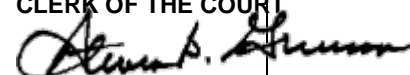


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Electronically Filed
3/9/2020 4:23 PM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Mar 13 2020 03:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR)	Case No. A-18-781866-J
MANAGEMENT COOPERATION)	
COMMITTEE, by and through its Trustees)	Department No.: 25
Terry Mayfield and Chris Christophersen,)	
)	
Petitioner,)	NOTICE OF APPEAL
)	
vs.)	
)	
CLARK COUNTY NEVADA,)	
DEPARTMENT OF AVIATION, a)	
political subdivision of the State of Nevada;)	
and THE OFFICE OF THE LABOR)	
COMMISSIONER,)	
)	
Respondents.)	

Notice is hereby given that Clark County Department of Aviation, Respondent in
the above named matter, hereby appeals to the Supreme Court of Nevada from the

///

///

///

///

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1 District Court's Findings of Fact, Conclusions of Law and Order Granting Petition for
2 Judicial Review dated January 28, 2020, attached hereto as **Exhibit A**, with Notice of
3 Entry dated February 7, 2020.

4 Dated this 9th day of March, 2020.

5 FISHER & PHILLIPS LLP

6 /s/ Allison L. Kheel, Esq.

7 MARK J. RICCIARDI, ESQ.

8 ALLISON L. KHEEL, ESQ.

9 300 South Fourth Street

10 Suite 1500

11 Las Vegas, Nevada 89101

12 Attorneys for Respondent

13 Clark County Department of Aviation

CERTIFICATE OF SERVICE

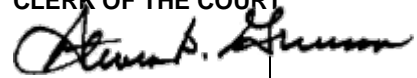
This is to certify that on the 9th day of March 2020, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **NOTICE OF APPEAL**, via the Court's e-file and e-service system on those case participants who are registers users.

Andrea Nichols, Esq.
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Reno, Nevada 89511
*Attorneys for Respondent
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Evan L. James, Esq.
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Las Vegas, Nevada 89117
*Attorneys for Petitioner
Southern Nevada Labor
Management Cooperation
Committee*

By: /s/ Stacey L. Grata
An employee of Fisher & Phillips LLP

EXHIBIT A



1 **NEOJ**
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6 Las Vegas, Nevada 89117
7 Tel.: (702) 255-1718
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10 *Attorneys for Petitioner*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SOUTHERN NEVADA LABOR
14 MANAGEMENT COOPERATION
15 COMMITTEE, by and through its
16 Trustees Terry Mayfield and Chris
17 Christophersen,

18 Petitioner,

19 vs.

20 CLARK COUNTY NEVADA,
21 DEPARTMENT OF AVIATION, a
22 political subdivision of the State of
23 Nevada; and THE OFFICE OF THE
24 LABOR COMMISSIONER,

25 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

NOTICE OF ENTRY OF ORDER

26 Please take notice that the attached order was entered on February 4, 2020.

27 DATED this 7th day of February 2020.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James

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Tel.: (702) 255-1718
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1 **CERTIFICATE OF SERVICE**

2 On February 7, 2020, I caused a true and correct copy of the foregoing notice to
3 be served as follows:

4 ☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the
5 Eighth Judicial District Court of the State of Nevada, the document was electronically
6 served on all parties registered in the case through the E-Filing System.

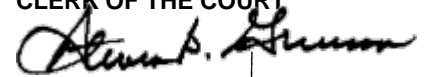
7 Mark J. Ricciardi, Esq. mricciardi@fisherphillips.com

8 Holly E. Walker, Esq. hwalker@fisherphillips.com

9 Andrea Nichols, Esq. anichols@ag.nv.gov

10 CHRISTENSEN JAMES & MARTIN

11 By: /s/ Natalie Saville
12 Natalie Saville
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DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, by and through its
Trustees Terry Mayfield and Chris
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,
DEPARTMENT OF AVIATION, a
political subdivision of the State of
Nevada; and THE OFFICE OF THE
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
PETITION FOR JUDICIAL REVIEW**

The Court hereby enters findings of fact and conclusions of law in granting the
Petition for Judicial Review. The Court remands the matter to the Nevada State Labor
Commissioner for further proceedings consistent with this Court's findings, conclusions
and order.

FINDINGS OF FACT

1. The Clark County Nevada Department of Aviation (hereinafter "DOA") operates
the McCarran International Airport ("Airport") in Clark County, Nevada.
2. The DOA is part of the Clark County, Nevada government.

CHRISTENSEN JAMES & MARTIN, CHTD.
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NOV 20 2019

1 3. The Airport is funded by two primary sources. Revenue from Airport operations
2 such as charges to airlines and lease payments from vendor operations is one source of
3 income. Revenue from grants from the United States Government Federal Aviation
4 Administration ("FAA") is another source of income. However, to receive revenue from
5 the FAA, the DOA is contractually required to be financially self-sustaining and not
6 dependent upon revenue from government sources separate from its own operations.

7 4. The DOA has operated the Airport as a financially self-sustaining operation for
8 many years, consistent with its contractual obligations with the FAA.

9 5. The DOA, in 2016, published an Invitation to Bid, Bid No. 17-604273, for the
10 removal and replacement of 12,000 square feet (approximately the area of two football
11 fields) of carpet and 5,000 linear feet (approximately the distance of one mile) of base
12 cove (collectively referred to herein as "Project").

13 6. The DOA advertised and proceeded with the Project pursuant Nevada's Local
14 Governments Purchasing Statue, NRS 332 et seq. and specifically NRS 332.065.

15 7. The Southern Nevada Labor Management Cooperation Committee ("LMCC")
16 exists pursuant to 29 U.S.C. §§ 175a(a) and 186(c)(6) and a collective bargaining
17 agreement between the International Union of Painters and Allied Trades Local Union
18 No. 1512 and employers engaged in the floorcovering industry.

19 8. LMCC was created and is governed by an Agreement and Declaration of Trust
20 ("Trust Agreement") and is "established for the purpose of improving labor management
21 relationships, job security, organizational effectiveness, enhancing economic
22 development or involving workers in decisions affecting their jobs including improving
23 communication with respect to subjects of mutual interest and concern."

24 9. LMCC also exists pursuant to NRS § 613.230 for the purpose of "dealing with
25 employers concerning grievances, labor disputes, wages, rates of pay, hours of
26 employment, or other conditions of employment."
27

1 10. To achieve its purposes, the LMCC works to ensure that labor laws are followed,
2 including prevailing wage laws, which laws and associated activity are a matter of public
3 concern and public policy.

4 11. On April 28, 2017, the LMCC filed a complaint with the State of Nevada Office of
5 the Labor Commissioner ("OLC") alleging that the DOA had violated numerous labor
6 laws with regard to the Project, including violations of NRS 338 et seq.

7 12. On May 2, 2017, the OLC issued a notice to the DOA of the LMCC's complaint.

8 13. The DOA answered the complaint on May 23, 2017, admitting that it is a political
9 subdivision of the state of Nevada, but generally denying the complaint's allegations due
10 lack of information.

11 14. The OLC proceeded to conduct an investigation of the matter and requested and
12 received documents from the DOA.

13 15. The OLC did not hold a hearing, but certain investigatory meetings were held,
14 including one on January 10, 2018.

15 16. On February 12, 2018, the DOA sent a letter to the OLC wherein it asserted that
16 the Project was not a public work subject to NRS 338. The DOA further asserted that the
17 Project work constituted maintenance by replacing up to 12,000 square feet of carpet and
18 5,000 feet of base cove over the course of a year and that none of the work is paid for
19 with public money because the Airport is a financially self-sustaining operation. The
20 DOA further asserted that the carpet and base cove replacement was performed in smaller
21 sections and so as not to interfere with Airport operations.

22 17. On March 12, 2018, the DOA sent a letter to the OLC asserting that the Project
23 constituted normal maintenance and further asserting that the Project did not constitute
24 public funds as defined by NRS 338.010(17) because it was not "financed in whole or in
25 part from public money."

1 18. On June 4, 2017, the DOA, through counsel, sent an email to the OLC further
2 asserting that the Project is not subject to NRS 338 et seq. because the Airport is self-
3 funded.

