAG
DATE SUBMITTED: 05/16/16
SUBMITTED BY: SWOLFE
DATE RECEIVED JUDGE OFFICE:
- 31 5/6/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5504231 - Approved By: NOREVIEW : 05-06-2016:15:09:04
- 32 5/6/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5504545 - Approved By: NOREVIEW : 05-06-2016:16:13:21
- 33 5/9/2016 - S200 - Request for Submission Complet
Additional Text: FILED TWICE
- 34 5/13/2016 - 2645 - Opposition to Mtn ...
Additional Text: Opposition to Motion to Enlarge Time - Transaction 5514054 - Approved By: CSULEZIC : 05-13-2016:10:09:07
- 35 5/13/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5514273 - Approved By: NOREVIEW : 05-13-2016:10:10:08
- 36 6/30/2016 - 3347 - Ord to Set
Additional Text: ORDER TO SET ORAL ARGUMENT ON MOTION TO DISMISS FOR LACK OF JURISDICTION - Transaction 5589352 - Approved By: NOREVIEW : 06-30-2016:15:21:52

- 37 6/30/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5589355 - Approved By: NOREVIEW : 06-30-2016:15:22:52
- 38 6/30/2016 - S200 - Request for Submission Complet
Additional Text: SET HEARING
- 39 7/7/2016 - 1250E - Application for Setting eFile
Additional Text: FOR HEARING ON MOTION TO DISMISS FOR LACK OF JURISDICTION SET FOR AUGUST 19, 2016, AT 10:00 A.M. -
Transaction 5598399 - Approved By: NOREVIEW : 07-07-2016:15:36:14
- 40 7/7/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5598406 - Approved By: NOREVIEW : 07-07-2016:15:37:16
- 41 8/19/2016 - MIN - ***Minutes
Additional Text: 8/19/16 - HRG ON MOTION TO DISMISS - Transaction 5667951 - Approved By: NOREVIEW : 08-19-2016:11:22:04
- 42 8/19/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5667959 - Approved By: NOREVIEW : 08-19-2016:11:23:23
- 43 9/6/2016 - 4185 - Transcript
Additional Text: 8/19/16 Motion to Dismiss - Transaction 5692375 - Approved By: NOREVIEW : 09-06-2016:07:42:06
- 44 9/6/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5692376 - Approved By: NOREVIEW : 09-06-2016:07:43:06
- 45 11/3/2016 - 3105 - Ord Granting ...
Additional Text: ORDER GRANTING MOTION TO DISMISS FOR LACK OF JURISDICTION PURSUANT TO NRCP 12(b)(1)-PETITION FOR
JUDICIAL REVIEW IS DISMISSED - Transaction 5789801 - Approved By: NOREVIEW : 11-03-2016:14:18:53
- 46 11/3/2016 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 47 11/3/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5789805 - Approved By: NOREVIEW : 11-03-2016:14:19:43
- 48 12/1/2016 - 1310 - Case Appeal Statement
Additional Text: Transaction 5832550 - Approved By: PMSEWELL : 12-01-2016:16:20:24
- 49 12/1/2016 - \$2515 - \$Notice/Appeal Supreme Court
Additional Text: Transaction 5832550 - Approved By: PMSEWELL : 12-01-2016:16:20:24
- 50 12/1/2016 - 2520 - Notice of Appearance
Additional Text: ERIC MEYERS, ESQ. FOR HEAT & FROST INSULATORS AND ALLIED WORKERS LOCAL 16 - Transaction 5832552 -
Approved By: PMSEWELL : 12-02-2016:08:34:56
- 51 12/1/2016 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$34.00 was made on receipt DCDC559680.
- 52 12/1/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5832586 - Approved By: NOREVIEW : 12-01-2016:16:23:11
- 53 12/2/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5832955 - Approved By: NOREVIEW : 12-02-2016:08:38:01
- 54 12/5/2016 - SAB - **Supreme Court Appeal Bond

Additional Text: Bond ID: SAB-16-00063; Total Bond Amount: \$500.00.

Bond Code, SAB, Receipted for: SITE DEFINED TRUST DEPOSIT, on 05-DEC-2016 in the amount of \$500.00 on case ID CV16-00353.

55 12/5/2016 - 1350 - Certificate of Clerk

Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 5835841 - Approved By: NOREVIEW
: 12-05-2016:11:30:59

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

* * *

HEAT & FROST INSULATORS and
ALLIED WORKERS LOCAL 16,

Petitioners,

Case No.: CV16-00353

vs.

