

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CLARK COUNTY NEV., DEPT' OF
AVIATION

VS.

S. NEV. LABOR MGMT. COOPERATION
COMM., AND OFFICE OF THE LABOR
COMMISSIONER

No. 80798
Electronically Filed
Apr 03 2020 03:47 p.m.
Elizabeth N. Brown
Clerk of Supreme Court
DOCKETING
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

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

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 25
County Clark Judge The Honorable Kathleen Delaney
District Ct. Case No. A-18-781866-J

2. Attorney filing this docketing statement:

Attorney Allison List Kheel, Esq. Telephone (702) 862-3817

Firm Fisher Phillips, LLP

Address 300 South Fourth Street,
Suite 1500
Las Vegas, NV 89101

Client(s) Clark County Department of Aviation ("CCDOA") (Respondent Below)

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Evan L. James, Esq. Telephone (702) 255-1718

Firm Christensen James & Martin

Address 7440 W. Sahara Avenue
Las Vegas, Nevada 89117

Client(s) Southern Nevada Labor Management Cooperation Committee (Petitioner Below)

Attorney Andrea Nichols, Esq. (Sr Deputy A.G.) Telephone (775) 687-2119

Firm Office of the Attorney General

Address 5420 Kietzke Lane,
Suite 202
Reno, Nevada 89511

Client(s) Office of the Labor Commissioner ("OLC") (Respondent Below)

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This Action is an appeal of the February 7, 2020 Findings of Fact, Conclusions of Law and Order Granting the Petition for Judicial Review (the "Order") of the final agency determination of the Office of the Labor Commissioner ("OLC"). The Order contains several legal and factual errors and internally contradictory findings which render the Order unenforceable, and which deprive the CCDOA of its right to due process. Among those errors, the District Court retained jurisdiction over future proceedings while simultaneously ceding jurisdiction to the Office of the Labor Commission, which is contrary to Nevada law. The Order further improperly included factual and legal findings that went well beyond the Labor Commissioner's sole "public money" determination that was before the District Court. Relatedly, the District Court's Order made factual findings, including finding that "the Project did not constitute maintenance," that could not be implied from the scant record developed in the proceedings before the Office of the Labor Commissioner. To correct such errors, the Appellant now appeals the Order issued by the District Court.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- (1) Whether the District Court can retain jurisdiction over future proceedings beyond merely enforcing its Order, while simultaneously remanding the matter, and ceding jurisdiction to, the Office of the Labor Commissioner?
- (2) Whether the District Court erred by making factual and legal findings that went beyond the Labor Commissioner's sole "public money" determination and the scant, undeveloped administrative record that was before the District Court?
- (3) Whether the District Court improperly exceeded its authority by continuing to hear arguments on, and purportedly decide, the CCDOA's Motion for Reconsideration (and/or clarification) after the CCDOA had filed its Notice of Appeal divesting the District Court of Jurisdiction?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: NRS Chapter 338, including its prevailing wage requirement, is explicitly excluded from contracts issued under NRS Chapter 332 related to the normal maintenance of property. The CCDOA asserts the carpet maintenance contract at the airport has never before been challenged as a public works project requiring prevailing wages. The Order “concludes that the Project did not constitute maintenance.” Such findings exceed the scope of the Petition for Judicial Review and are completely unsupported by the scant administrative record developed to date, is contrary to NRS Chapters 332 and 338, and is otherwise unsupported by law.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This is an Appeal of a Final Order Granting a Petition for Judicial Review of the final agency determination issued by the Office of the Labor Commissioner under the Administrative Procedure Act, NRS Chapter 233B.150. The District Court exceeded its authority and jurisdiction by making findings beyond the administrative record and OLC's "public money" determination. Thus, the Supreme Court should retain this case despite it being presumptively assigned to the Court of Appeals under NRAP 17(b)(9). Additionally, after CCDOA filed its Notice of Appeal divesting the District Court of Jurisdiction, the District Court improperly exceeded its authority by hearing on March 31, 2020 and purportedly deciding (as an advisory opinion) the CCDOA's Motion for Reconsideration, and the Supreme Court should retain jurisdiction in the interest of judicial efficiency.