4 19. On June 13, 2017, the OLC requested documents from the DOA confirming the
5 sources of the Airport's revenue.

6 20. On June 27, 2017, the DOA responded, through counsel, that the Airport's 2018
7 fiscal year budget consisted of \$556,500,000 and that \$23,703,000 of that money was
8 budgeted for what the DOA self characterizes as maintenance.

9 21. On August 30, 2017, the OLC issued a determination that acknowledged the DOA's
10 argument that the Project was maintenance. The OLC accepted the DOA's representation
11 that "[n]one of the repairs and maintenance funds are financed in any part through taxes
12 or public money."

13 22. The Special Conditions section of the Project's bid documents state that "[f]looring,
14 adhesive and base cove are OWNER supplied, successful bidder installed."

15 23. The DOA separated Project material costs from Project labor costs.

16 24. The DOA intended for the Project to be completed in smaller sections such as
17 individual rooms or smaller areas.

18 25. The DOA did not bid the Project pursuant to NRS 338 requirements.

19 26. At oral argument, counsel for the DOA questioned whether or not the LMCC had
20 a right to bring the original complaint filed with the Labor Commissioner.

21 CONCLUSION OF LAW

22 1. The DOA, as a political subdivision of the State of Nevada, is subject to all the laws
23 of the State of Nevada. The DOA cannot, whether intentionally or unintentionally,
24 selectively choose what laws it will or will not follow.

25 2. The Airport, its operations, and its funding, consisting of hundreds of millions of
26 dollars, are a matters of public concern because the Airport services all of southern
27 Nevada and its presence and use has a financial impact on the entire State of Nevada.

1 3. Governmental compliance with established law is a matter of public concern.

2 4. Moreover, prevailing wage laws are a matter of public policy and their application
3 and impact are a matter of public concern because they have an economic impact on the
4 community and affect the community by impacting the construction industry.

5 5. Because the LMCC is established and exists under both federal and state law to
6 address matters of public concern and public policy within the construction industry, it
7 has a direct interest in ensuring that laws within the construction industry are adhered to
8 and followed, giving the LMCC standing to challenge the DOA's conduct in regard to
9 NRS 338 et seq. and the payment of prevailing wages.

10 6. There is no definition of "public money" in NRS 338 et seq. The Court finds the
11 reasoning and arguments regarding public money as set forth in the LMCC's briefing
12 persuasive, being consistent with statute and case law.

13 7. The DOA's contractual relationship with the FAA does not excuse compliance with
14 Nevada law. Contractual relationships under 49 U.S.C. § 47101, upon which the DOA
15 relies, for the purposes of receiving grants are voluntary. There is no indication in 49
16 U.S.C § 47101 that the United States Congress intended to preempt state laws of
17 generally applicability. Nevertheless, allowing a party, such as the DOA, to contract
18 around state law would create the unchecked ability to nullify Nevada law where there
19 was no congressional intent to do so. *See California Trucking Association v. Su*, 903 F.3d
20 953, 963 (9th Cir. 2018). In addition, the DOA's obligations under 49 U.S.C. § 47101(a)
21 specifically require that "the [A]irport will be available for public use...." The DOA is
22 therefore legally obligated to operate the Airport for the benefit of the public regardless
23 of the source of its funding. The Court concludes that contractual obligations that the
24 Airport be self-sustaining do not nullify Nevada law. The Court further concludes that
25 because the DOA is legally obligated to operate the Airport for a public purpose the
26 money it uses for Airport operations is intended for a public purpose.

1 8. There is no definition of “public money” in NRS 338 et seq. The Court must
2 therefore look elsewhere for an appropriate definition. The Nevada Supreme Court
3 addressed the issue of “public money” in the case of *Bombardier Transportation*
4 (*Holdings*) *USA, Inc. v. Nevada Labor Commissioner*, 433 P.3d 248, 251 (Nev., 2019).¹
5 The DOA was a party to the *Bombardier* case and made the same public money argument
6 that it now makes to this Court. The DOA argued to the Nevada Supreme Court that
7 money from its “normal operating funds” is not subject to Nevada’s prevailing wage laws
8 because the Airport operates “without the County’s general tax fund revenue.” The
9 Nevada Supreme Court rejected that argument, noting that “Bombardier’s arguments are
10 belied by the plain language of NRS 338.010(15) ... the financing language in the statute
11 does not require a particular type of funding, only that the project be financed by public
12 money, which the contract was.” *Bombardier* at 248 n. 3. The Court concludes that
13 pursuant to *Bombardier*, the Airport’s funds, the funding of which is common between
14 the *Bombardier* case and the Project, are in fact public money within the meaning of NRS
15 338.010(17).

16 9. The Court also concludes that the funds by which the Airport operates are in fact
17 public money even in the absence of the *Bombardier* holding. The Nevada Supreme
18 Court provided guidance of what constitutes public money in the case of *Carson-Tahoe*
19 *Hosp. v. Building & Const. Trades Council of Northern Nevada*, 128 P.3d 1065, 1068,
20 122 Nev. 218, 222 (2006) (“For example, a private project constructed to a public
21 agency’s specifications as part of an arrangement for the project’s eventual purchase by
22 the public agency would be a public work.”) The Airport is owned and operated by a
23 public entity. The Airport is for public use. The money by which the Airport operates,
24 regardless of source, is therefore public and within the meaning of “public money” as
25 used in NRS 338 et seq.

26 _____
27 ¹ The OLC did not have the benefit of the *Bombardier* decision when issuing her
determination because the opinion was issued after the determination.

1 10. Subject to the remand order below, the Court concludes that the Project did not
2 constitute maintenance. The DOA's unilateral separation of the Project into smaller
3 construction units and the separation of material costs and labor costs violated Nevada
4 law. "A unit of the project must not be separated from the total project, even if that unit
5 is to be completed at a later time...." NRS 338.080(3). Replacing 12,000 square feet of
6 carpet and 5,000 linear feet of base cove involves a significant amount of work and is not
7 reflective of the type of work constituting maintenance as articulated in *Bombardier*. The
8 Nevada Supreme Court articulated maintenance as involving "such activities like
9 window washing, janitorial and housekeeping services, [and] fixing broken windows."
10 *Bombardier* at 255. The Court concludes that the OLC's accepting the DOA's assertion
11 that the Project constituted maintenance is contrary to fact and law. The Project was bid
12 with the potential of replacing carpeting that would cover approximately two football
13 fields and base cove that extended for approximately a mile. The intent of the bid and
14 Project execution was clearly an effort to manage costs. The DOA's assertion that it may
15 or may not have replaced 12,000 feet of carpet and 5,000 linear feet of base cove is
16 inconsequential because the intent of the bid and the Project allowed for a large volume
17 of repair work. Accepting an argument allowing the DOA to incrementally finish the
18 Project's scope of work "would run afoul of NRS Chapter 338's purpose and would allow
19 parties to insulate themselves from the statutes' applicability by simply including repair
20 work in a maintenance contract." See *Bombardier* at 254. The law does not allow the
21 DOA to bid large repair projects to be completed through smaller projects purported to
22 qualify as "maintenance."

23 11. The Court concludes that the OLC's determination was arbitrary, capricious and
24 inconsistent with fact.

25 12. Although the bid and intent of the Project violated Nevada law, the *Bombardier*
26 Court holding suggests that the OLC should conduct a post construction analysis to
27

1 determine what, if any, of the completed work actually constituted maintenance and what
2 constituted repair, being subject to prevailing wage rates.

3 ORDER

4 1. The Court Orders that matters set forth in its Conclusions of Law may also be
5 considered findings of fact to the extent necessary to maintain the coherence of its
6 conclusions.

7 2. The LMCC's Petition for Judicial Review is granted. The OLC's Determination is
8 hereby vacated and reversed as arbitrary, capricious and inconsistent with fact.

9 3. The Court rules and Orders that the money received by the Airport is public money
10 within the meaning of NRS 338 and that the Project did not constitute maintenance within
11 the meaning of NRS 338 et seq.