Dept. No.: 10

LABOR COMMISSIONER OF THE STATE
OF NEVADA; THE UNIVERSITY OF NEVADA,
RENO; CORE CONSTRUCTION; and RENO TAHOE
CONSTRUCTION,

Respondents.

ORDER

Presently before the Court is a MOTION TO DISMISS FOR LACK OF JURISDICTION PURSUANT TO NRCP 12(b)(1) ("the Motion"). The Motion was filed by Respondent LABOR COMMISSIONER OF THE STATE OF NEVADA ("the Commissioner") on April 15, 2016. Respondent UNIVERSITY OF NEVADA, RENO ("UNR") filed UNIVERSITY OF NEVADA, RENO'S JOINDER IN LABOR COMMISSIONER'S MOTION TO DISMISS FOR LACK OF JURISDICTION PURSUANT TO NRCP 12(b)(1) ("UNR's Joinder") on April 19, 2016. Respondent CORE CONSTRUCTION ("Core") filed RESPONDENT CORE CONSTRUCTION'S JOINDER TO RESPONDENT LABOR COMMISSIONER OF THE STATE OF NEVADA'S MOTION TO DISMISS ("Core's Joinder") on April 22, 2016. Petitioner HEAT & FROST INSULATORS AND ALLIED WORKERS LOCAL 16 ("the Petitioner") filed PETITIONER'S OPPOSITION TO MOTION TO DISMISS ("the Opposition") on April 26, 2016. The Commissioner filed the REPLY TO MOTION TO DISMISS FOR LACK OF JURISDICTION

1 PURSUANT TO NRCP 12(b)(1) (“the Reply”) on May 6, 2016, and contemporaneously submitted
2 the matter for the Court’s consideration. The Court heard oral argument on the Motion on August
3 19, 2016. This ORDER follows.

4 The Petitioner filed a PETITION FOR JUDICIAL REVIEW (“the PJR”) on February 18,
5 2016. The PJR seeks review, “of the final administrative determination by the Labor Commissioner
6 concerning the prevailing wage determination by [UNR] about prevailing wages for the installation
7 of Gilsulate insulation by [Core] and Reno Tahoe Construction.” The PJR 1:21-23.¹ The Motion
8 argues the Court must dismiss the PJR because the Court lacks jurisdiction over the proceedings due
9 to a failure to serve the appropriate parties. It is alleged the Petitioner failed to serve the Nevada
10 Attorney General (“the AG”) within the statutory 45 days mandated by NRS 233B.130(5), as
11 amended by the 2015 session of the Nevada Legislature.² The Motion contends the Court has never
12 been vested with jurisdiction over these proceedings given this procedural defect. The Opposition
13 does not dispute the AG was not timely served.³ The Opposition contends The Petitioner was
14 unaware of its responsibility to serve the AG given the recent passage of AB 53 and its lack of
15 publication; therefore, the procedural deficiency should be overlooked.⁴ The Opposition offers no
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20 ¹ RENO TAHOE CONSTRUCTION (“RTC”) is a named Respondent in these proceedings. It has been served with the
21 PJR. *See generally* AFFIDAVIT OF SERVICE filed March 18, 2016. RTC has failed to take any action regarding the
22 PJR.

23 ² AB 53, ch. 160, § 9, 2015 Nev. Stat. 709.

24 ³ The PJR had to be served on the AG by the close of business on April 4, 2016. *See generally* NRCP 6. It was not.
25 The Petitioner served the AG on April 25, 2016, well after the 45 day period prescribed in NRS 233B.130(5). *See*
26 AFFIDAVIT OF SERVICE ON OFFICE OF THE ATTORNEY GENERAL, NEVADA filed April 27, 2016. The
27 Petitioner filed a MOTION FOR EXTENSION OF TIME TO SERVE PETITION (“the Motion for Extension”) on
April 26, 2016. The Commissioner filed its OPPOSITION TO MOTION TO ENLARGE TIME (“the Opposition to
Extension”) on May 13, 2016. The Petitioner did not file a reply brief and the Motion for Extension was never
submitted to the Court for consideration; therefore, it will not be considered by the Court in deciding the issue raised in
the Motion. WDCR 12(4).

28 ⁴ The amendments to NRS 233B.130 became effective July 1, 2015. AB 53, ch. 160, § 28, 2015 Nev. Stat. 722.

1 authority to support the lack of publication argument. The Court finds the Opposition unpersuasive.
2 The Motion must be granted.