14. Trial. If this action proceeded to trial, how many days did the trial last? 0 _____

Was it a bench or jury trial? N/A _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from February 4, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Feb 10, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Mar 9, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|--|--|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input checked="" type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
This appeal is over a final Order of the District Court granting a Petition for Judicial Review under the Administrative Procedure Act, NRS Chapter 233B.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Southern Nevada Labor Management Cooperation Committee (Petitioner Below)

Clark County Department of Aviation (Respondent Below)

Office of the Labor Commissioner (Respondent Below)

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

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

Petitioner's claim for Judicial Review of the Final Determination of the OLC granted on Feb. 7, 2020.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

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

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

- ê The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- ê Any tolling motion(s) and order(s) resolving tolling motion(s)
- ê Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- ê Any other order challenged on appeal
- ê Notices of entry for each attached order

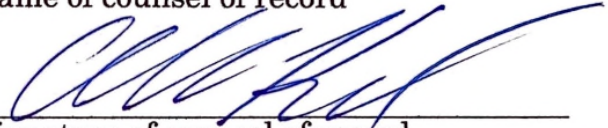
VERIFICATION

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

Clark County Department of Aviation
Name of appellant

April 3, 2020
Date

Allison List Kheel, Esq.
Name of counsel of record


Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 3rd day of April, 2020, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Andrea Nichols, Esq., Sr Deputy Attorney General
Office of the Attorney General
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511
Attorney for the Office of the Labor Commissioner

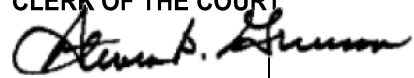
Evan L. James, Esq.
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorney for Southern Nevada Labor Management Cooperation Committee

Dated this 3rd day of April, 2020

/s/ Sarah Griffin
Signature

CLARK COUNTY NEVADA,) **Supreme Court No. 80798**
DEPARTMENT OF AVIATION, a) District Court Case No. A-18-781866-J
political subdivision of the State of)
Nevada;)
Appellant,)
)
vs.)
)
SOUTHERN NEVADA LABOR)
MANAGEMENT COOPERATION)
COMMITTEE, by and through its)
Trustees Terry Mayfield and Chris)
Christophersen, and THE OFFICE)
OF THE LABOR COMMISSIONER,)
)
)
Respondents.

Date Filed	Document Title	Page Numbers
9/27/18	Petition for Judicial Review	1-8
2/7/20	Notice of Entry of Order and Findings of Fact, Conclusions of Law and Order Granting the Petition for Judicial Review (dated Feb.4, 2020)	9-19
2/24/20	Notice of Hearing on CCDOA's Motion for Reconsideration	20



PTJR
CHRISTENSEN JAMES & MARTIN
EVAN L. JAMES, ESQ.
Nevada Bar No. 07760
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: elj@cjmlv.com
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.: **Department 25**

PETITION FOR JUDICIAL REVIEW

COMES NOW, Petitioner, Southern Nevada Labor Management Cooperation Committee, by and through its Trustees Terry Mayfield and Chris Christopherson¹ ("LMCC"), by and through its attorney, Evan L. James, Esq. of the law firm of Christensen James & Martin, and here by petitions the Court for review of the Final Decision issued by the OFFICE OF THE LABOR COMMISSIONER ("OLC"), a copy of which is attached hereto as Exhibit 1.

¹ The original Trustee, John Smirk, identified in the administrative proceedings has been removed from office and no longer has authority to act on behalf of the Petitioner. As such, his name is substituted with a current and authorized Trustee.

1 **I. JURISDICTIONAL STATEMENT**

2 Pursuant to NRS 233B.130(1) & (2), "Any party who is ... [a]ggrieved by a final
3 decision in a contested case is entitled to judicial review of the decision...." Petitions for
4 judicial review must ... [b]e filed within 30 days after service of the final decision of the
5 agency." Additionally, NRS 233B.130(2) states this Court may hear this case, which
6 reads as follows: "Petitions for judicial review must ... [b]e instituted by filing a petition
7 in the district court ... in and for the county in which the aggrieved party resides or in and
8 for the county where the agency proceeding occurred." The LMCC's resides in Clark
9 County, Nevada and the proceedings occurred in Clark County, Nevada.