12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of
13 determining the amount, if any, of the completed work that constitutes maintenance and
14 to whom and how much additional wages should be paid for work subject to NRS 338 et
15 seq.'s prevailing wage requirements. In making any such determinations, the OLC must
16 not separate the Project into smaller units as doing so is in violation of Nevada law.

17 5. This Order does not preclude the OLC from issuing administrative fines and similar
18 assessments pursuant to her statutory and regulatory authority.

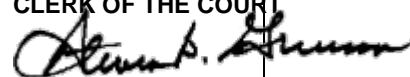
19 6. The Court further Orders that the LMCC must be included in the proceedings on
20 remand as a proper and interested party with appropriate standing to participate.

21 7. The Court further Orders that it retains jurisdiction over any subsequent
22 proceedings that may be necessary for the collection of information, the enforcement of
23 this Order or for further review, if any, as may be sought by the parties.

24 Dated: January 28, 2020.

25 
26 District Court Judge Kathleen Delaney
27

1 Submitted by:
2 CHRISTENSEN JAMES & MARTIN
3 /s/ *Evan L. James*
4 By: _____
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11 *Attorneys for Petitioners*
12
13 Reviewed as to form and content:
14 FISHER & PHILLIPS, LLC
15
16 By: *Refused to sign* _____
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22 *Attorneys for Respondent Clark*
23 *County Department of Aviation*
24
25
26
27 ATTORNEY GENERAL AARON FORD
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DISTRICT COURT**CLARK COUNTY, NEVADA**

SOUTHERN NEVADA LABOR)	Case No. A-18-781866-J
MANAGEMENT COOPERATION)	
COMMITTEE, by and through its Trustees)	Department No.: 25
Terry Mayfield and Chris Christophersen,)	
)	
Petitioner,)	
)	
vs.)	
)	
CLARK COUNTY NEVADA,)	
DEPARTMENT OF AVIATION, a)	
political subdivision of the State of Nevada;)	
and THE OFFICE OF THE LABOR)	
COMMISSIONER,)	
)	
Respondents.)	

CASE APPEAL STATEMENT

1. Name of Appellant filing this Case Appeal Statement: Respondent Clark County Department of Aviation.
2. Judge Issuing the Judgment Appealed From: The Honorable Kathleen Delaney.
3. Appellant involved in this Appeal: Clark County Department of Aviation.

///

///

Counsel for Appellant:

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Allison L. Kheel, Esq.
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Attorneys for Respondent/Appellant
Clark County Department of Aviation

4. Respondents Involved in the Appeal: Southern Nevada Labor Management Cooperation Committee (Petitioner Below) and Office of the Labor Commissioner (Respondent Below):

Counsel for Respondents:

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Southern Nevada Labor Management Cooperation Committee

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Attorney for Respondent (Respondent in District Court)
Office of the Labor Commissioner

5. All counsel identified in response to questions 3 and 4 above, are licensed to practice law in the State of Nevada.

6. Respondent/Appellant was represented by retained counsel in the District Court.

7. Respondent/Appellant is represented by retained counsel on Appeal.

8. Respondent/Appellant have not been granted leave to proceed in forma pauperis.

1 9. Date this action was commenced in District Court: September 27, 2018.

2 10. On April 28, 2017, Respondent Southern Nevada Labor Management
3 Cooperation Committee (“LMCC” or “Respondent”) filed a complaint to the Office of
4 the Labor Commissioner averring that the Clark County Department Aviation
5 (“CCDOA” or “Appellant”) bid certain carpet maintenance work in violation of
6 prevailing wage laws contained in NRS Chapter 338.

7 On August 30, 2018, the Office of the Labor Commissioner issued a written final
8 agency decision, which ruled against LMCC and found no violation of prevailing wage
9 laws based solely on its finding that the carpet replacement work for the CCDOA was
10 not funded by “public money,” as that term is used in NRS Chapter 338.

11 On September 27, 2018, LMCC filed a Petition for Judicial Review before the
12 District Court. Through that Petition, LMCC challenged and sought to reverse the Labor
13 Commissioner’s decision.

14 In response to the Petition, the District Court entered its Findings of Fact,
15 Conclusions of Law and Order Granting Petition for Judicial Review (the “Order”) on
16 February 7, 2020. The Order contains several legal and factual errors and internally
17 contradictory findings which render the Order unenforceable, and which deprive the
18 CCDOA of its right to due process. Among those errors, the District Court retained
19 jurisdiction over future proceedings while simultaneously ceding jurisdiction to the
20 Office of the Labor Commission, which is contrary to Nevada law. The Order further
21 improperly included factual and legal findings that went well beyond the Labor
22 Commissioner’s sole “public money” determination that was before the District Court.
23 Relatedly, the District Court’s Order made factual findings that could not be implied from
24 the scant record developed in the proceedings before the Office of the Labor
25 Commissioner.

26 To correct such errors, the Appellant now appeals the Order issued by the District
27 Court.

28 ///

1 11. This case has not previously been the subject of an appeal proceeding in the
2 Supreme Court.

3 12. This Appeal does not involve child custody or visitation.

4 13. This Appeal does involve the possibility of settlement.

5 Dated this 9th day of March, 2020.

6 FISHER & PHILLIPS LLP

7 /s/ Allison L. Kheel, Esq.

8 MARK J. RICCIARDI, ESQ.

9 ALLISON L. KHEEL, ESQ.

300 South Fourth Street

Suite 1500

10 Las Vegas, Nevada 89101

11 *Attorneys for Respondent/Appellant*

12 *Clark County Department of Aviation*

CERTIFICATE OF SERVICE

This is to certify that on the 9th day of March 2020, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **CASE APPEAL STATEMENT**, via the Court's e-file and e-service system on those case participants who are registers users.

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Senior Deputy Attorney General
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*Attorneys for Respondent
Office of the Labor
Commissioner*

Evan L. James, Esq.
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Las Vegas, Nevada 89117
*Attorneys for Petitioner
Southern Nevada Labor
Management Cooperation
Committee*

By: /s/ Stacey L. Grata
An employee of Fisher & Phillips LLP

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. A-18-781866-J**

**Southern Nevada Labor Management Cooperation
Committee, Petitioner(s)**
vs.
**Clark County Nevada Department of Aviation,
Respondent(s)**

§
§
§
§
§

Location: **Department 25**
Judicial Officer: **Delaney, Kathleen E.**
Filed on: **09/27/2018**
Cross-Reference Case Number: **A781866**







CASE INFORMATIONCase Type: **Other Judicial Review/Appeal**Case Flags: **Appealed to Supreme Court****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number A-18-781866-J
Court Department 25
Date Assigned 09/27/2018
Judicial Officer Delaney, Kathleen E.

PARTY INFORMATION

Petitioner	Southern Nevada Labor Management Cooperation Committee	<i>Lead Attorneys</i> James, Evan L. <i>Retained</i> 702-255-1718(W)
Respondent	Clark County Nevada Department of Aviation	Ricciardi, Mark J. <i>Retained</i> 7022523131(W)
	Office of the Labor Commissioner	Nichols, Andrea H. <i>Retained</i> 7758504102(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX**

09/27/2018	 Petition for Judicial Review <i>Petition for Judicial Review</i>
09/27/2018	 Initial Appearance Fee Disclosure Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>Initial Appearance Fee Disclosure</i>
10/15/2018	 Statement of Intent to Participate in Petition for Judicial Filed By: Respondent Office of the Labor Commissioner <i>Statement of Intent to Participate</i>
10/30/2018	 Certificate of Service Filed by: Respondent Office of the Labor Commissioner <i>Certificate of Service</i>
10/30/2018	 Statement of Intent to Participate in Petition for Judicial Filed By: Respondent Clark County Nevada Department of Aviation <i>Clark County Department of Aviation's Statement of Intent to Participate</i>
11/08/2018	 Administrative Record Party: Respondent Office of the Labor Commissioner