3 A district court does not have inherent authority to consider petitions for judicial review.
4 “Generally, ‘[c]ourts have no inherent appellate jurisdiction over official acts of administrative
5 agencies except where the legislature has made some statutory provisions for judicial review.’ Thus,
6 ‘[w]hen the legislature creates a specific procedure for review of administrative agency decisions,
7 such procedure is controlling.’” *Washoe County v. Otto*, 128 Nev. Adv. Op. 40, 282 P.3d 719, 724
8 (2012) (citing *Crane v. Continental Telephone*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989)). The
9 Nevada Legislature (“the Legislature”) enacted the Nevada Administrative Procedures Act (“the
10 APA”) to guide courts in determining when their appellate jurisdiction may be invoked. The
11 requirements of the APA are mandatory, and require strict compliance.⁵ The parties do not dispute
12 NRS 233B.130 is the statute that confers jurisdiction in the Court pursuant to the APA.

13 NRS 233B.130(2), as enacted at the time of the filing of the PJR, mandated four conditions
14 precedent to invoke the Court’s appellate review authority. The PJR was required to:

- 15 (a) Name as respondents the agency and all parties of record to the administrative
16 proceeding;
 - 17 (b) Be instituted by filing a petition in the district court in and for Carson City, in and for the
18 county in which the aggrieved party resides or in and for the county where the agency
19 proceeding occurred;
 - 20 (c) Be served on the Attorney General, or his designee, and the person serving in the office
21 of administrative head of the agency; and
 - 22 (d) Be filed within 30 days after service of the final decision of the agency.
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27 ⁵ “[A] court’s requirement for strict or substantial compliance may vary depending on the specific circumstances. In
28 general, ‘time and manner’ requirements are strictly construed, whereas substantial compliance may be sufficient for
‘form and content’ requirements.” *Einhorn v. BAC Home Loan Servicing, LP*, 128 Nev. Adv. Op. 61, 290 P.3d 249,
254 (2012) (citing *Leven v. Frey*, 123 Nev. 399, 407, 168 P.2d 712, 717 (2007)).

1
2 The Supreme Court of Nevada (“the Supreme Court”) has held failure to strictly comply with
3 conditions (a), (b), or (d) results in a failure to confer jurisdiction on a district court. These failures
4 have mandated dismissal of a petition for judicial review. *See generally Otto*, 128 Nev. Adv. Op.
5 40, 282 P.3d at 726 (failure to strictly comply with NRS 233B.130(2)(a) mandates dismissal of
6 petition for judicial review); *Liberty Mutual v. Thomasson*, 130 Nev. Adv. Op. 4, 317 P.3d 831
7 (2014) (failure to strictly comply with NRS 233B.130(2)(b) mandates dismissal of petition for
8 judicial review); *Bing Construction v. State of Nevada, Department of Taxation*, 107 Nev. 630, 632,
9 817 P.2d 710, 711 (1991) (finding NRS 233B.130(2)(d) is “jurisdictional in nature and designed to
10 place limits on the substantive rights of parties to seek review in a civil action commenced before an
11 agency...”)⁶ and *Civil Serv. Comm’n v. Second Judicial Dist. Court*, 118 Nev. 186, 189, 42 P.3d 268,
12 271 (2002). The *Otto* Court held, “[w]hen a party seeks judicial review of an administrative
13 decision, strict compliance with the statutory requirements for such review is a precondition to
14 jurisdiction by the court of judicial review,’ and ‘[n]oncompliance with the requirements is grounds
15 for dismissal.’” *Otto*, 282 P.3d at 725 (citing *Kame v. Emp’t Sec. Dep’t*, 105 Nev. 22, 25, 769 P.2d
16 66, 68 (1998)). The *Otto* Court further held the term “must” in NRS 233B.130(2) applies to all
17 conditions of the statute. *Id.*, 282 P.3d at 725.

18
19 *Otto* had been the law for approximately 33 months when the Legislature amended NRS
20 233B.130 to add the requirement the AG must be served. It must be assumed the Legislature knew
21 of, and agreed with, the Supreme Court’s interpretation of NRS 233B.130 when it added the service
22 of the AG requirement. *See City of Las Vegas Downtown Redevelopment Agency v. Crockett*, 117
23 Nev. 816, 825 fn. 15, 34 P.3d 553, 559 fn. 15 (2001) (“[L]egislative inaction following a
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⁶ The Court is using the current statutory rubric in referencing the cases, *supra*.