10 **II. GROUNDS FOR PETITION**

11 Clark County, Department of Aviation ("DOA") published an invitation to bid, Bid
12 No. 17-604273 ("Bid") for "Carpet and Base Cove Installation" at the McCarren
13 International Airport ("Project"). The DOA, in the Bid documents, separated the Project's
14 material costs from the Project's labor costs. This is a violation under NRS § 338.080(3),
15 which reads in part: "A unit of the project must not be separated from the total project,
16 even if that unit is to be completed at a later time, in order to lower the cost of the project
17 below \$250,000." The DOA admitted in 2017 that it purchased the materials in bulk and
18 split the labor costs out for material installation at a later date.

19 The DOA has acted to avoid the prevailing wage rates. The DOA is violating
20 Nevada's labor laws by refusing to have the Project bid and performed in accordance with
21 prevailing wage requirements. Pursuant to NAC § 338.0095, the workers employed on
22 the Project, "must be paid the applicable prevailing rate of wage for the type of work that
23 the worker actually performs on the [Project] and in accordance with the recognized class
24 of worker...." Under NAC § 338.007, the definition of "recognized class of workers" is
25 "a class of worker recognized by the Labor Commissioner as being a distinct craft or type
26 of work for purposes of establishing prevailing rates of wages."

1 The DOA argued that it is not in violation of Nevada labor laws because it budgeted
2 construction costs through its 2018 budget. This is directly contrary to DOA's claims that
3 it purchased materials prior to 2018. The DOA further argued it is not subject to Nevada
4 law because its money is not public money. DOA is a public agency, so its money is in
5 fact public money. Nevertheless, the OLC determined in favor of the DOA and closed
6 the case.

7 The OLC's closing of the matter was contrary to fact, law and was arbitrary and
8 capricious. The Labor Commissioner errs in the following ways:

9 1. The matter is clearly not maintenance. The DOA is violating NRS §§ 332 and
10 338 et seq. Also, the DOA has not produced any evidence to the contrary.

11 2. The DOA claims that the improvements are being paid for from a 2018 budget.
12 However, the DOA confirmed during prior meetings that the materials used for the
13 project were purchased long ago. Thus, there is no factual way that the 2018 budget could
14 have been paid for materials purchased prior to the year 2018.

15 3. The DOA further asserts a faulty legal position that money it possesses is not
16 public money. The DOA is a government agency and any money it receives or possesses
17 is in fact public money. The revenues obtained by DOA do not belong to private parties
18 and the facility being improved (the airport) is a public facility. The Nevada Supreme
19 Court has made it clear that even private projects developed for a public agency are
20 subject to prevailing wage laws. *See Carson-Tahoe Hosp. v. Building & Const. Trades*
21 *Council of Northern Nevada*, 128 P.3d 1065, 1068, 122 Nev. 218, 222 (2006) ("For
22 example, a private project constructed to a public agency's specification as part of an
23 arrangement for the project's eventual purchase by the public agency would be a public
24 work."). Another court stated, "To take rent collected from one source and use it to pay
25 obligations would plainly be a payment of public funds...." *McIntosh v. Aubry*,
26 Cal.Rptr.2d 680, 688, 14 Cal.App.4th 1576, 1588 (Cal.App. 1 Dist., 1993) (superseded
27 by statute).

1 Acceptance of such positions is factually and legally incorrect. In addition, the OLC
2 failed to effectively consider points raised by the LMCC.

3 **III. CONCLUSION**

4 Petitioner respectfully requests that the Court reverse the OLC's ruling and to the
5 extent necessary, conduct a de novo review with additional evidence be utilized as
6 appropriate.