CASE SUMMARY
CASE NO. A-18-781866-J

Administrative Record

11/12/2018	 Administrative Record Party: Petitioner Southern Nevada Labor Management Cooperation Committee <i>Administrative Record</i>
11/13/2018	 Administrative Record Party: Respondent Office of the Labor Commissioner <i>Amended Administrative Record (Part 1 of 2)</i>
11/20/2018	 Administrative Record Party: Respondent Office of the Labor Commissioner <i>Amended Administrative Record (Part 2 of 2)</i>
12/11/2018	 Memorandum of Points and Authorities Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee; Trustee Mayfield, Terry; Trustee Christophersen, Chris <i>Petitioner's Opening Memorandum of Points and Authorities</i>
01/15/2019	 Stipulation and Order Filed by: Respondent Clark County Nevada Department of Aviation <i>Stipulation and Order for Extension of Time to File Reply Memorandum of Points and Authorities</i>
01/15/2019	 Notice of Entry Filed By: Respondent Clark County Nevada Department of Aviation <i>Notice of Entry of Stipulation and Order for Extension of Time to File Reply Memorandum of Points and Authorities</i>
02/01/2019	 Stipulation and Order Filed by: Respondent Clark County Nevada Department of Aviation <i>Stipulation and Order for Extension of Time to File Reply Memorandum of Points and Authorities (Second Request)</i>
02/01/2019	 Notice of Entry of Stipulation and Order Filed By: Respondent Clark County Nevada Department of Aviation <i>Notice of Entry of Order</i>
02/13/2019	 Stipulation and Order Filed by: Respondent Clark County Nevada Department of Aviation <i>Stipulation and Order for Extension of Time to File Reply Memorandum of Points and Authorities (Third Request)</i>
02/13/2019	 Notice of Entry Filed By: Respondent Clark County Nevada Department of Aviation <i>Notice of Entry of Order</i>
02/21/2019	 Motion Filed By: Respondent Clark County Nevada Department of Aviation <i>Motion to Extend Time to File Reply to Petition for Judicial Review</i>
02/25/2019	 Reply Points and Authorities Filed by: Respondent Clark County Nevada Department of Aviation <i>Clark County Department of Aviation's Reply Memorandum of Points and Authorities to Petition for Judicial Review</i>

CASE SUMMARY

CASE NO. A-18-781866-J

02/26/2019	 Respondent's Answering Brief Filed by: Respondent Office of the Labor Commissioner <i>Office of the Labor Commissioner's Response to Petitioner's Opening Brief</i>
02/27/2019	 Non Opposition Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>Non Opposition to Motion to Extend Time</i>
03/27/2019	 Motion Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee; Trustee Mayfield, Terry; Trustee Christophersen, Chris <i>Motion for Extension of Time</i>
04/02/2019	CANCELED Motion (9:00 AM) (Judicial Officer: Delaney, Kathleen E.) <i>Vacated - per Stipulation and Order</i> <i>Motion to Extend Time to File Reply to Petition for Judicial Review</i>
04/02/2019	 Stipulation and Order Filed by: Respondent Clark County Nevada Department of Aviation <i>Stipulation and Order for Withdrawal of Motion and Extension of Deadlines Pursuant to NRS 233B.133</i>
04/02/2019	 Notice of Entry Filed By: Respondent Clark County Nevada Department of Aviation <i>Notice of Entry of Stipulation and Order for Withdrawal of Motion and Extension of Deadlines</i>
04/05/2019	 Notice of Withdrawal of Motion Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee; Trustee Mayfield, Terry; Trustee Christophersen, Chris <i>Notice of Withdrawal of Motion for Extension of Time</i>
04/16/2019	 Petitioner's Reply Brief Filed by: Petitioner Southern Nevada Labor Management Cooperation Committee; Trustee Mayfield, Terry; Trustee Christophersen, Chris <i>Petitioner's Reply Brief</i>
04/16/2019	 Notice of Hearing Filed By: Respondent Clark County Nevada Department of Aviation <i>Notice of Hearing on Petition for Judicial Review</i>
04/17/2019	 Request Filed by: Petitioner Southern Nevada Labor Management Cooperation Committee; Trustee Mayfield, Terry; Trustee Christophersen, Chris <i>Petitioner's Request for Hearing</i>
06/18/2019	 Stipulation and Order Filed by: Petitioner Southern Nevada Labor Management Cooperation Committee <i>Stipulation and Order to Continue Hearing</i>
07/03/2019	 Substitution of Attorney Filed by: Respondent Office of the Labor Commissioner <i>Substitution of Counsel</i>
08/13/2019	 Petition for Judicial Review (9:00 AM) (Judicial Officer: Delaney, Kathleen E.)

CASE SUMMARY

CASE NO. A-18-781866-J



08/13/2019, 08/20/2019, 08/27/2019

08/20/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Delaney, Kathleen E.)
08/20/2019	Decision (10:30 AM) (Judicial Officer: Delaney, Kathleen E.) 08/20/2019, 08/27/2019 <i>Decision: Petition for Judicial Review</i>
08/27/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Delaney, Kathleen E.)
01/24/2020	 Motion Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee (2/7/2020 Withdrawn) <i>Motion for Status Check (Hearing Requested)</i>
01/27/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
02/04/2020	 Findings of Fact, Conclusions of Law and Order Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>Findings of Fact, Conclusions of Law and Order Granting Petition for Judicial Review</i>
02/04/2020	Order Granting Judicial Review (Judicial Officer: Delaney, Kathleen E.) Debtors: Clark County Nevada Department of Aviation (Respondent), Office of the Labor Commissioner (Respondent) Creditors: Southern Nevada Labor Management Cooperation Committee (Petitioner) Judgment: 02/04/2020, Docketed: 02/04/2020
02/07/2020	 Notice of Withdrawal of Motion Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>Notice of Withdrawal og Motion for Status Check</i>
02/07/2020	 Notice of Entry of Order Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>Notice of Entry of Order</i>
02/21/2020	 Motion to Reconsider Filed By: Respondent Clark County Nevada Department of Aviation <i>Motion for Reconsideration</i>
02/21/2020	 Motion for Order Filed By: Respondent Clark County Nevada Department of Aviation <i>Motion for Order Shortening Time on Respondent's Motion for Reconsideration</i>
02/24/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
02/24/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
02/28/2020	 Opposition to Motion Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>Opposition to Motion for Reconsideration</i>
03/03/2020	CANCELED Motion (9:00 AM) (Judicial Officer: Delaney, Kathleen E.)

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-18-781866-J

	<i>Vacated</i> <i>Petitioner Motion for Status Check</i>	
03/09/2020	 Notice of Appeal Filed By: Respondent Clark County Nevada Department of Aviation	
03/09/2020	 Case Appeal Statement <i>Case Appeal Statement</i>	
03/31/2020	Motion For Reconsideration (9:00 AM) (Judicial Officer: Delaney, Kathleen E.) <i>Respondent's Motion for Reconsideration</i>	
03/31/2020	Motion for Order (9:00 AM) (Judicial Officer: Delaney, Kathleen E.) <i>Respondent's Motion for Order Shortening Time on Respondent's Motion for Reconsideration</i>	

DATE

FINANCIAL INFORMATION

Petitioner Southern Nevada Labor Management Cooperation Committee	
Total Charges	285.00
Total Payments and Credits	285.00
Balance Due as of 3/11/2020	0.00
 Respondent Clark County Nevada Department of Aviation	
Total Charges	24.00
Total Payments and Credits	24.00
Balance Due as of 3/11/2020	0.00

DISTRICT COURT CIVIL COVER SHEET

A-18-781866-J

County, Nevada

Department 25

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Southern Nevada Labor Management Cooperation Committee;

Defendant(s) (name/address/phone):

Clark County Nevada Department of Aviation; The Office of the Labor Commissioner

Attorney (name/address/phone):

Christensen James & Martin

Evan L. James, Esq.

7440 W. Sahara Ave., LV, NV 89117

(702) 255-1718

Attorney (name/address/phone):

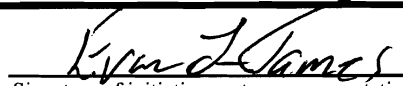
II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input checked="" type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

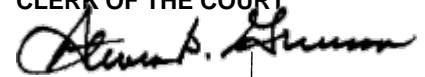
Business Court filings should be filed using the Business Court civil coversheet.

9/27/2018

Date


 Signature of initiating party or representative

See other side for family-related case filings.