1 contemporaneous and practical interpretation is evidence that the legislature intends to adopt such an
2 interpretation.”); *Silvera v. Emp’rs Ins. Co. of Nev.*, 118 Nev. 105, 109, 40 P.3d 429, 432 (2002) (“It
3 is presumed that the legislature approved of the supreme court’s interpretation of statutory provision
4 when the legislature has amended the statute but did not change the provision’s language subsequent
5 to the court’s interpretation.”); *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 364 fn.
6 21, 184 P.3d 378, 385 fn. 21 (2008) (“When the Legislature has had ample opportunity to change
7 statutory law after this court has interpreted that law but does not do so, we presume that the
8 Legislature approves of our construction.”); *Northern Nev. Ass’n of Injured Workers v. Nev. State*
9 *Indus. Ins. Sys.*, 107 Nev. 108, 112, 807 P.2d 728, 730 (1991) (holding the Legislature presumably
10 knows of the Supreme Court’s interpretation of statutes when it amends a law: failure to modify the
11 statute imparts an approval of the Supreme Court’s interpretation).

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14 The Opposition contends the failure to timely serve the AG is merely a “technical
15 dereliction;” therefore, dismissal is not mandatory. The Court is not persuaded. The Legislature
16 inserted the requirement at issue into a section of the statute with *mandatory* conditions. Had the
17 Legislature intended to confer “technical” status on the service of the AG, possibly opening the door
18 for a substantial compliance analysis, it could have done so by creating a separate subsection of NRS
19 233B.130. The Legislature did no such thing. The Court must conclude the Legislature acted
20 intentionally, with full knowledge of the consequences, when it added the service requirement to
21 NRS 233B.130(2).
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24 The Opposition’s two additional arguments are also not persuasive. The Opposition
25 contends the AG knew of the PJR even though it was not served; therefore, the Commissioner has
26 suffered no prejudice. Notice of a suit is not a substitute for service of process. *See C.H.A. Venture*
27 *v. G.C. Wallace Consulting Eng’rs, Inc.*, 106 Nev. 381, 384, 794 P.2d 707, 709 (1990); *Abreu v.*
28

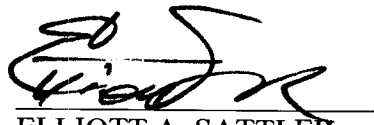
1 *Gilmer*, 115 Nev. 308, 314 fn. 5, 985 P.2d 746, 749 fn. 5 (1999). The Opposition also contends
2 strong public policy favors resolving cases on their merits. The Supreme Court acknowledged this
3 sentiment in *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992). The *Kahn* Court noted
4 the policy has its limits, stating “[l]itigants and their counsel may not properly be allowed to
5 disregard process or procedural rules with impunity.” *Id.* (citing *Lentz v. Boles*, 84 Nev. 197, 200,
6 438 P.2d 254, 256 (1968)). The Supreme Court recently held the sound public policy of resolving
7 issues on their merits is not boundless. In *Huckabay Prop., Inc. v. NC Auto Parts, LLC*, 130 Nev.
8 Adv. Op. 23, 322 P.3d 429, 433 (2014), the Supreme Court acknowledged other interests come into
9 consideration. These interests include: the court’s ability to manage its docket, the prejudice to the
10 opposing party, and the public’s need for expeditious judicial process. The *Huckabay* Court
11 concluded, “... a party cannot rely on the preference for deciding cases on the merits to the exclusion
12 of all other policy considerations....” *Id.* The Court cannot simply ignore the jurisdictional
13 requirements established by the Legislature so the Petitioner can have their “day in court.”
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16 CONCLUSION

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18 The Motion notes the dismissal of the PJR is a “harsh” result. The Motion, 2:9. The Court
19 agrees; however, the Court finds it has no alternative other than to dismiss. NRS 233B.130(2)
20 creates the framework by which jurisdiction is conferred in a petition for judicial review. A
21 petitioner *must* comply with all four requirements codified in that statute. The Petitioner did not
22 serve the AG prior to the filing of the Motion, and it failed to file and submit a timely motion for
23 extension.
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2 It is hereby ORDERED the MOTION TO DISMISS FOR LACK OF JURISDICTION
3 PURSUANT TO NCRP 12(b)(1) is GRANTED. The PETITION FOR JUDICIAL REVIEW is
4 DISMISSED.

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6 DATED this 3 day of November, 2016.