7 DATED this 27th day of September 2018.

8 CHRISTENSEN JAMES & MARTIN

9 By: /s/ Evan L. James
10 Evan L. James, Esq.
11 Nevada Bar No. 7760
12 7440 W. Sahara Avenue
13 Las Vegas, NV 89117
14 Tel.: (702) 255-1718
15 Fax: (702) 255-0871
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CERTIFICATE OF SERVICE

On September 27, 2018, I caused a true and correct copy of the foregoing Petition to be served as follows:

☒ UNITED STATES REGULAR MAIL: By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address:

Clark County Department of Aviation
Administration Building 3rd Floor
845 East Russell Road
Las Vegas, NV 89119

Clark County District Attorney
Att: Timothy Baldwin, Esq.
500 S Grand Central Pkwy.
Las Vegas, NV 89106

Nevada State Labor Commissioner
Shannon Chambers
3300 W Sahara Ave., Suite 225
Las Vegas, NV 89102

Nevada Attorney General
Adam Laxalt
100 North Carson Street
Carson City, NV 89701

☒ UNITED STATES CERTIFIED MAIL: By sending a true and correct copy of the above-referenced through the United States Mail as Certified Deliver with a return receipt requested and addressed as follows:

Clark County Department of Aviation
Administration Building 3rd Floor
845 East Russell Road
Las Vegas, NV 89119

Clark County District Attorney
Att: Timothy Baldwin, Esq.
500 S Grand Central Pkwy.
Las Vegas, NV 89106

Nevada State Labor Commissioner
Shannon Chambers
3300 W Sahara Ave., Suite 225
Las Vegas, NV 89102

Nevada Attorney General
Adam Laxalt
100 North Carson Street
Carson City, NV 89701

☒ PERSONAL SERVICE: By submitting the document to a process server for personal service, Proofs of Service to be filed when available.

CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville
Natalie Saville

EXHIBIT

1

STATE OF NEVADA

BRIAN SANDOVAL
GOVERNOR

C.J. MANTHE
DIRECTOR

SHANNON CHAMBERS
LABOR COMMISSIONER



X OFFICE OF THE LABOR COMMISSIONER
3300 WEST SAHARA AVE, SUITE 225
LAS VEGAS, NEVADA 89102
PHONE: (702) 486-2650
FAX (702) 486-2660

OFFICE OF THE LABOR COMMISSIONER
1818 E. COLLEGE PARKWAY, SUITE 102
CARSON CITY, NV 89706
PHONE: (775) 684-1890
FAX (775) 687-6409

Department of Business & Industry OFFICE OF THE LABOR COMMISSIONER

www.labor.nv.gov

August 30, 2018

CLARK COUNTY DEPARTMENT OF AVIATION
ADMINISTRATION BUILDING RD FLOOR, PURCHASING
845 EAST RUSSELL ROAD
LAS VEGAS, NEVADA 89119

FISHER PHILLIPS
MARK J. RICCIARDI, ESQ
300 S. FOURTH STREET
SUITE 1500
LAS VEGAS, NEVADA 89101

CHRISTENSEN JAMES & MARTIN
EVAN L. JAMES, ESQ.
KEVIN A. ARCHIBALD, ESQ.
7440 W. SAHARA AVENUE
LAS VEGAS, NEVADA 89117

REFERENCE: PREVAILING WAGE CLAIM/COMPLAINT # NLC-17-001486 BID NO 17-604273,
CARPET AND BASE COVE INSTALLATION

Clark County Department of Aviation:

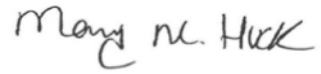
Thank you for your response to the complaint filed against Clark County Department of Aviation (DOA).

The complaint alleged possible violations of Nevada Revised Statutes (NRS) 338.010 to 338.090, inclusive, or Nevada Administrative Code (NAC) 338.005 to 338.125, inclusive. DOA asserted carpet maintenance work is financed from two sources airline revenues and non-airline revenues. None of the repairs and maintenance funds are financed in any part through any taxes or public money. The DOA is not subsidized by any tax revenues of the County and has been a self-sustaining entity since 1966. DOA represented in writing that the work in question is not paid for with public money.

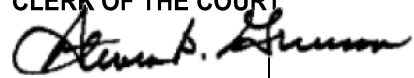
The Office of the Labor Commissioner has completed its review of the complaint. The compliance review conducted did not reveal violations of Nevada labor laws with regards to **NRS Chapter 338 or NAC Chapter 338**. This complaint has been closed.

If you have any questions, please contact me at (702) 486-2650 or by e-mail at mhuck@labor.nv.gov

Sincerely,

A handwritten signature in dark ink that reads "Mary M. Huck". The signature is written in a cursive, flowing style.

Mary Huck
Deputy Labor Commissioner
Email: mhuck@labor.nv.gov



1 **NEOJ**
2 **CHRISTENSEN JAMES & MARTIN**
3 EVAN L. JAMES, ESQ.
4 Nevada Bar No. 07760
5 7440 W. Sahara Avenue
6 Las Vegas, Nevada 89117
7 Tel.: (702) 255-1718
8 Facsimile: (702) 255-0871
9 Email: elj@cjmlv.com
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

Evan L. James, Esq.
Nevada Bar No. 7760
7440 W. Sahara Avenue
Las Vegas, NV 89117
Tel.: (702) 255-1718
Fax: (702) 255-0871

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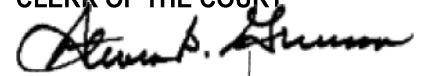
CERTIFICATE OF SERVICE

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

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

Mark J. Ricciardi, Esq.	mricciardi@fisherphillips.com
Holly E. Walker, Esq.	hwalker@fisherphillips.com
Andrea Nichols, Esq.	anichols@ag.nv.gov

CHRISTENSEN JAMES & MARTIN
By: /s/ Natalie Saville
Natalie Saville



FFCO
CHRISTENSEN JAMES & MARTIN
EVAN L. JAMES, ESQ.
Nevada Bar No. 07760
DARYL E. MARTIN, ESQ.
Nevada Bar No. 006735
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
elj@cjmlv.com
dem@cjmlv.com
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.

CHRISTENSEN JAMES & MARTIN, CHTD.
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

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.

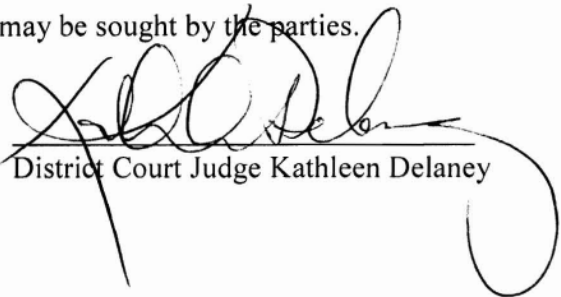
12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of
13 determining the amount, if any, of the completed work that constitutes maintenance and
14 to whom and how much additional wages should be paid for work subject to NRS 338 et
15 seq.'s prevailing wage requirements. 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.

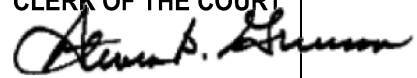
24 Dated: January 28, 2020.

25 
26 District Court Judge Kathleen Delaney
27

1 Submitted by:
2 CHRISTENSEN JAMES & MARTIN
3 /s/ *Evan L. James*
4 By: _____
5 Evan L. James, Esq.
6 Nevada Bar No. 006735
7 7440 W. Sahara Avenue
8 Las Vegas, NV 89117
9 Tel.: (702) 255-1718
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.
18 Nevada Bar No. 14295
19 300 South Fourth Street, Suite 1500
20 Las Vegas, NV 89101
21 hwalker@fisherphillips.com
22 *Attorneys for Respondent Clark*
23 *County Department of Aviation*
24
25
26
27 ATTORNEY GENERAL AARON FORD
By: /s/ *Andrea Nichols* (email approval given)
Andrea Nichols, Esq.
Senior Deputy Attorney General,
Nevada Bar No. 6436
Office of the Attorney General
100 N. Carson Nevada 89701
Carson City, NV 89701
Tel.: (775) 684-1218
anichols@ag.nv.gov
Attorneys for Respondent Office
of the Labor Commissioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Case No.: A-18-781866-J

Department 25

NOTICE OF HEARING

Please be advised that the Respondent's Motion for Reconsideration in the above-entitled matter is set for hearing as follows:

Date: March 31, 2020

Time: 9:00 AM

Location: RJC Courtroom 15B
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Marie Kramer
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Marie Kramer
Deputy Clerk of the Court