FFCO
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Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, by and through its
Trustees Terry Mayfield and Chris
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,
DEPARTMENT OF AVIATION, a
political subdivision of the State of
Nevada; and THE OFFICE OF THE
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
PETITION FOR JUDICIAL REVIEW**

The Court hereby enters findings of fact and conclusions of law in granting the
Petition for Judicial Review. The Court remands the matter to the Nevada State Labor
Commissioner for further proceedings consistent with this Court's findings, conclusions
and order.

FINDINGS OF FACT

1. The Clark County Nevada Department of Aviation (hereinafter "DOA") operates the McCarran International Airport ("Airport") in Clark County, Nevada.
2. The DOA is part of the Clark County, Nevada government.

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NOV 20 2019

1 3. The Airport is funded by two primary sources. Revenue from Airport operations
2 such as charges to airlines and lease payments from vendor operations is one source of
3 income. Revenue from grants from the United States Government Federal Aviation
4 Administration ("FAA") is another source of income. However, to receive revenue from
5 the FAA, the DOA is contractually required to be financially self-sustaining and not
6 dependent upon revenue from government sources separate from its own operations.

7 4. The DOA has operated the Airport as a financially self-sustaining operation for
8 many years, consistent with its contractual obligations with the FAA.

9 5. The DOA, in 2016, published an Invitation to Bid, Bid No. 17-604273, for the
10 removal and replacement of 12,000 square feet (approximately the area of two football
11 fields) of carpet and 5,000 linear feet (approximately the distance of one mile) of base
12 cove (collectively referred to herein as "Project").

13 6. The DOA advertised and proceeded with the Project pursuant Nevada's Local
14 Governments Purchasing Statue, NRS 332 et seq. and specifically NRS 332.065.

15 7. The Southern Nevada Labor Management Cooperation Committee ("LMCC")
16 exists pursuant to 29 U.S.C. §§ 175a(a) and 186(c)(6) and a collective bargaining
17 agreement between the International Union of Painters and Allied Trades Local Union
18 No. 1512 and employers engaged in the floorcovering industry.

19 8. LMCC was created and is governed by an Agreement and Declaration of Trust
20 ("Trust Agreement") and is "established for the purpose of improving labor management
21 relationships, job security, organizational effectiveness, enhancing economic
22 development or involving workers in decisions affecting their jobs including improving
23 communication with respect to subjects of mutual interest and concern."

24 9. LMCC also exists pursuant to NRS § 613.230 for the purpose of "dealing with
25 employers concerning grievances, labor disputes, wages, rates of pay, hours of
26 employment, or other conditions of employment."

1 10. To achieve its purposes, the LMCC works to ensure that labor laws are followed,
2 including prevailing wage laws, which laws and associated activity are a matter of public
3 concern and public policy.

4 11. On April 28, 2017, the LMCC filed a complaint with the State of Nevada Office of
5 the Labor Commissioner (“OLC”) alleging that the DOA had violated numerous labor
6 laws with regard to the Project, including violations of NRS 338 et seq.

7 12. On May 2, 2017, the OLC issued a notice to the DOA of the LMCC’s complaint.

8 13. The DOA answered the complaint on May 23, 2017, admitting that it is a political
9 subdivision of the state of Nevada, but generally denying the complaint’s allegations due
10 lack of information.

11 14. The OLC proceeded to conduct an investigation of the matter and requested and
12 received documents from the DOA.

13 15. The OLC did not hold a hearing, but certain investigatory meetings were held,
14 including one on January 10, 2018.

15 16. On February 12, 2018, the DOA sent a letter to the OLC wherein it asserted that
16 the Project was not a public work subject to NRS 338. The DOA further asserted that the
17 Project work constituted maintenance by replacing up to 12,000 square feet of carpet and
18 5,000 feet of base cove over the course of a year and that none of the work is paid for
19 with public money because the Airport is a financially self-sustaining operation. The
20 DOA further asserted that the carpet and base cove replacement was performed in smaller
21 sections and so as not to interfere with Airport operations.

22 17. On March 12, 2018, the DOA sent a letter to the OLC asserting that the Project
23 constituted normal maintenance and further asserting that the Project did not constitute
24 public funds as defined by NRS 338.010(17) because it was not “financed in whole or in
25 part from public money.”

1 18. On June 4, 2017, the DOA, through counsel, sent an email to the OLC further
2 asserting that the Project is not subject to NRS 338 et seq. because the Airport is self-
3 funded.

4 19. On June 13, 2017, the OLC requested documents from the DOA confirming the
5 sources of the Airport's revenue.

6 20. On June 27, 2017, the DOA responded, through counsel, that the Airport's 2018
7 fiscal year budget consisted of \$556,500,000 and that \$23,703,000 of that money was
8 budgeted for what the DOA self characterizes as maintenance.

9 21. On August 30, 2017, the OLC issued a determination that acknowledged the DOA's
10 argument that the Project was maintenance. The OLC accepted the DOA's representation
11 that "[n]one of the repairs and maintenance funds are financed in any part through taxes
12 or public money."

13 22. The Special Conditions section of the Project's bid documents state that "[f]looring,
14 adhesive and base cove are OWNER supplied, successful bidder installed."

15 23. The DOA separated Project material costs from Project labor costs.

16 24. The DOA intended for the Project to be completed in smaller sections such as
17 individual rooms or smaller areas.

18 25. The DOA did not bid the Project pursuant to NRS 338 requirements.

19 26. At oral argument, counsel for the DOA questioned whether or not the LMCC had
20 a right to bring the original complaint filed with the Labor Commissioner.

21 CONCLUSION OF LAW

22 1. The DOA, as a political subdivision of the State of Nevada, is subject to all the laws
23 of the State of Nevada. The DOA cannot, whether intentionally or unintentionally,
24 selectively choose what laws it will or will not follow.

25 2. The Airport, its operations, and its funding, consisting of hundreds of millions of
26 dollars, are a matters of public concern because the Airport services all of southern
27 Nevada and its presence and use has a financial impact on the entire State of Nevada.

1 3. Governmental compliance with established law is a matter of public concern.

2 4. Moreover, prevailing wage laws are a matter of public policy and their application
3 and impact are a matter of public concern because they have an economic impact on the
4 community and affect the community by impacting the construction industry.

5 5. Because the LMCC is established and exists under both federal and state law to
6 address matters of public concern and public policy within the construction industry, it
7 has a direct interest in ensuring that laws within the construction industry are adhered to
8 and followed, giving the LMCC standing to challenge the DOA's conduct in regard to
9 NRS 338 et seq. and the payment of prevailing wages.

10 6. There is no definition of "public money" in NRS 338 et seq. The Court finds the
11 reasoning and arguments regarding public money as set forth in the LMCC's briefing
12 persuasive, being consistent with statute and case law.

13 7. The DOA's contractual relationship with the FAA does not excuse compliance with
14 Nevada law. Contractual relationships under 49 U.S.C. § 47101, upon which the DOA
15 relies, for the purposes of receiving grants are voluntary. There is no indication in 49
16 U.S.C § 47101 that the United States Congress intended to preempt state laws of
17 generally applicability. Nevertheless, allowing a party, such as the DOA, to contract
18 around state law would create the unchecked ability to nullify Nevada law where there
19 was no congressional intent to do so. *See California Trucking Association v. Su*, 903 F.3d
20 953, 963 (9th Cir. 2018). In addition, the DOA's obligations under 49 U.S.C. § 47101(a)
21 specifically require that "the [A]irport will be available for public use...." The DOA is
22 therefore legally obligated to operate the Airport for the benefit of the public regardless
23 of the source of its funding. The Court concludes that contractual obligations that the
24 Airport be self-sustaining do not nullify Nevada law. The Court further concludes that
25 because the DOA is legally obligated to operate the Airport for a public purpose the
26 money it uses for Airport operations is intended for a public purpose.