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9 ELLIOTT A. SATTLER
10 District Judge
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court
3 of the State of Nevada, County of Washoe; that on this 3 day of November, 2016, I deposited in
4 the County mailing system for postage and mailing with the United States Postal Service in Reno,
5 Nevada, a true copy of the attached document addressed to:

6 MICHAEL SPRINGER
7 9460 DOUBLE R BLVD., SUITE 103
8 RENO, NV 89521
9

10 **CERTIFICATE OF ELECTRONIC SERVICE**

11 I hereby certify that I am an employee of the Second Judicial District Court of the State of
12 Nevada, in and for the County of Washoe; that on the 3 day of November, 2016, I
13 electronically filed the foregoing with the Clerk of the Court by using the ECF system which will
14 send a notice of electronic filing to the following:

15
16 MELISSA FLATLEY, ESQ.

17 SARAH VARELA, ESQ.

18 ERIC HONE, ESQ.

19 BRYAN WRIGHT, ESQ.
20

21 
22 SHEILA MANSFIELD
23 Judicial Assistant
24
25
26
27
28

CASE NO. CV16-00353 **HEAT & FROST INSULATORS and ALLIED WORKERS LOCAL 16**
VS. LABOR COMMISSIONER OF THE STATE OF NEVADA ETAL

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

8/19/16

HEARING ON MOTION TO DISMISS

HONORABLE

10:00 a.m. – Court convened.

ELLIOTT A.

Eric Myers, Esq., was present on behalf of the Petitioners, Heat & Frost Insulators and Allied Workers Local 16.

SATTLER

DEPT. NO. 10

Deputy Attorney General Melissa Flatley was present on behalf of Respondent Labor Commissioner of the State of Nevada.

M. White

Bryan Wright, Esq., was present on behalf of Respondent University of Nevada.

(Clerk)

Justin Bustos, Esq., was present on behalf of Respondent Core Construction.

L. Urmston

COURT reviewed the procedural history of the case.

(Reporter)

State's counsel presented argument in support of the Motion to Dismiss for Lack of Jurisdiction Pursuant to NRCP 12(b)(1), filed April 15, 2016 (Motion to Dismiss).

Counsel Bustos joined in State's counsel's arguments, noting that he did not have anything substantive to add.

Counsel Wright presented argument in support of the Motion to Dismiss.

Counsel Myers responded; and he further argued in opposition of the Motion to Dismiss.

COURT advised respective counsel that the Motion for Extension of Time to Serve Petition, filed April 26, 2016, has not been fully briefed or submitted to the Court for consideration.

Counsel Myers further argued in opposition of the Motion to Dismiss.

State's counsel replied.

Counsel Wright replied.

Counsel Myers further responded.

COURT ORDERED: Motion to Dismiss taken under advisement.

Upon questioning by the Court, counsel Bustos and counsel Wright stated that they did not respond to the Motion for Extension of Time.

COURT noted that he may review the Motion for Extension of Time to Serve Petition while making a decision on the Motion to Dismiss.

11:01 a.m. – Court adjourned.

1 **Code 1350**

2
3
4 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
5 **IN AND FOR THE COUNTY OF WASHOE**

6 **HEAT & FROST INSULATORS and**
7 **ALLIED WORKERS LOCAL 16,**

Case No. CV16-00353

8 **Petitioners,**

Dept. No. 10

9 **vs.**

10 **LABOR COMMISSIONER OF THE STATE**
11 **OF NEVADA; THE UNIVERSITY OF NEVADA,**
12 **RENO; CORE CONSTRUCTION; and RENO TAHOE**
13 **CONSTRUCTION,**

14 **Respondents.**

15 _____/

16 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

17 I certify that I am an employee of the Second Judicial District Court of the State of Nevada,
18 County of Washoe; that on the 5th day of December, 2016, I electronically filed the Notice of
19 Appeal in the above entitled matter to the Nevada Supreme Court.

20 I further certify that the transmitted record is a true and correct copy of the original
21 pleadings on file with the Second Judicial District Court.

22 Dated this 5th day of December, 2016

23 Jacqueline Bryant
24 Clerk of the Court

25 By /s/ Yvonne Vilorio
26 Yvonne Vilorio
27 Deputy Clerk
28



THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS



Davis, Cowell & Bowe, LLP

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(415) 597-7200

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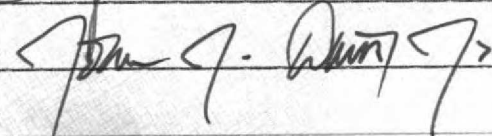
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MEMO

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Cv16







MP

MP

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