1 8. There is no definition of “public money” in NRS 338 et seq. The Court must
2 therefore look elsewhere for an appropriate definition. The Nevada Supreme Court
3 addressed the issue of “public money” in the case of *Bombardier Transportation*
4 *(Holdings) USA, Inc. v. Nevada Labor Commissioner*, 433 P.3d 248, 251 (Nev., 2019).¹
5 The DOA was a party to the *Bombardier* case and made the same public money argument
6 that it now makes to this Court. The DOA argued to the Nevada Supreme Court that
7 money from its “normal operating funds” is not subject to Nevada’s prevailing wage laws
8 because the Airport operates “without the County’s general tax fund revenue.” The
9 Nevada Supreme Court rejected that argument, noting that “Bombardier’s arguments are
10 belied by the plain language of NRS 338.010(15) ... the financing language in the statute
11 does not require a particular type of funding, only that the project be financed by public
12 money, which the contract was.” *Bombardier* at 248 n. 3. The Court concludes that
13 pursuant to *Bombardier*, the Airport’s funds, the funding of which is common between
14 the *Bombardier* case and the Project, are in fact public money within the meaning of NRS
15 338.010(17).

16 9. The Court also concludes that the funds by which the Airport operates are in fact
17 public money even in the absence of the *Bombardier* holding. The Nevada Supreme
18 Court provided guidance of what constitutes public money in the case of *Carson-Tahoe*
19 *Hosp. v. Building & Const. Trades Council of Northern Nevada*, 128 P.3d 1065, 1068,
20 122 Nev. 218, 222 (2006) (“For example, a private project constructed to a public
21 agency’s specifications as part of an arrangement for the project’s eventual purchase by
22 the public agency would be a public work.”) The Airport is owned and operated by a
23 public entity. The Airport is for public use. The money by which the Airport operates,
24 regardless of source, is therefore public and within the meaning of “public money” as
25 used in NRS 338 et seq.

26 _____
27 ¹ The OLC did not have the benefit of the *Bombardier* decision when issuing her
determination because the opinion was issued after the determination.

1 10. Subject to the remand order below, the Court concludes that the Project did not
2 constitute maintenance. The DOA's unilateral separation of the Project into smaller
3 construction units and the separation of material costs and labor costs violated Nevada
4 law. "A unit of the project must not be separated from the total project, even if that unit
5 is to be completed at a later time...." NRS 338.080(3). Replacing 12,000 square feet of
6 carpet and 5,000 linear feet of base cove involves a significant amount of work and is not
7 reflective of the type of work constituting maintenance as articulated in *Bombardier*. The
8 Nevada Supreme Court articulated maintenance as involving "such activities like
9 window washing, janitorial and housekeeping services, [and] fixing broken windows."
10 *Bombardier* at 255. The Court concludes that the OLC's accepting the DOA's assertion
11 that the Project constituted maintenance is contrary to fact and law. The Project was bid
12 with the potential of replacing carpeting that would cover approximately two football
13 fields and base cove that extended for approximately a mile. The intent of the bid and
14 Project execution was clearly an effort to manage costs. The DOA's assertion that it may
15 or may not have replaced 12,000 feet of carpet and 5,000 linear feet of base cove is
16 inconsequential because the intent of the bid and the Project allowed for a large volume
17 of repair work. Accepting an argument allowing the DOA to incrementally finish the
18 Project's scope of work "would run afoul of NRS Chapter 338's purpose and would allow
19 parties to insulate themselves from the statutes' applicability by simply including repair
20 work in a maintenance contract." See *Bombardier* at 254. The law does not allow the
21 DOA to bid large repair projects to be completed through smaller projects purported to
22 qualify as "maintenance."

23 11. The Court concludes that the OLC's determination was arbitrary, capricious and
24 inconsistent with fact.

25 12. Although the bid and intent of the Project violated Nevada law, the *Bombardier*
26 Court holding suggests that the OLC should conduct a post construction analysis to
27

1 determine what, if any, of the completed work actually constituted maintenance and what
2 constituted repair, being subject to prevailing wage rates.

3 ORDER

4 1. The Court Orders that matters set forth in its Conclusions of Law may also be
5 considered findings of fact to the extent necessary to maintain the coherence of its
6 conclusions.

7 2. The LMCC's Petition for Judicial Review is granted. The OLC's Determination is
8 hereby vacated and reversed as arbitrary, capricious and inconsistent with fact.

9 3. The Court rules and Orders that the money received by the Airport is public money
10 within the meaning of NRS 338 and that the Project did not constitute maintenance within
11 the meaning of NRS 338 et seq.

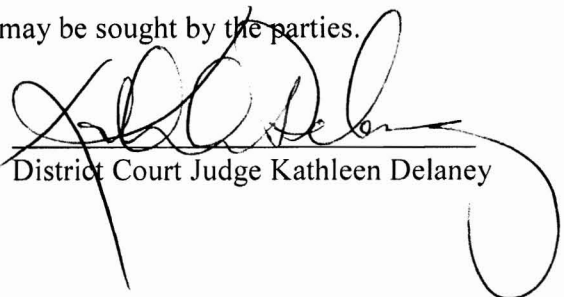
12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of
13 determining the amount, if any, of the completed work that constitutes maintenance and
14 to whom and how much additional wages should be paid for work subject to NRS 338 et
15 seq.'s prevailing wage requirements. In making any such determinations, the OLC must
16 not separate the Project into smaller units as doing so is in violation of Nevada law.

17 5. This Order does not preclude the OLC from issuing administrative fines and similar
18 assessments pursuant to her statutory and regulatory authority.

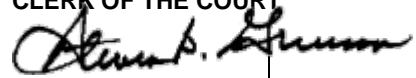
19 6. The Court further Orders that the LMCC must be included in the proceedings on
20 remand as a proper and interested party with appropriate standing to participate.

21 7. The Court further Orders that it retains jurisdiction over any subsequent
22 proceedings that may be necessary for the collection of information, the enforcement of
23 this Order or for further review, if any, as may be sought by the parties.

24 Dated: January 28, 2020.

25 
26 District Court Judge Kathleen Delaney
27

1 Submitted by:
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3 /s/ *Evan L. James*
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10 elj@cjmlv.com
11 *Attorneys for Petitioners*
12
13 Reviewed as to form and content:
14 FISHER & PHILLIPS, LLC
15
16 By: *Refused to sign* _____
17 Holly E. Walker, Esq.
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22 *Attorneys for Respondent Clark*
23 *County Department of Aviation*
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1 **NEOJ**
2 **CHRISTENSEN JAMES & MARTIN**
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10 *Attorneys for Petitioner*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SOUTHERN NEVADA LABOR
14 MANAGEMENT COOPERATION
15 COMMITTEE, by and through its
16 Trustees Terry Mayfield and Chris
17 Christophersen,

18 Petitioner,

19 vs.

20 CLARK COUNTY NEVADA,
21 DEPARTMENT OF AVIATION, a
22 political subdivision of the State of
23 Nevada; and THE OFFICE OF THE
24 LABOR COMMISSIONER,

25 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

NOTICE OF ENTRY OF ORDER

26 Please take notice that the attached order was entered on February 4, 2020.

27 DATED this 7th day of February 2020.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James

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1 **CERTIFICATE OF SERVICE**

2 On February 7, 2020, I caused a true and correct copy of the foregoing notice to
3 be served as follows:

4 ☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the
5 Eighth Judicial District Court of the State of Nevada, the document was electronically
6 served on all parties registered in the case through the E-Filing System.

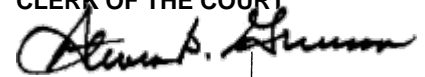
7 Mark J. Ricciardi, Esq. mricciardi@fisherphillips.com

8 Holly E. Walker, Esq. hwalker@fisherphillips.com

9 Andrea Nichols, Esq. anichols@ag.nv.gov

10 CHRISTENSEN JAMES & MARTIN

11 By: /s/ Natalie Saville
12 Natalie Saville
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DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, by and through its
Trustees Terry Mayfield and Chris
Christophersen,

Petitioner,

vs.

CLARK COUNTY NEVADA,
DEPARTMENT OF AVIATION, a
political subdivision of the State of
Nevada; and THE OFFICE OF THE
LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
PETITION FOR JUDICIAL REVIEW**

The Court hereby enters findings of fact and conclusions of law in granting the
Petition for Judicial Review. The Court remands the matter to the Nevada State Labor
Commissioner for further proceedings consistent with this Court's findings, conclusions
and order.

FINDINGS OF FACT

1. The Clark County Nevada Department of Aviation (hereinafter "DOA") operates
the McCarran International Airport ("Airport") in Clark County, Nevada.
2. The DOA is part of the Clark County, Nevada government.

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NOV 20 2019

1 3. The Airport is funded by two primary sources. Revenue from Airport operations
2 such as charges to airlines and lease payments from vendor operations is one source of
3 income. Revenue from grants from the United States Government Federal Aviation
4 Administration ("FAA") is another source of income. However, to receive revenue from
5 the FAA, the DOA is contractually required to be financially self-sustaining and not
6 dependent upon revenue from government sources separate from its own operations.

7 4. The DOA has operated the Airport as a financially self-sustaining operation for
8 many years, consistent with its contractual obligations with the FAA.

9 5. The DOA, in 2016, published an Invitation to Bid, Bid No. 17-604273, for the
10 removal and replacement of 12,000 square feet (approximately the area of two football
11 fields) of carpet and 5,000 linear feet (approximately the distance of one mile) of base
12 cove (collectively referred to herein as "Project").

13 6. The DOA advertised and proceeded with the Project pursuant Nevada's Local
14 Governments Purchasing Statue, NRS 332 et seq. and specifically NRS 332.065.

15 7. The Southern Nevada Labor Management Cooperation Committee ("LMCC")
16 exists pursuant to 29 U.S.C. §§ 175a(a) and 186(c)(6) and a collective bargaining
17 agreement between the International Union of Painters and Allied Trades Local Union
18 No. 1512 and employers engaged in the floorcovering industry.

19 8. LMCC was created and is governed by an Agreement and Declaration of Trust
20 ("Trust Agreement") and is "established for the purpose of improving labor management
21 relationships, job security, organizational effectiveness, enhancing economic
22 development or involving workers in decisions affecting their jobs including improving
23 communication with respect to subjects of mutual interest and concern."

24 9. LMCC also exists pursuant to NRS § 613.230 for the purpose of "dealing with
25 employers concerning grievances, labor disputes, wages, rates of pay, hours of
26 employment, or other conditions of employment."

1 10. To achieve its purposes, the LMCC works to ensure that labor laws are followed,
2 including prevailing wage laws, which laws and associated activity are a matter of public
3 concern and public policy.

4 11. On April 28, 2017, the LMCC filed a complaint with the State of Nevada Office of
5 the Labor Commissioner (“OLC”) alleging that the DOA had violated numerous labor
6 laws with regard to the Project, including violations of NRS 338 et seq.

7 12. On May 2, 2017, the OLC issued a notice to the DOA of the LMCC’s complaint.

8 13. The DOA answered the complaint on May 23, 2017, admitting that it is a political
9 subdivision of the state of Nevada, but generally denying the complaint’s allegations due
10 lack of information.

11 14. The OLC proceeded to conduct an investigation of the matter and requested and
12 received documents from the DOA.

13 15. The OLC did not hold a hearing, but certain investigatory meetings were held,
14 including one on January 10, 2018.

15 16. On February 12, 2018, the DOA sent a letter to the OLC wherein it asserted that
16 the Project was not a public work subject to NRS 338. The DOA further asserted that the
17 Project work constituted maintenance by replacing up to 12,000 square feet of carpet and
18 5,000 feet of base cove over the course of a year and that none of the work is paid for
19 with public money because the Airport is a financially self-sustaining operation. The
20 DOA further asserted that the carpet and base cove replacement was performed in smaller
21 sections and so as not to interfere with Airport operations.

22 17. On March 12, 2018, the DOA sent a letter to the OLC asserting that the Project
23 constituted normal maintenance and further asserting that the Project did not constitute
24 public funds as defined by NRS 338.010(17) because it was not “financed in whole or in
25 part from public money.”

1 18. On June 4, 2017, the DOA, through counsel, sent an email to the OLC further
2 asserting that the Project is not subject to NRS 338 et seq. because the Airport is self-
3 funded.

4 19. On June 13, 2017, the OLC requested documents from the DOA confirming the
5 sources of the Airport's revenue.

6 20. On June 27, 2017, the DOA responded, through counsel, that the Airport's 2018
7 fiscal year budget consisted of \$556,500,000 and that \$23,703,000 of that money was
8 budgeted for what the DOA self characterizes as maintenance.

9 21. On August 30, 2017, the OLC issued a determination that acknowledged the DOA's
10 argument that the Project was maintenance. The OLC accepted the DOA's representation
11 that "[n]one of the repairs and maintenance funds are financed in any part through taxes
12 or public money."

13 22. The Special Conditions section of the Project's bid documents state that "[f]looring,
14 adhesive and base cove are OWNER supplied, successful bidder installed."

15 23. The DOA separated Project material costs from Project labor costs.

16 24. The DOA intended for the Project to be completed in smaller sections such as
17 individual rooms or smaller areas.

18 25. The DOA did not bid the Project pursuant to NRS 338 requirements.

19 26. At oral argument, counsel for the DOA questioned whether or not the LMCC had
20 a right to bring the original complaint filed with the Labor Commissioner.

21 CONCLUSION OF LAW

22 1. The DOA, as a political subdivision of the State of Nevada, is subject to all the laws
23 of the State of Nevada. The DOA cannot, whether intentionally or unintentionally,
24 selectively choose what laws it will or will not follow.

25 2. The Airport, its operations, and its funding, consisting of hundreds of millions of
26 dollars, are a matters of public concern because the Airport services all of southern
27 Nevada and its presence and use has a financial impact on the entire State of Nevada.

1 3. Governmental compliance with established law is a matter of public concern.

2 4. Moreover, prevailing wage laws are a matter of public policy and their application
3 and impact are a matter of public concern because they have an economic impact on the
4 community and affect the community by impacting the construction industry.

5 5. Because the LMCC is established and exists under both federal and state law to
6 address matters of public concern and public policy within the construction industry, it
7 has a direct interest in ensuring that laws within the construction industry are adhered to
8 and followed, giving the LMCC standing to challenge the DOA's conduct in regard to
9 NRS 338 et seq. and the payment of prevailing wages.

10 6. There is no definition of "public money" in NRS 338 et seq. The Court finds the
11 reasoning and arguments regarding public money as set forth in the LMCC's briefing
12 persuasive, being consistent with statute and case law.

13 7. The DOA's contractual relationship with the FAA does not excuse compliance with
14 Nevada law. Contractual relationships under 49 U.S.C. § 47101, upon which the DOA
15 relies, for the purposes of receiving grants are voluntary. There is no indication in 49
16 U.S.C § 47101 that the United States Congress intended to preempt state laws of
17 generally applicability. Nevertheless, allowing a party, such as the DOA, to contract
18 around state law would create the unchecked ability to nullify Nevada law where there
19 was no congressional intent to do so. *See California Trucking Association v. Su*, 903 F.3d
20 953, 963 (9th Cir. 2018). In addition, the DOA's obligations under 49 U.S.C. § 47101(a)
21 specifically require that "the [A]irport will be available for public use...." The DOA is
22 therefore legally obligated to operate the Airport for the benefit of the public regardless
23 of the source of its funding. The Court concludes that contractual obligations that the
24 Airport be self-sustaining do not nullify Nevada law. The Court further concludes that
25 because the DOA is legally obligated to operate the Airport for a public purpose the
26 money it uses for Airport operations is intended for a public purpose.

1 8. There is no definition of “public money” in NRS 338 et seq. The Court must
2 therefore look elsewhere for an appropriate definition. The Nevada Supreme Court
3 addressed the issue of “public money” in the case of *Bombardier Transportation*
4 *(Holdings) USA, Inc. v. Nevada Labor Commissioner*, 433 P.3d 248, 251 (Nev., 2019).¹
5 The DOA was a party to the *Bombardier* case and made the same public money argument
6 that it now makes to this Court. The DOA argued to the Nevada Supreme Court that
7 money from its “normal operating funds” is not subject to Nevada’s prevailing wage laws
8 because the Airport operates “without the County’s general tax fund revenue.” The
9 Nevada Supreme Court rejected that argument, noting that “Bombardier’s arguments are
10 belied by the plain language of NRS 338.010(15) ... the financing language in the statute
11 does not require a particular type of funding, only that the project be financed by public
12 money, which the contract was.” *Bombardier* at 248 n. 3. The Court concludes that
13 pursuant to *Bombardier*, the Airport’s funds, the funding of which is common between
14 the *Bombardier* case and the Project, are in fact public money within the meaning of NRS
15 338.010(17).

16 9. The Court also concludes that the funds by which the Airport operates are in fact
17 public money even in the absence of the *Bombardier* holding. The Nevada Supreme
18 Court provided guidance of what constitutes public money in the case of *Carson-Tahoe*
19 *Hosp. v. Building & Const. Trades Council of Northern Nevada*, 128 P.3d 1065, 1068,
20 122 Nev. 218, 222 (2006) (“For example, a private project constructed to a public
21 agency’s specifications as part of an arrangement for the project’s eventual purchase by
22 the public agency would be a public work.”) The Airport is owned and operated by a
23 public entity. The Airport is for public use. The money by which the Airport operates,
24 regardless of source, is therefore public and within the meaning of “public money” as
25 used in NRS 338 et seq.

26 _____
27 ¹ The OLC did not have the benefit of the *Bombardier* decision when issuing her
determination because the opinion was issued after the determination.

1 10. Subject to the remand order below, the Court concludes that the Project did not
2 constitute maintenance. The DOA's unilateral separation of the Project into smaller
3 construction units and the separation of material costs and labor costs violated Nevada
4 law. "A unit of the project must not be separated from the total project, even if that unit
5 is to be completed at a later time...." NRS 338.080(3). Replacing 12,000 square feet of
6 carpet and 5,000 linear feet of base cove involves a significant amount of work and is not
7 reflective of the type of work constituting maintenance as articulated in *Bombardier*. The
8 Nevada Supreme Court articulated maintenance as involving "such activities like
9 window washing, janitorial and housekeeping services, [and] fixing broken windows."
10 *Bombardier* at 255. The Court concludes that the OLC's accepting the DOA's assertion
11 that the Project constituted maintenance is contrary to fact and law. The Project was bid
12 with the potential of replacing carpeting that would cover approximately two football
13 fields and base cove that extended for approximately a mile. The intent of the bid and
14 Project execution was clearly an effort to manage costs. The DOA's assertion that it may
15 or may not have replaced 12,000 feet of carpet and 5,000 linear feet of base cove is
16 inconsequential because the intent of the bid and the Project allowed for a large volume
17 of repair work. Accepting an argument allowing the DOA to incrementally finish the
18 Project's scope of work "would run afoul of NRS Chapter 338's purpose and would allow
19 parties to insulate themselves from the statutes' applicability by simply including repair
20 work in a maintenance contract." See *Bombardier* at 254. The law does not allow the
21 DOA to bid large repair projects to be completed through smaller projects purported to
22 qualify as "maintenance."

23 11. The Court concludes that the OLC's determination was arbitrary, capricious and
24 inconsistent with fact.

25 12. Although the bid and intent of the Project violated Nevada law, the *Bombardier*
26 Court holding suggests that the OLC should conduct a post construction analysis to
27

1 determine what, if any, of the completed work actually constituted maintenance and what
2 constituted repair, being subject to prevailing wage rates.

3 ORDER

4 1. The Court Orders that matters set forth in its Conclusions of Law may also be
5 considered findings of fact to the extent necessary to maintain the coherence of its
6 conclusions.

7 2. The LMCC's Petition for Judicial Review is granted. The OLC's Determination is
8 hereby vacated and reversed as arbitrary, capricious and inconsistent with fact.

9 3. The Court rules and Orders that the money received by the Airport is public money
10 within the meaning of NRS 338 and that the Project did not constitute maintenance within
11 the meaning of NRS 338 et seq.

12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of
13 determining the amount, if any, of the completed work that constitutes maintenance and
14 to whom and how much additional wages should be paid for work subject to NRS 338 et
15 seq.'s prevailing wage requirements. In making any such determinations, the OLC must
16 not separate the Project into smaller units as doing so is in violation of Nevada law.

17 5. This Order does not preclude the OLC from issuing administrative fines and similar
18 assessments pursuant to her statutory and regulatory authority.

19 6. The Court further Orders that the LMCC must be included in the proceedings on
20 remand as a proper and interested party with appropriate standing to participate.

21 7. The Court further Orders that it retains jurisdiction over any subsequent
22 proceedings that may be necessary for the collection of information, the enforcement of
23 this Order or for further review, if any, as may be sought by the parties.

24 Dated: January 28, 2020.

25 
26 District Court Judge Kathleen Delaney
27

1 Submitted by:
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

August 13, 2019

A-18-781866-J Southern Nevada Labor Management Cooperation Committee, Petitioner(s)
vs.
Clark County Nevada Department of Aviation, Respondent(s)

August 13, 2019 9:00 AM Petition for Judicial Review

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15B

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Renee Silvaggio

PARTIES

PRESENT:	James, Evan L.	Attorney
	Nichols, Andrea H.	Attorney
	Ricciardi, Mark J.	Attorney

JOURNAL ENTRIES

- Extensive argument regarding the definition of public money, source of the funds and what they were designated to be used for, wage calculation, the Labor Commissioner's decision, and Federal statutes and requirements regarding funding that the Department of Aviation is subject to. Mr. Ricciardi argued public money was not used to fund the project. COURT ORDERED, matter CONTINUED and SET for Decision.

08/20/19 10:30 A.M. PETITION FOR JUDICIAL REVIEW...DECISION: PETITION FOR JUDICIAL REVIEW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

August 20, 2019

A-18-781866-J Southern Nevada Labor Management Cooperation Committee, Petitioner(s)
vs.
Clark County Nevada Department of Aviation, Respondent(s)

August 20, 2019

9:00 AM

All Pending Motions

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT:

JOURNAL ENTRIES

- PETITION FOR JUDICIAL REVIEW...DECISION: PETITION FOR JUDICIAL REVIEW

COURT ORDERED, matters CONTINUED.

CONTINUED TO: 08/27/19 9:00 A.M. (BOTH)

CLERK'S NOTE: A copy of this minute order was electronically served on all registered parties. /sb
08/20/19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

August 27, 2019

A-18-781866-J	Southern Nevada Labor Management Cooperation Committee, Petitioner(s) vs. Clark County Nevada Department of Aviation, Respondent(s)
---------------	---

August 27, 2019 9:00 AM All Pending Motions

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15B

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT:	James, Evan L.	Attorney
	Nichols, Andrea H.	Attorney
	Walker, Holly E.	Attorney

JOURNAL ENTRIES

- PETITION FOR JUDICIAL REVIEW...DECISION: PETITION FOR JUDICIAL REVIEW

Ms. Nichols appeared telephonically. Ms. Mary Huck present on behalf of Office of the Labor Commissioner.

COURT ORDERED, Petition GRANTED; and STATED extensive FINDINGS. COURT FINDS the parties do have STANDING to bring the case. COURT FINDS persuasive and compelling the arguments in the Petitioner's Memorandum of Points and Authority and it is on that basis that the Court is GRANTING the Petition. Court appreciates Its decision may be challenged.

Colloquy and argument regarding returning the matter to the Labor Commissioner for review of the ultimate determination of who would be paid what, and remanding the matter. COURT STATED ADDITIONAL FINDINGS, and CLARIFIED, matter REMANDED to the Labor Commissioner to be neutral and do their job, and for the determination if any portion of program is maintenance versus project. Mr. James is to provide the Order with findings of fact and conclusions of law, provide a copy to opposing counsel for review as to form and content, and return it back to the Court within 10

days. Competing Orders can be submitted if there are any disputes.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PETITION FOR JUDICIAL REVIEW; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, by and through its Trustees
TERRY MAYFIELD and CHRIS
CHRISTOPHERSEN,

Plaintiff(s),

vs.

CLARK COUNTY NEVADA, DEPARTMENT
OF AVIATION, a political subdivision of the
STATE OF NEVADA; THE OFFICE OF THE
LABOR COMMISSIONER,

Defendant(s),

Case No: A-18-781866-J

Dept No: XXV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 11 day of March 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk