

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY NEVADA,
DEPARTMENT OF AVIATION, a
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.

) **Supreme Court No. 80798**

) District Court Case No. A-18-781866-J

) Electronically Filed
) May 15 2020 04:43 p.m.
) Elizabeth A. Brown
) Clerk of Supreme Court

APPENDIX OF EXHIBITS TO RESPONSE TO RULE TO SHOW CAUSE

Exhibit	Document Title	Page Numbers
1	The Notice of Entry of the Order Granting in Part the Petition for Judicial Review of the final agency decision of the Office of the Labor Commissioner	001-012
2	Motion for Reconsideration of the Order	013-028
3	Motion for Order Shortening Time on Respondent's Motion for Reconsideration	029-047
4	CCDOA's objections to the draft order submitted by the Petitioner, Southern Nevada Labor Management Cooperation Committee	048-052
5	August 27, 2019 Hearing Transcript	053-072
6	March 31, 2020 Hearing Transcript	073-098
7	February 24, 2020 Order setting Hearing on Motion	099-100
8	February 24, 2020 Order setting Hearing on OST Motion	101-102

CERTIFICATE OF MAILING

This is to certify that on the 15th day of May, 2020, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **APPENDIX OF EXHIBITS TO RESPONSE TO RULE TO SHOW CAUSE**, via the Court's e-file and e-service system, and the same was served on those case participants who are registers users as follows:

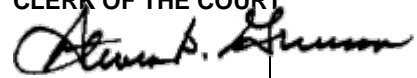
Andrea Nichols, Esq.
Senior Deputy Attorney General
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511
*Attorneys for Respondent
Office of the Labor
Commissioner*

Evan L. James, Esq.
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
*Attorney for Respondent (Petitioner
Below) Southern Nevada Labor
Management Cooperation
Committee*

/s/ Sarah Griffin

An employee of Fisher & Phillips LLP

EXHIBIT 1



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

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.

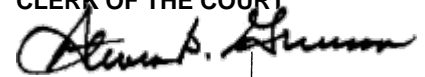
Mark J. Ricciardi, Esq. mricciardi@fisherphillips.com

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
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LABOR COMMISSIONER,

Respondents.

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**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

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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.

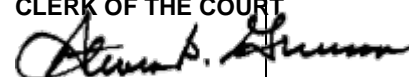
21 7. The Court further Orders that it retains jurisdiction over any subsequent
22 proceedings that may be necessary for the collection of information, the enforcement of
23 this Order or for further review, if any, as may be sought by the parties.

24 Dated: January 28, 2020.

25 
District Court Judge Kathleen Delaney
26
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*
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EXHIBIT 2



FISHER & PHILLIPS LLP
MARK J. RICCIARDI, ESQ.
Nevada Bar No. 3141
ALLISON L. KHEEL, ESQ.
Nevada Bar No. 12986
300 South Fourth Street, Suite 1500
Las Vegas, NV 89101
Telephone: (702) 252-3131
Facsimile: (702) 252-7411
E-Mail: mricciardi@fisherphillips.com
E-Mail: akheel@fisherphillips.com
Attorneys for Respondent
Clark County Department of Aviation

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,	)	MOTION FOR
	)	RECONSIDERATION
vs.)	
	)	HEARING REQUESTED
CLARK COUNTY NEVADA,	)	(Pursuant to NRS 233B.133)
DEPARTMENT OF AVIATION, a)	
political subdivision of the State of Nevada;)	
and THE OFFICE OF THE LABOR)	
COMMISSIONER,)	
)	
Respondents.)	

Respondent, Clark County Department of Aviation, ("Respondent" or the "DOA"), by and through its counsel, Fisher & Phillips, LLP, hereby asks the Court to reconsider the Findings of Fact, Conclusions of Law and Order Granting Petition for Judicial Review signed by Judge Kathleen Delaney on January 28, 2020 and filed with the Court by Notice of Entry on February 7, 2020 (hereinafter the "Order").

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MEMORANDUM OF POINTS AND AUTHORITIES

The Order issued by the Court contains several legal errors and internally contradictory findings which render the Order unenforceable, and which deprive Respondent of its right to due process. Paragraph 4 of the Order purports to remand the matter back to the Office of the Labor Commissioner (“OLC”), the administrative agency issuing the final decision. Order ¶ 4. This paragraph also suggests that this Order is intended to be a final disposition of this matter with no further proceedings to occur before the District Court. However, in direct contrast to this remand instruction, Paragraph 7 of the Order states:

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

Order ¶ 7. Paragraph 7 purports to retain jurisdiction over future proceedings while simultaneously ceding jurisdiction to the OLC. The Nevada Supreme Court in *Westside Charter* made it clear that the District Court cannot remand a matter to the agency and retain jurisdiction at the same time. *See Westside Charter Service, Inc. v. Gray Line Tours of S. Nev.*, 99 Nev. 456, 459-460, 664 P.2d 351, 353 (1983); *see also SFPP, L.P. v. Second Jud. Dist. Court*, 123 Nev. 608, 612, 173 P.3d 715, 717 (Nev. 2007). Doing so deprives the OLC of the power to hear the matter and any findings or enforcement measures taken by the OLC on the basis of this Order would frustrate and contradict the jurisdiction of the Court. *Id.* Similar language in an order drafted by Petitioner in another case was struck down in an unpublished order of affirmance by the Nevada Supreme Court citing *SFPP* and finding the district court’s attempt to “retain jurisdiction over the matter, in the event that the parties seek relief from the labor commissioner and thereafter desire judicial review” to be improper. *See Southern Nevada Labor Management Cooperation Committee, by and through its Trustees Terry Mayfield and John Smirk, et al v. City of Boulder City & MMI Tank, Inc.*, Case No. 68060, Doc. 16-14802, at *5 fn.1

(May 11, 2016 Order of Affirmance)(unpublished).¹ The Nevada Supreme Court stated clearly “[t]his the court cannot do.” *Id.* (emphasis added). The Court should correct the Order to remove the improper retention of jurisdiction.

Alternatively, if the Court is not willing to reconsider its Order in this matter, the Respondent requests that the Court declare that the Order is a “final order” from which Respondent may file an appeal as a matter of right. The District Court can only retain jurisdiction until a final judgement has been entered. *SFPP*, 123 Nev. at 612, 173 P.3d at 718 (upon filing of the signed order “the district court lost jurisdiction . . . and lacked jurisdiction to conduct any further proceedings with respect to the matters resolved in the judgment unless it was first properly set aside or vacated”). The District Court only retains jurisdiction to deal with matters ancillary to the final order (e.g. taxation of costs, etc.). *Westside Charter*, 99 Nev. at 458-459, 664 P.2d at 352-353. Without declaring the Order to be a “final order,” Respondent is denied its due process right to appeal and is left in legal limbo whereby none of the parties can take further action without potentially violating the law.² The Court should reconsider the Order as written,³ or in the alternative clarify that the Order is a “final order” subject to an automatic appeal right.

The Order further improperly concludes that the “the Project did not constitute maintenance within the meaning of NRS 388 et seq.,” a conclusion which the next paragraph of the Order then concedes is not supported by the Record as it orders the case remanded to the OLC to determine how much of the work might or might not be maintenance. See Order ¶¶ 3 & 4.

It is the duty of the administrative agency to state findings of fact and conclusions of law in the final agency decision. NRS § 233B.125⁴. In a Petition for Judicial Review,

¹ A copy is attached as **Exhibit A**.

² The OLC cannot determine the matter on remand because it has not been given full jurisdiction to act; the District Court cannot hold a factual hearing or order the parties to take further action because it has purportedly ceded jurisdiction to the OLC; the Petitioner cannot seek enforcement before either the Court or the OLC; and the Respondent cannot appeal because it is not a final order. Respondent also cannot file any tolling motions without determining if the Order is a “final order.”

³ For ease of reference, Respondent’s proposed order is attached as **Exhibit B**.

⁴ “. . . Except as provided in subsection 5 of NRS 233B.121, a final decision must include findings of fact and conclusions of law, separately stated. Findings of fact and decisions must be based upon a

1 the District Court has the limited statutory power to do one of the following: (1) remand,
2 (2) affirm the final agency decision, or (3) “set it aside in whole or in part . . . because
3 the final decision of the agency is: . . . Clearly erroneous in view of the reliable, probative
4 and substantial evidence on the whole record. . .” NRS § 233B.135(3)(e). The Court
5 appears to have chosen to remand the matter to the OLC, recognizing that the OLC must
6 determine “the amount, if any, of the completed work that constitutes maintenance and
7 to whom and how much additional wages should be paid for work subject to NRS 338 et
8 seq.’s prevailing wage requirements.” Order ¶ 4.

9 The Court does not have before it the necessary factual record to determine
10 whether, all, some or none of the work is considered maintenance work. The factual
11 findings of the OLC are limited to the public money issue and the Court does not have
12 jurisdiction to make a determination beyond these factual findings.

13 The Order improperly makes new factual findings on the maintenance issue,
14 despite the agency *deliberately* not expressing any findings on this issue in its decision.
15 Cf. *Revert v. Ray*, 95 Nev. 782, 603 P.2d 262 (Nev. 1979). The Order erroneously states
16 that the Labor Commissioner **previously** found that “the Project did not constitute
17 maintenance” — a finding the Labor Commissioner NEVER made. The Petitioner even
18 agreed with the Respondent that any such finding from the Court would constitute
19 reversible error.⁵ Finding insufficient evidence in the Record to support the maintenance
20 exception is not the same as affirmatively finding the project “did not constitute
21 maintenance.” Such factual findings cannot simply be implied from the Record,
22 particularly when Petitioner claimed it was denied the opportunity to introduce rebuttal
23 evidence on the maintenance issue. Cf. *Griffin v. Westergard*, 96 Nev. 627, 632 (1980).
24 Respondent therefore implores the Court to reconsider its Order and correct this error.

25 ///

26 _____
preponderance of the evidence. Findings of fact, if set forth in statutory language, must be accompanied by
27 a concise and explicit statement of the underlying facts supporting the findings. . . .”

28 ⁵ In its April 16, 2019 Reply Brief, Petitioner expressly argued the reverse, asserting that “**any ruling on
the maintenance issue** would be error as the Labor Commissioner made no factual findings or legal
conclusions related to issue.” Reply, p. 1 (emphasis added).

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CERTIFICATE OF SERVICE

This is to certify that on the 21st day of February 2020, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **MOTION FOR RECONSIDERATION**, via the Court's e-file and e-service system on those case participants who are registers users.

Andrea Nichols, Esq.
Deputy Attorney General
100 N. Carson
Carson City, Nevada 89701
*Attorneys for Respondent
Office of the Labor
Commissioner*

Evan L. James, Esq.
7440 W. Sahara Avenue
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

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, BY AND THROUGH ITS
TRUSTEES TERRY MAYFIELD AND
JOHN SMIRK, FOR ITSELF AND ON
BEHALF OF KEN DUNAWAY AND
INJURED SIGNATORIES; AND THE
PAINTING AND DECORATING
CONTRACTORS OF AMERICA,
SOUTHERN NEVADA CHAPTER, FOR
AND ON BEHALF OF ITSELF AND ITS
INJURED MEMBERS,

Appellants,

vs.

CITY OF BOULDER CITY, A
POLITICAL SUBDIVISION OF THE
STATE OF NEVADA; AND MMI TANK,
INC., AN ARIZONA CORPORATION,
Respondents.

No. 68060

FILED

MAY 11 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a complaint for declaratory and injunctive relief concerning an alleged public works project. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Below, appellants Southern Nevada Labor Management Cooperation Committee (LMCC) and the Painting and Decorating Contractors of America, Southern Nevada Chapter, sued respondent City

of Boulder City, alleging that the City had improperly awarded a public works contract in connection with work on a water tank to respondent MMI Tank, Inc., through a faulty bid solicitation. In particular, appellants contended that the bid solicitation wrongly advertised the water tank work as “normal maintenance” and thus excluded it, under NRS 338.011, from statutory public works requirements like paying prevailing wages. As a result, appellants asserted, their members, who are either employers required by collective bargaining agreements to pay their workers certain minimum wages or the workers themselves, were unable to fairly compete with companies that were not restricted by similar wage requirements. After motions to dismiss were filed, the district court determined that appellants had standing as representatives of injured parties and that, although the case was factually different from that in *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 194 P.3d 96 (2008), the Nevada Labor Commissioner nevertheless had jurisdiction to determine the issues, and the court dismissed the case. Appellants then appealed.

The district court properly dismissed for failure to first seek relief with the labor commissioner. *Malecon Tobacco, LLC v. State*, 118 Nev. 837, 839, 59 P.3d 474, 475-76 (2002) (“Ordinarily, before availing oneself of district court relief from an agency decision, one must first exhaust available administrative remedies.”); see *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227–28, 181 P.3d 670, 672 (2008) (noting that this court reviews orders granting motions to dismiss de novo). The labor commissioner is charged with enforcing prevailing wage requirements for public work projects under NRS 338.010 – NRS 338.130,

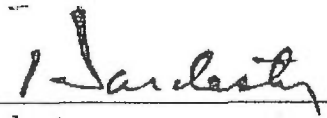
which charge necessarily includes determining whether a project is a public work. NRS 338.015(1); see NRS 338.010(17) (defining "public work"); NRS 338.011 (describing contracts excluded from NRS Chapter 338). To that end, a number of statutes and regulations allow parties to bring matters before the labor commissioner. For instance, NRS 607.205 and NRS 607.207 provide for notice and hearings on labor law enforcement questions under the labor commissioner's authority. And NAC 338.107 authorizes the filing of a complaint concerning violations of the public works statutes enforceable by the labor commissioner, while NAC 607.650 and NAC 607.670 govern, generally, petitions for advisory and declaratory orders. As whether a project is subject to NRS Chapter 338 is governed by the statutory definitions enforceable by the labor commissioner, the labor commissioner has authority over the issues raised by appellants.


Nevertheless, appellants assert that any administrative remedy is inadequate, such that they should be allowed to bring their claims directly in the district court. In *Baldonado*, we recognized that "when an administrative official is expressly charged with enforcing a section of laws, a private cause of action generally cannot be implied." *Baldonado*, 124 Nev. at 961, 194 P.3d at 102. Here, the labor commissioner is charged with enforcing the applicable statutes, and no statute expressly authorizes a party to seek relief from an improperly advertised bid in the district court. When no clear, statutory language authorizes a private right of action, one may be implied only if the legislature so intended. *Baldonado*, 124 Nev. at 958-59, 194 P.3d at 100-01 (explaining that this court looks at three factors to determine the


legislature's intent: "(1) whether the plaintiffs are of the class for whose [e]special benefit the statute was enacted; (2) whether the legislative history indicates any intention to create or to deny a private remedy; and (3) whether implying such a remedy is consistent with the underlying purposes of the legislative scheme" (internal quotation marks and citation omitted) (alteration in original)). We conclude that the legislature did not intend to authorize a bid-solicitation challenge in the district court, as appellants are not members of the class the bid-solicitation statute, NRS 338.143, was enacted to benefit, see *Associated Builders & Contractors, Inc. v. S. Nev. Water Auth.*, 115 Nev. 151, 158, 979 P.2d 224, 229 (1999); the statute's legislative history reveals intent to deny a private remedy, see Hearing on S.B. 189 Before the Senate Governmental Affairs Comm., 75th Leg., at 23 (Nev., March 18, 2009) ("[T]here is no statutory recognized private cause of action. . . . There is not in NRS 338."); and implying a private cause of action is inconsistent with the underlying purpose of NRS 338.143 to protect the public. See *S. Nev. Labor Mgmt. Cooperation Comm. v. Clark Cty. Sch. Dist.*, Docket No. 65547 (January 28, 2016, Order of Affirmance) (applying the factors set forth in *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 958, 194 P.3d 96, 100 (2008), in determining, under similar arguments made by LMCC with respect to a different factual situation, that no private right of action to enforce NRS 338.143 exists).

The labor commissioner has authority to determine whether a project is a public work under NRS Chapter 338. Appellants concede that they did not seek relief from the labor commissioner before filing suit in the district court. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


Hardesty


Saitta


Pickering

cc: Hon. Rob Bare, District Judge
Christensen James & Martin
Ogletree Deakins Nash Smoak & Stewart
Grant Morris Dodds PLLC
Eighth District Court Clerk

¹In light of this order, we need not reach the parties' arguments concerning standing.

In addition to dismissing this case by way of final judgment under NRCP 54(b), the district court purported to "stay" and retain jurisdiction over the matter, in the event that the parties seek relief from the labor commissioner and thereafter desire judicial review. This the court cannot do. *SFPP, L.P. v. Second Judicial Dist. Court*, 123 Nev. 608, 612, 173 P.3d 715, 717 (2007) ("[O]nce a final judgment is entered, the district court lacks jurisdiction to reopen it. . ."). Thus, any post-administrative-action district court proceeding must proceed in the normal course.

EXHIBIT B

1 FISHER & PHILLIPS LLP
2 MARK J. RICCIARDI, ESQ.
3 Nevada Bar No. 3141
4 HOLLY E. WALKER, ESQ.
5 Nevada Bar No. 14295
6 300 South Fourth Street, Suite 1500
7 Las Vegas, NV 89101
8 Telephone: (702) 252-3131
9 Facsimile: (702) 252-7411
10 E-Mail: mricciardi@fisherphillips.com
11 E-Mail: hwalker@fisherphillips.com
12 *Attorneys for Respondent*
13 *Clark County Department of Aviation*

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

12 SOUTHERN NEVADA LABOR	)	Case No. A-18-781866-J
13 MANAGEMENT COOPERATION)	
14 COMMITTEE, by and through its Trustees	)	Department No.: XXV
15 Terry Mayfield and Chris Christophersen,)	
16)	ORDER GRANTING PETITION
17)	FOR JUDICIAL REVIEW
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Petitioner Southern Nevada Labor Management Cooperation Committee's Petition for
Judicial Review, having come for hearing on August 13, 2019 and August 27, 2019, at
the hour of 10:30 a.m. in Department XXV of the above-entitled Court, the Honorable
Kathleen Delaney presiding, the Court hereby orders as follows:

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- 1) That the Office of the Labor Commissioner's determination that the carpet maintenance contract was not financed with public money, was arbitrary and capricious;
- 2) That this Court, pursuant to NRS 233B.135, grants the Petition for Judicial Review; and
- 3) That this Court, remands this matter to the Office of the Labor Commissioner to address the issue of whether the carpet maintenance contract pertains to the normal maintenance of the Clark County Department of Aviation's property and to address any other issues that the Labor Commissioner determines have been properly raised by the parties.

DATED this ____ day of September 2019.

DISTRICT COURT JUDGE

Submitted by:

FISHER & PHILLIPS

Mark J. Ricciardi, Esq.
Holly E. Walker, Esq.
300 South Fourth Street, Suite 1500
Las Vegas, Nevada 89101
Attorneys for Respondent
Clark County Department of Aviation

Approved as to form and content:

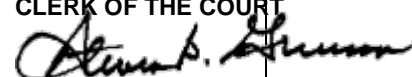
ATTORNEY GENERAL

CHRISTENSEN JAMES & MARTIN

By: _____
Andrea H. Nichols, Esq.
Senior Deputy Attorney General
100 N. Carson
Carson City, Nevada 89701
Attorneys for Respondent
Office of the Labor
Commissioner

By: _____
Evan L. James, Esq.
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
*Attorneys for Petitioner
Southern Nevada Labor
Management Cooperation
Committee*

EXHIBIT 3



FISHER & PHILLIPS LLP
MARK J. RICCIARDI, ESQ.
Nevada Bar No. 3141
ALLISON L. KHEEL, ESQ.
Nevada Bar No. 12986
300 South Fourth Street, Suite 1500
Las Vegas, NV 89101
Telephone: (702) 252-3131
Facsimile: (702) 252-7411
E-Mail: mricciardi@fisherphillips.com
E-Mail: akheel@fisherphillips.com
Attorneys for Respondent
Clark County Department of Aviation

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,	)	MOTION FOR ORDER
	)	SHORTENING TIME ON
vs.	)	RESPONDENT'S MOTION FOR
	)	RECONSIDERATION
CLARK COUNTY NEVADA,)	
DEPARTMENT OF AVIATION, a	)	HEARING REQUESTED
political subdivision of the State of Nevada;	)	(Pursuant to NRS 233B.133)
and THE OFFICE OF THE LABOR)	
COMMISSIONER,)	
)	
Respondents.)	

Respondent, Clark County Department of Aviation, ("Respondent" or the "DOA"), hereby moves this Court, pursuant to EDCR 2.26, for an order shortening the time on which a hearing is to be held on Respondent's Motion for Reconsideration filed on February 21, 2020 (the "Motion") based on the following Memorandum of Points and Authorities.

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MEMORANDUM OF POINTS AND AUTHORITIES

E.D.C.R. 2.26 allows for motions to be heard on an expedited basis on a showing of “good cause.” As set forth in the Declaration of Allison L. Kheel appended hereto as **Exhibit 1**, and based on the content of the Motion, good cause exists for hearing the Motion on an expedited basis because the Findings of Fact, Conclusions of Law and Order Granting Petition for Judicial Review signed by Judge Kathleen Delaney on January 28, 2020 and filed with the Court by Notice of Entry on February 7, 2020 (hereinafter the “Order”) simultaneously remands the matter to the Office of the Labor Commissioner (“OLC”) and retains jurisdiction over further proceedings, thereby creating ambiguity as to whether the Order is in fact a “final order” as it appears to be. Ex. 1 at ¶¶ 2-3.

Because Respondent cannot determine if the Order is a “final order” Respondent will have no choice but to file its appeal within 30 days of the Notice of Entry of the Order (March 9, 2020). Ex. 1 at ¶ 3. However, the ambiguity also prevents Respondent from filing a tolling motion which would delay the appeal deadline while such motion was pending and avoid the need for an expedited hearing. Ex. 1 at ¶ 5. Counsel for Respondent DOA raised and discussed each of the problematic issues with Counsel for the Petitioner prior to Petitioner’s submission of its proposed order to the Court. Therefore, an expedited briefing schedule and hearing on this matter will not unfairly prejudice the Petitioner. Ex. 1 at ¶ 6.

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Dated this 21st day of February, 2020.

Clark County Department of Aviation

CERTIFICATE OF SERVICE

This is to certify that on the 21st day of February 2020, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **MOTION FOR ORDER SHORTENING TIME ON RESPONDENT'S MOTION FOR RECONSIDERATION**, via the Court's e-file and e-service system on those case participants who are registers users.

Andrea Nichols, Esq.
Deputy Attorney General
100 N. Carson
Carson City, Nevada 89701
*Attorneys for Respondent
Office of the Labor
Commissioner*

Evan L. James, Esq.
7440 W. Sahara Avenue
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 1

DECLARATION OF ALLISON L. KHEEL

Allison L. Kheel states as follows:

1. I am an attorney representing the Respondent, Clark County Department of Aviation ("DOA") in this proceeding. I have personal knowledge of, and am competent to testify to, the facts set forth herein. I make this Declaration in support of Respondent's Motion for Order Shortening Time on Motion for Reconsideration.

2. Appended as **Exhibit A** is a true and correct copy the Findings of Fact, Conclusions of Law and Order Granting Petition for Judicial Review signed by Judge Kathleen Delaney on January 28, 2020 was filed with the Court by Notice of Entry on February 7, 2020 (hereinafter the "Order").

3. The Order simultaneously remands the case to the Office of the Labor Commissioner ("OLC") and retains jurisdiction over the matter, creating ambiguity as to whether the Order is in fact a "final order" from which Respondent has the right to appeal. This would make March 9, 2020 Respondent's deadline to appeal.

4. Due to this fact, the Court would only have two weeks to reconsider the Order before any appellate filings by Respondent would divest the Court of jurisdiction.

5. Due to the ambiguity in the Order regarding whether it constitutes a final judgment or final order, Respondent is unable to file any tolling motions which might provide the Court more time to hear and consider the Motion.

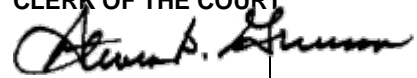
6. Counsel for Respondent DOA raised and discussed each of the problematic issues with Counsel for the Petitioner prior to Petitioner's submission of its proposed order to the Court. Therefore, an expedited briefing schedule and hearing on this matter will not unfairly prejudice the Petitioner.

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

Executed on February 21, 2020.


Allison L. Kheel

EXHIBIT A



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

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.

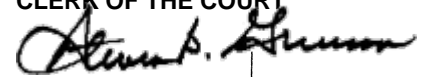
7 Mark J. Ricciardi, Esq. mricciardi@fisherphillips.com

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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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

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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 ¹ The OLC did not have the benefit of the *Bombardier* decision when issuing her
27 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.

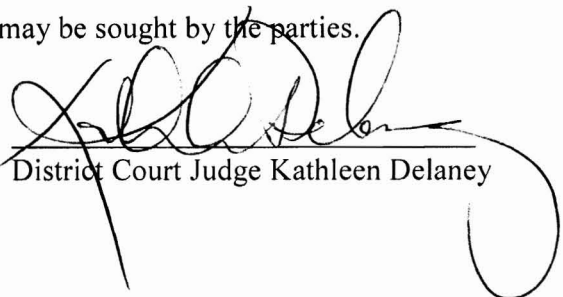
12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of
13 determining the amount, if any, of the completed work that constitutes maintenance and
14 to whom and how much additional wages should be paid for work subject to NRS 338 et
15 seq.'s prevailing wage requirements.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



fisherphillips.com

Las Vegas
300 S. Fourth Street
Suite 1500
Las Vegas, NV 89101

(702) 252-3131 Tel
(702) 252-7411 Fax

Writer's Direct Dial:
(702) 862-3804

Writer's E-mail:
mricciardi@fisherphillips.com

September 5, 2019

VIA HAND DELIVERY

Judge Kathleen E. Delaney
Eighth Judicial District Court
Regional Justice Center
Department XXV
200 Lewis Avenue
Las Vegas, NV 89155

Re: *Southern Nevada Labor Management Cooperation Committee v. Clark County Department of Aviation and the Office of the Labor Commissioner (A-18-781866-J)*

Dear Honorable Judge Delaney:

Enclosed is the Clark County Department of Aviation's proposed Order Granting the Petition for Judicial Review. We have reviewed the Petitioner's proposed order; however, it is so improper both as to form and content that we thought it better to prepare an appropriate order and explain to the Court the legal basis for our proposed order. The Petitioner's proposed order contains twenty-six (26) detailed "Findings of Fact" and twelve (12) detailed "Conclusions of Law." Even if it were appropriate for the Court to make findings of fact and conclusions of law, (which is it not—see below), with the exception of the public funds issue, the proposed findings are not supported by the record and certainly not supported by the Labor Commissioner's actual order.

It is the administrative agency's duty to make factual findings. The District Court has the limited statutory power to: "remand or affirm the final decision or set it aside in whole or in part..." NRS 233B.135(3). The Petitioner's Findings and Fact and Conclusions of Law in its proposed order invite the Court to exceed its statutory jurisdiction and impair the agency's ability to carry out its duties.

The Petitioner's attempt to have the court make factual findings never made by the agency usurps the agency's duties and deprives the Clark County Department of Aviation of its

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right to due process. While the Petitioner might have preferred the Labor Commissioner to have made numerous detailed factual findings, the Supreme Court has held that a party cannot make post-hoc rationalizations on judicial review. *Revert v. Ray*, 95 Nev. 782, 603 P.2d 262 (1979).

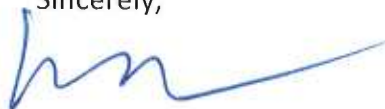
The Court's jurisdiction here is clear: review the one finding made by the agency. The agency concluded that the prevailing wage statute did not apply because the funds used for the carpet maintenance work were not public funds. That is the one and only finding that is before this Court, and this Court has held that such finding was arbitrary and capricious. In the proceedings before the agency, the parties disputed whether the work was in whole or in part maintenance work not covered by the prevailing wage statute. The agency made no factual findings or legal conclusions on that issue. Therefore, the Court's duty is to remand the case to the agency to consider that or any other issues properly raised by the parties. The only conclusive holding by this Court should pertain to the public funds issue.

Finally, in paragraph 7, page 8 of the Petitioner's proposed order, the Petitioner invites the Court to retain jurisdiction after remand of the matter to the agency. That would be contrary to law; the Supreme Court of Nevada has clearly held that just as how an agency's authority is suspended while an order of the agency is appealed to the District Court, the District Court likewise cannot exercise jurisdiction that would conflict with that of the agency once the matter is remanded. See *Westside Charter Serv. v. Public Service Comm'n*, 99 Nev. 456, 664 P.2d 351 (1983).

Thus, Clark County Department of Aviation respectfully submits its proposed Order Granting the Petition for Judicial Review, which is enclosed.

If you have any questions or would like additional information, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark J. Ricciardi', with a long horizontal flourish extending to the right.

Mark J. Ricciardi, Esq.
Regional Managing Partner
For Fisher & Phillips LLP

cc: Evan L. James, Esq.
(Via E-mail)

Andrea H. Nichols, Esq.
(Via E-mail)

FISHER & PHILLIPS LLP
MARK J. RICCIARDI, ESQ.
Nevada Bar No. 3141
HOLLY E. WALKER, ESQ.
Nevada Bar No. 14295
300 South Fourth Street, Suite 1500
Las Vegas, NV 89101
Telephone: (702) 252-3131
Facsimile: (702) 252-7411
E-Mail: mricciardi@fisherphillips.com
E-Mail: hwalker@fisherphillips.com
Attorneys for Respondent
Clark County Department of Aviation

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Petitioner Southern Nevada Labor Management Cooperation Committee's Petition for Judicial Review, having come for hearing on August 13, 2019 and August 27, 2019, at the hour of 10:30 a.m. in Department XXV of the above-entitled Court, the Honorable Kathleen Delaney presiding, the Court hereby orders as follows:

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///

///

- 1) That the Office of the Labor Commissioner's determination that the carpet maintenance contract was not financed with public money, was arbitrary and capricious;
- 2) That this Court, pursuant to NRS 233B.135, grants the Petition for Judicial Review; and
- 3) That this Court, remands this matter to the Office of the Labor Commissioner to address the issue of whether the carpet maintenance contract pertains to the normal maintenance of the Clark County Department of Aviation's property and to address any other issues that the Labor Commissioner determines have been properly raised by the parties.

DATED this ____ day of September 2019.

DISTRICT COURT JUDGE

Submitted by:

FISHER & PHILLIPS

Mark J. Ricciardi, Esq.
Holly E. Walker, Esq.
300 South Fourth Street, Suite 1500
Las Vegas, Nevada 89101
Attorneys for Respondent
Clark County Department of Aviation

Approved as to form and content:

ATTORNEY GENERAL

By: _____
Andrea H. Nichols, Esq.
Senior Deputy Attorney General
100 N. Carson
Carson City, Nevada 89701
*Attorneys for Respondent
Office of the Labor
Commissioner*

CHRISTENSEN JAMES & MARTIN

By: _____
Evan L. James, Esq.
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
*Attorneys for Petitioner
Southern Nevada Labor
Management Cooperation
Committee*

EXHIBIT 5

1 TRAN
2 CASE NO. A-18-781866-J
3 DEPT. NO. 25
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * * *

8
9 SOUTHERN NEVADA LABOR)
10 MANAGEMENT COMMITTEE,)
11)
12) Plaintiff,
13)
14) vs.
15)
16)
17)
18 CLARK COUNTY, NEVADA)
19 DEPARTMENT OF AVIATION,)
20)
21)
22) Defendant.
23 _____
24

REPORTER'S TRANSCRIPT
OF
DECISION ON PETITION FOR
JUDICIAL REVIEW

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: TUESDAY, AUGUST 27, 2019

25 REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

1 APPEARANCES:

2 For the Plaintiff:

HOLLY WALKER, ESQ.

3 MARY HUCK, ESQ.

4 Telephonic

ANDREA NICHOLS, ESQ.

5
6 For the Defendant:

EVAN JAMES, ESQ.

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1 LAS VEGAS, NEVADA; TUESDAY, AUGUST 27, 2019

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: Page 5, Southern Nevada Labor
6 Management vs. Clark County Nevada Department of
7 Aviation.

8 MS. HUCK: I'm the deputy labor commissioner. I
9 came to hear the decision. Mr. Evans is not here.

10 THE COURT: I thought they would be present.
11 This was supposed to be on last Tuesday, then the court
12 needed additional time because of a trial schedule that
13 had gotten away from the court. So I put it over to this
14 week. I thought they'd be here. I don't want to hold you
15 up. Do you think there's a chance someone coming.

16 MS. HUCK: I thought they'd be here too. They
17 are not. So they might be waiting for the minute order.
18 I kind of --

19 THE COURT: So the clerk is telling me now she's
20 saying that that rings a bell. I intended to, when I had
21 it on last week, I was offsetting it to try to get through
22 as much of the 9:00 calendar as possible, then announce my
23 decision so they didn't have to wait. When it got reset
24 to this week, it got reset to 9:00. It's technically
25 9:00. If they've seen that, when it got switched, that it

1 moved to 9:00 I think they'd have been here. I can't rule
2 out the fact they might trickle in.

3 MS. HUCK: I'll wait. That's fine.

4 THE COURT: So 10:30 --

5 MS. HUCK: I think Andrea Nichols is calling in
6 at 10:30. I'm not sure.

7 THE COURT: She's up in Carson. She was
8 present. I told her she could be telephonic. Generally
9 they have to give us that request in advance. You'd have
10 the number.

11 MS. HUCK: It doesn't matter. I'm here on
12 behalf of the labor commission.

13 THE COURT: What I'll do is wait till 10:30. I
14 do have several Rule 16 conferences at that time. If I
15 can finish the 9:00 calendar by 10:30, if I can't I'll
16 take that matter first right at 10:30, get that disposed
17 of, then do the Rule 16s quickly.

18 If you want to come back, come back by 10:30.

19 MS. HUCK: Thank you.

20 (Matter to be recalled.)

21 THE COURT: Recalling page 5, Southern Nevada
22 Labor Management Cooperation Committee vs. Clark County
23 Nevada Department of Aviation.

24 We're going to get Ms. Nichols on the phone. This is
25 Judge Delaney. It's a little after 10:30. There was some

1 confusion about the timing on the calendar for the court
2 to announce its decision in Southern Nevada labor
3 Management Corporation vs. Clark County Nevada Department
4 of Aviation.

5 When we reset it to this week, we set it at 9:00, but
6 only the Assistant Labor Commissioner was here.

7 Do I have your title correct.

8 MS. HUCK: Mary Huck, deputy labor
9 commissioner.

10 THE COURT: We realized because of the time
11 change that perhaps folks would be coming at 10:30. I
12 apologize for any confusion. You're on the horn now.
13 Let's go ahead and get appearances.

14 MR. JAMES: Evan James on behalf of the
15 Petitioner, your Honor.

16 MS. WALKER: Holly Walker from Fisher Phillips
17 on behalf of Clark County Department of Aviation.

18 THE COURT: You're here in Mr. Ricciardi's
19 place.

20 MS. WALKER: Yes.

21 MS. HUCK: Mary Huck, office of the Labor
22 Commission.

23 THE COURT: Good morning. Then we have Ms.
24 Nichols, announce your appearance.

25 MS. NICHOLS: Andrea Nichols on behalf of the

1 labor commission, Deputy Attorney General -- sorry.

2 THE COURT: You're fine. Thank you so much.

3 Thank you for being present telephonically, and for
4 the others here in the courtroom. Thank you for your
5 patience when we had to continue this matter from last
6 week because of a trial schedule that had just not given
7 us time to further review matters.

8 It is the Court's determination to grant the petition
9 for judicial review. I do make the finding that the
10 office of the labor commissioner, closing the matter, was
11 contrary to fact and law and was arbitrary and capricious.
12 I think that the errors are that the -- this was not --
13 the record belies any argument that this was just strictly
14 maintenance. That it does appear to be the type of work
15 that was project work and that it could not be separated
16 out in this way.

17 I do believe that there was evidence -- sufficient
18 evidence to show that the materials for the work were
19 purchased prior to a 2018 budget and part of the larger
20 project that were then later disbursed and that would be
21 an inappropriate end run around the prevailing wage
22 requirements. And that ultimately the argument that was
23 made from a legal basis that this is simply not -- the
24 Department of Aviation is simply not something that
25 operates using public monies is also incorrect under the

1 law.

2 I did review the case law. I did spend a little bit
3 more time with the decisions, including the Bombardier
4 decision and some other things. I appreciate very much
5 the labor commissioner's argument that we didn't have the
6 benefit of that decision at the time we made our decision.
7 I understand and agree with that, but that doesn't
8 necessarily mean that this is not the way that the law
9 should be interpreted under the prevailing circumstances
10 here.

11 The only issue that I maybe struggled with a little
12 bit was the standing issue that was raised, would this
13 entity that has brought this, this union group, really be
14 able to have the standing to bring this issue, and I do
15 believe they do have the standing. This is a matter of
16 not only public interest but public policy. This is
17 something that, you know, these individuals in the
18 bargaining unit, in the circumstances who either could
19 have been harmed by this or would be harmed by these types
20 of actions do have standing to bring the case. And that
21 ultimately it is the Court's determination that although I
22 don't think necessarily I'm subscribing any nefarious
23 conduct here at all to trying to circumvent prevailing
24 wage, I just think the natural circumstances of what
25 occurred here did circumvent the prevailing wage, and the

1 labor commissioner should have, through the petition for
2 judicial review effort -- sorry, through the initial
3 efforts to have this reviewed that led to this petition
4 for judicial review effort, should have interpreted the
5 law differently and should have determined that this
6 matter, again, was a unit of a project that could not be
7 separated from the total project and ultimately that the
8 prevailing wage was not paid and was not appropriate in
9 this case.

10 There probably are other things I could articulate
11 more specifically about that, but I do ultimately find
12 persuasive and compelling the arguments in the
13 petitioner's memorandum of points and authorities. And it
14 is on that basis I'm granting this. And, as I said, I did
15 spend more time to look at both the standing issue and
16 ultimately the issue with regard to calling something
17 maintenance, but ultimately whether or not is or is not
18 truly that. And ultimately whether or not this is, the
19 Department of Aviation, is a public works, does public
20 works projects. I think all of those things line up in
21 favor of the Petitioner in this case.

22 I appreciate that this is likely to be challenged.
23 In fact, I would embrace it if it was so there is
24 potentially further clarity on this point. Although we do
25 have some, again, coming from this recent Bombardier

1 decision for these types of things, but I would ask that
2 the prevailing party here, Mr. James, prepare the findings
3 of fact, conclusions of law and order on the granting of
4 the petition for judicial review, which will ultimately
5 then mandate the, I guess, technically -- actually, my
6 first thought was we'd be remanding it to the labor
7 commissioner to correct the decision, then ultimately have
8 the wages corrected. I'm not sure we need to go that
9 additional step back to the labor commissioner, based on
10 the Court's ruling.

11 Mr. James, do you have any input on that.

12 MR. JAMES: Thank you for your ruling. I
13 appreciate it.

14 The issue with regard to going back to the labor
15 commissioner, there does need to be an analysis of who
16 needs to be paid what. That's something.

17 THE COURT: That would make sense. We haven't
18 had that factual determination here. So the remand would
19 be to the labor commissioner -- I'll hear from you, I
20 promise, Deputy, in just a minute.

21 The remand will be to the labor commissioner for the
22 review and ultimate determination of, as Mr. James very
23 simply put it, who should be paid what.

24 Deputy, did you want to --

25 MS. HUCK: Your Honor, so I understand that you

1 made a decision that is subject to prevailing wage, but
2 your decision then is two-fold. You're also saying the
3 maintenance exemption would not apply and is going to be
4 considered in its entirety subject to prevailing wage.

5 THE COURT: That is, I believe, what the case
6 law would direct us to find. That based on when these
7 materials were purchased, what the circumstance of the
8 project is, that just having these materials and then
9 using them at a later date does not somehow turn it into
10 maintenance. So it would make that project, in its
11 entirety --

12 MS. HUCK: I'm fine with that. Bombardier, our
13 office did have a hearing once it was found it was subject
14 to prevailing wage, they determined what portion was
15 maintenance and what portion --

16 THE COURT: I think the labor commissioner
17 should still have the right to do that. I think the
18 determination here was faulty because it found entirely
19 that it was maintenance. So I don't think there's a
20 preclusion. I don't think I'm in a position to find today
21 that it's -- there's not some portion of it that's
22 maintenance. But it does appear to me that the
23 determination it was all maintenance is faulty.

24 MR. JAMES: May I address that.

25 THE COURT: Go ahead.

1 MR. JAMES: So, under the Administrative
2 Procedures Act, the remand can take place to the agency,
3 is if the Petitioner's rights have been violated. We
4 don't get to send something back to the agency to redo the
5 case or redo the hearing.

6 I think that ruling to send it back and try to decide
7 if part of it was maintenance and part of it wasn't
8 maintenance actually is outside the authority of the
9 Administrative Procedures Act. Because I believe it
10 233(b)135, Subparagraph 3, that indicates that the remand
11 can go back for the Petitioner's benefit, not the
12 Respondent's benefit. And that's exactly what would be
13 happening if it went back for the Respondent's benefit.
14 It would be going back for them to try to argue
15 maintenance, and that's a determination that was never
16 actually something that -- well, you made a decision on it
17 today.

18 So that's my concern about sending it back for that
19 type of hearing, is we're going back to redo something
20 that's disallowed by statute.

21 THE COURT: Let me hear from the deputy again.

22 MS. HUCK: So our office is very neutral. We
23 are happy to take it back however you send it back. We
24 never went and considered if it was going to be subject to
25 prevailing wage or if it was not because of the

1 maintenance, because Clark County asserted it's not public
2 money, so we just closed it. So we would want to really
3 clarify it for everyone, if it's just being sent back to
4 calculate wages and what time frame wages, or it's being
5 sent back saying, yes, it was a prevailing wage project,
6 but it's not going to be because of maintenance. Just
7 what our authority or the scope of it would be. I would
8 be happy if you could just clarify that.

9 THE COURT: It's a fair question to clarify.

10 MS. WALKER: Your Honor, just to add onto that.
11 Like my co-counsel was saying, essentially Clark County
12 Department of Aviation, we never waived the maintenance
13 issue as we argued prior too So to the extent it's being
14 remanded back to the office of labor commissioner, we do
15 want to be able to say that it doesn't exceed the scope of
16 what the Administrative Procedure Act is saying in order
17 to remand it to the office of the labor commissioner to
18 consider alternative arguments. Aside from the public
19 money issue.

20 THE COURT: I think what it boils down to, I
21 still perceive it -- I don't perceive it was waived, but I
22 think the fair ask today is the scope of the Court's
23 ruling. We have determined that the labor commissioner
24 erred in -- was arbitrary and capricious and erred in
25 applying the law the way it found, first and foremost,

1 that this was not a public agency and it wasn't public
2 money. I think that is belied by the prevailing case law.
3 So ultimately the primary aspect of the decision is this
4 is public works, public money, you know, project, or at
5 least the Department of Aviation is subject to those
6 laws.

7 Then, the issue becomes, you know, was this -- and I
8 thought because the labor commissioner, I perceived, had
9 made some determination that this was maintenance and not
10 something subject to a work project subject to prevailing
11 wage, my perception was that determination had an
12 underpinning of a determination of the labor commissioner
13 that that was in error. That this was not maintenance.
14 That this was project.

15 It didn't occur to the Court, in all candor, until
16 this argument was raised for clarification, that there
17 still could be a determination that some portion of it was
18 maintenance and some portion of it was not. It appeared it
19 was an error that was determined to all be maintenance and
20 that that determination had been made.

21 I think in fairness, and I don't perceive it,
22 Mr. James, as being sent back to the benefit of the
23 Aviation Department, or being sent back to the benefit of
24 the Petitioner. I see it being sent back for the labor
25 commissioner to do a complete job. And based on the

1 argument that's being made here today and perhaps the
2 Court's, you know, not cottoning, so to speak, to the
3 extent of what the labor commissioner's determination was,
4 it's fair that it go back to the labor commissioner for
5 the labor commissioner to be neutral and do their job and
6 determine if any portion of this is properly maintenance
7 or not.

8 I hear you saying, well, that maybe does a disservice
9 to the Petitioner because the court should, perhaps, more
10 properly determine that this is all project and not
11 maintenance and it should just be who gets paid what.
12 When you initially said that that sounded right, but in
13 light of the argument that really the labor commissioner
14 had not undertaken that determination and needs to do that
15 and mainly was deciding what it was deciding based on the
16 initial opinion about it or the argument about it being
17 not public money, not public works project, I think the
18 labor commissioner needs to do their job. I trust them to
19 be neutral to do their job.

20 I'm going to give the clarification that it is being
21 sent back for the determination to be made if any portion
22 of the project is maintenance versus project.

23 The Bombardier decision is now known to the labor
24 commissioner so it should be taken into account. I think
25 ultimately there will be a fair outcome that, of course,

1 could still be subject to petition for judicial review
2 But I think it would be improper for me to determine at
3 this point that the labor commissioner is without
4 discretion to undertake that full review and that must
5 only just decide who gets paid what.

6 I am going to decline, Mr. James, to go that far.

7 MR. JAMES: One more argument for the record.

8 THE COURT: Of course, please.

9 MR. JAMES: Thank you.

10 The potential error I see in that analysis, I'm
11 not saying you did error. I'm smart enough not to tell the
12 Judge you're wrong.

13 THE COURT: You wouldn't be the first, and I am
14 very readily able to admit when I'm wrong.

15 MR. JAMES: I think that's helpful for all of
16 Hut here's the potential error on the argument. Really
17 that allows the party through the administrative process
18 to sand bag the administrative process and hold back an
19 argument from petition for judicial review requirement
20 under 233(b).130, Sub-part 2(d).

21 If they disagreed with the labor commissioner's
22 determination, they had an obligation to within 10 days of
23 my filing this petition for judicial review to actually
24 file their own petition for judicial review to challenge
25 how the labor commissioner made her determination. That

1 was not done. So what's happening today, and my concern
2 is this, we're sending something back that really is to
3 the benefit of the Respondent, but not only to the benefit
4 of the Respondent, to the detriment of the Petitioner.
5 Cause now we have to go through the administrative process
6 again, a process that should have been completed, but as
7 we've all discussed here wasn't.

8 So it allows parties in the administrative process to
9 get two bites of the apple. I don't think that's the
10 intent of an appear to this court or an appeal to the
11 Supreme Court. Our judicial process is established on
12 taking a final determination to what we have and the labor
13 commissioner discussing that. If there's errors, we go
14 back and deal with those errors. So I think that is the
15 potential error in the decision.

16 THE COURT: I appreciate that. I can see that
17 view. I respectfully, as you said, will agree to disagree
18 on that point. Because I think it is not uncommon for
19 remands to go back and ultimately as a redo verse, okay,
20 this is the prevailing party. Go back and fix it for
21 them. I think that's too narrow a reading of the
22 administrative practices, requirements. Whether it's
23 proper in this case, based on the law or not, that can be
24 where the error lies. I'm not finding that at this
25 points.

1 I think the labor commissioner needs to look at it.
2 I don't suspect that it can be abused, or would be abused
3 the way the speculation is that it could happen based on a
4 ruling such as this. I think it is the proper scope of
5 this particular remand to allow the discovery commissioner
6 to understand the Court has ruled this is susceptible to
7 public works project because it is public money, based on
8 the case law. Then ultimately make a determination which
9 aspect of it, if not all of it -- again, we have now the
10 Bombardier decision to impart to be something that gives
11 guidance to the labor commissioner that they didn't have
12 benefit of before. Then they can make their determination
13 of the circumstances of what occurred and whether or not,
14 you know, what portion of it is project versus what
15 portion of it is maintenance, if any. And decide who to
16 pay what. So I think that's the proper scope for it to go
17 back.

18 MR. JAMES: Thank you.

19 THE COURT: I do need somebody to prepare me an
20 order.

21 MR. JAMES: I'm happy to do that. I'll run it
22 by Ms. Walker.

23 THE COURT: Thank you.

24 THE COURT: Ms. Nichols, do you want to see the
25 order from Mr. James.

1 MS. NICHOLS: That would be great.

2 THE COURT: We'll have Mr. James serve his draft
3 on everybody. I still would like to see it back within 10
4 days. Please no undo delays messing around with it. Mr.
5 James has a very solid handle on what it is, even if we
6 agree to disagree on some of the scope issue, but go ahead
7 and get it submitted.

8 If there are any disputes you can provide
9 competing orders or a letter of what your basis is.

10 MR. JAMES: Thank you so much.

11 MS. WALKER: Thank you.

12 MS. HUCK: Thank you.

13 MS. NICHOLS: Thank you, your Honor.

14 THE COURT: Thank you. Have a good day.

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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", followed by a large, circular flourish.

Sharon Howard
C.C.R. #745

EXHIBIT 6

TRAN

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR)	
MANAGEMENT CORPORATION)	
COMMITTEE,)	
)	
Petitioner,)	
)	
vs.	)	Case No.
	)	A-18-781866
CLARK COUNTY NEVADA)	
DEPARTMENT OF AVIATION,)	
	)	Dept. No. 25
)	
Respondent,)	

HEARING

Before the Honorable Kathleen Delaney
Tuesday, March 31, 2020, 9:00 a.m.

Reporter's Transcript of Proceedings

REPORTED BY ROBERT A. CANGEMI, CCR 888

1 APPEARANCES :

2 FOR THE PETITIONER: Evan James, Esq.
3

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5 FOR THE RESPONDENT: Andrea Nichols, Esq.
6 Allison Kheel, Esq.
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1 Las Vegas, Nevada, Tuesday, March 31,
2 2020

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4 THE COURT: Southern Nevada Labor Management
5 Cooperation Committee versus Clark County Nevada
6 Department of Aviation, the Labor Commissioner
7 matter.

8 So this is on, of course, for your motion
9 for reconsideration.

10 I did note that, and I want to sort of maybe
11 -- I am sorry, another housekeeping, forgive me.

12 I found that in having these telephonics, as
13 we are doing more and more of these telephonic
14 appearances, that there is this interesting dynamic
15 of that when people can't get the social cues of
16 being able to see each other, or see me, that folks
17 just keep talking.

18 And I had -- my civil calendar last week was
19 just 3 matters, and it took us 2 and a half hours to
20 get through them, so I am trying to get a handle on
21 that this week, so I am asking for any argument that
22 is made for the highlighting of the motion for
23 reconsideration, or anything in opposition, that
24 that be no more than 10 minutes.

25 If you can kind of keep an eye on a clock

1 nearby, and I know that we are probably on our
2 phone, so if that's the only clock, then I will just
3 watch it as well.

4 I am not the Supreme Court here. I don't
5 have buzzers or lights, or anything like that. I am
6 just trying to keep it on time for the other
7 matters.

8 And, of course, if there is any rebuttal, 5
9 minutes or so for that I think seems fair, so we
10 will try that this morning.

11 But let me give you some initial thoughts
12 that I have in my mind, which is, it really doesn't
13 seem like there is a lot of dispute here that
14 perhaps the order needs to be clarified, or could be
15 more pointed in some of issues that it handles.

16 I wouldn't have signed off on the order, if
17 I didn't think it accurately reflected the Court's
18 determination, and thought that it had what it
19 needed to have, and it wasn't going to be of
20 concern.

21 Ms. Kheel has, of course, pointed out some
22 potential ways in which it could be read to be
23 inconsistent, and some indications of findings that
24 maybe need to be clarified, that were the Court's
25 findings, and not the Labor Commissioner's findings

1 as to whether this was maintenance.

2 But at the end of the day, it doesn't really
3 seem to be disputed, other than in one respect, and
4 I think the one main respect that it seems to be
5 disputed is whether or not this is a motion for
6 reconsideration, and whether or not the Court would
7 still have jurisdiction to hear it in light of the
8 appeal, or whether or not this is just a motion for
9 clarification, and the Court should somehow consider
10 this not for us to be divested of jurisdiction, and
11 not be able to hear the matter.

12 So, given that that was raised as an issue,
13 as far as whether or not we have any ability to
14 actually hear the matter, I think we should address
15 that first.

16 So I can start with Ms. Kheel on that.

17 MS. KHEEL: Thank you, Your Honor.

18 Basically the Clark County Department of
19 Aviation's position is that it is a motion that goes
20 to the merit of the ultimate resolution of the
21 issue.

22 And it is unclear whether or not it was a
23 final order, but it appears that that was everyone's
24 intent, and it appears that it was seeking to fully
25 remand.

1 So when we filed the appeal, we believed
2 that the District Court no longer maintains
3 jurisdiction to hear the motion for reconsideration,
4 because it would not toll the appeal deadline.

5 And therefore, upon filing the notice of
6 appeal, the District Court got to the jurisdiction.

7 THE COURT: Well, I understand the idea
8 that in the local rules, it makes it very clear that
9 if you are going to file a motion for
10 reconsideration and do so within a certain time
11 frame, that it does not toll the time frame that
12 also would be ticking for an appeal.

13 But I have also had a number of cases that
14 have been brought before the Court, where it raises
15 the issue.

16 Certainly there are any number of things
17 that the Court can still have jurisdiction over
18 post-judgment, post final judgment, the most obvious
19 of which would be things related to motions for
20 attorneys' fees, motions for costs.

21 You know, things that, like you said, that
22 are maybe not related to the merits of the decision.

23 But I have also had cases that have come
24 back that have indicated that if the Court is going
25 to change its position on anything, if the Court is

1 going to have something that is going to scrutinized
2 on appeal, and if we are really just looking for
3 some form of clarification of that, that that would
4 benefit everyone.

5 Because I don't think, and I think what the
6 Department of Aviation -- I am sorry -- I think what
7 the petitioner and what the Labor Commissioner would
8 agree with maybe -- and I am not trying to put words
9 in anybody's mouth -- is that we are not changing
10 our opinion.

11 The outcome is the outcome. The Court is
12 finding that it wasn't maintenance. The Court is
13 finding that it should be remanded to the Labor
14 Commissioner to proceed as directed.

15 And the only issue was, you know, should
16 this Court have retained any of its own jurisdiction
17 following that remand, and where exactly was the
18 finding with regard to the maintenance, and that
19 ultimately it is a final order.

20 And if we make all of those clarifications
21 in the order, the outcome is still the same. The
22 appeal is unchanged, but I believe it at least
23 clarifies the Court's intent with those pieces of
24 the final order.

25 So, in that since, you still would believe

1 that the Court should not undertake that action,
2 Ms. Kheel?

3 MS. KHEEL: Well, yes. This is Ms. Kheel.
4 So here is our position, it is not that we
5 wouldn't have loved the Court to do it, but I
6 believe that the case law is distinct that once that
7 notice of appeal is filed, the District Court
8 doesn't have the power to correct its order, because
9 then what does the Supreme Court do with it, because
10 then we are going to -- it would be filing a new
11 appeal, and it would be -- it has been a tolling
12 motion, and the statute doesn't intend, the rule
13 doesn't intend that it is a tolling motion.

14 THE COURT: I don't know. Respectfully,
15 that's just not how we have addressed these matters
16 before. I can't say that I have addressed exactly
17 anything like this, mind you.

18 But like what you would do with it, I think,
19 is you would advice the Supreme Court that there was
20 a clarifying order that did not change the outcome,
21 that there is no new appeal needed, because nothing
22 is different.

23 I mean, I guess if your appeal focused on
24 the fact that my order was bad because it said that
25 I retained jurisdiction, then it has to be an

1 argument over whether I actually said that, and
2 whether that's actually inconsistent or not, or
3 whether we just retain the right so that there would
4 be any -- I forget how it was phrased in the
5 opposition better than I am articulating it here
6 today, so let me look it up, that ultimately what we
7 were doing was retaining jurisdiction to enforce our
8 own order versus what has been portrayed.

9 I mean, if that is the whole substance of
10 the appeal, then maybe, okay, I would agree with you
11 that clarification isn't necessary.

12 But I thought that the point was that we are
13 appealing, because you think that the outcome itself
14 is wrong, not the procedure by which we did it.

15 So why wouldn't that just be something that
16 is supplemented in your appeal so that the Supreme
17 Court knows what it is looking at?

18 MS. KHEEL: Well -- sorry.

19 In our opinion, the Department of Aviation's
20 opinion is, we are not challenging the public money
21 finding on appeal.

22 We respect your decision on that. What we
23 are challenging is whether or not the Court found it
24 to be maintenance or not, or whether that issue
25 should go back to the Labor Commissioner, because it

1 is our position that there really wasn't really a
2 full record developed below.

3 And in reviewing the transcript from the
4 prior hearing, when you announced your findings, we
5 feel that that is consistent with the position that
6 you were intending to take, and that the order
7 doesn't accurately reflect that that decision, that
8 determination is going back to the Labor
9 Commissioner.

10 And I believe, and the Department of
11 Aviation believes that it could be interpreted
12 beyond simply enforcing its own order as retaining
13 jurisdiction over matters such as discovery, and
14 what type of documents the Labor Commissioner could
15 be permitted to look at or consider, and that those
16 were really the main issues that were challenged on
17 appeal.

18 THE COURT: Mr. James, do you want to
19 respond?

20 MR. JAMES: Sure, I would love to.

21 First, to address your issue on whether or
22 not you can amend the order or change the order,
23 here is my understanding on how it works.

24 Since the matter has been appealed, the
25 Court has lost jurisdiction, and so it doesn't have

1 the ability to change its order.

2 What the Court can do, in my understanding,
3 is it can enter what I would call an advisory order
4 for the Supreme Court to review, and to look at.

5 So your order wouldn't actually change, but
6 you can say something to the extent, if I had
7 authority over this order here is how I would decide
8 it.

9 That's my understanding of how the process
10 works.

11 So, you can enter an order that might
12 clarify your order. It might say, well, this is
13 what I meant. But to actually change the substance
14 of your order, I don't think it is proper, because
15 of the jurisdictional issue.

16 But I do agree, and I think that this is
17 where you were going with your explanation, is that
18 you have the ability to express your view on the
19 order, and I think that's something that you can do.
20 At least that's my understanding.

21 But when it goes to the substance of what
22 the Department of Aviation is arguing, what they are
23 essentially arguing is you got it wrong.

24 And in order to do that on a motion for
25 reconsideration, they have to present new evidence,

1 or they have to point out how you misinterpreted the
2 law, which they do neither.

3 So, the motion that they filed is somewhat
4 deficient in that I can't really argue a point when
5 that point isn't made.

6 So, that's one of my first issues with
7 regard to the motion for reconsideration, and why it
8 shouldn't be granted, because they never actually
9 addressed the appropriate issues.

10 When it comes to the substance of this
11 maintenance issue, I would like to point out to the
12 Court that the Department of Aviation in its reply
13 brief to our petition for judicial review, on page
14 8, lines 8 through 21, they specifically tell this
15 Court, what you need to do is you need to consider
16 the entirety of the record before the Labor
17 Commissioner.

18 And let me read just 2 sentences from what
19 they write.

20 This first sentence on page 8 starts at line
21 16. They write, at no time did the DOA abandon or
22 waive this argument, which may be found in the
23 entirety of the administrative record, and then they
24 cite to the record.

25 They continue, the DOA reiterates this

1 argument here and summarized below.

2 The argument that they are reiterating, and
3 the argument they made to the Labor Commissioner
4 about this being maintenance, and the contract not
5 being maintenance -- excuse me, the contract being a
6 maintenance contract.

7 And then, the Department of Aviation
8 continues down on line 20 through 21, the Labor
9 Commissioner's determination must still be affirmed
10 on the basis of the contract pertains to normal
11 maintenance of the DOA's property.

12 So, for the DOA to now come back before you
13 on a motion to reconsider and say, well, you didn't
14 have the right to do that, that's completely
15 inconsistent and opposite with what they argued to
16 you before.

17 And, so, this idea that you didn't have the
18 ability to go in and make a determination based upon
19 their argument, I don't see how that squares with
20 their position -- and excuse me -- so those main 2
21 points right there, I think that the motion fails --
22 excuse me. Allow me to reiterate.

23 I think that you can enter an order that
24 tries to clarify what you meant, and I think it is
25 paragraph 7 of your order that really is the big

1 issue.

2 I think that you can enter an order trying
3 to clarify that. It is not a binding order, it is
4 more of an advisory order.

5 And, then, as to the substance of what their
6 issue is with regard to the maintenance, the
7 Department of Aviation argued to you that this was
8 maintenance, and you made a finding based upon their
9 argument.

10 And that finding I think should stand and is
11 appropriate.

12 And, if there are any questions, I would be
13 happy to answer.

14 THE COURT: Thank you.

15 Ms. Nichols, is there anything that you
16 would like to say before I go back to Ms. Kheel?

17 MS. NICHOLS: Just to clarify for the record
18 that the Labor Commissioner at the end of the day
19 really is just concerned with whether or not this is
20 a public works project, and whether or not laborers
21 are owed their daily wage.

22 And, as far as the procedural and
23 jurisdictional argument, the Labor Commissioner is
24 neutral.

25 THE COURT: Thank you.

1 Ms. Kheel, any final thoughts?

2 MS. KHEEL: Yes.

3 The main point that Mr. James is making is
4 that he is saying we made arguments in our reply
5 brief on the merits.

6 Well, the Court considered those. In our
7 motion for reconsideration, we argued that the order
8 that was actually entered basically didn't apply
9 that, or could be construed as not applying the law
10 correctly, and that was what we had taken up on
11 appeal.

12 I wouldn't dispute the more advisory nature
13 of the type of order that you could issue in this
14 proceeding, but I do believe that there has been a
15 divestment of the Court's jurisdiction.

16 And really it is these issues as to the
17 maintenance. In the transcript, I believe the Court
18 was very clear that that issue of whether or not it
19 is maintenance at all, and if it is maintenance or
20 not maintenance, what percentage of it should have
21 been paid prevailing wage was to be remanded totally
22 back to the Labor Commissioner. And I don't believe
23 that is what the order accomplished.

24 THE COURT: Okay.

25 So I think the best course of travel -- I

1 mean, it would be very easy to say, let's just let
2 things lie. Let's see what the appeal does.

3 But my fear in doing that is that there may
4 be resolution that comes from the appellate review
5 that is not taking into account what the intent was,
6 and/or is sort of knee jerk on a particular
7 procedural issue, and doesn't really get us
8 substantively where we need to go.

9 I agree with everyone's assessment at this
10 point with the appeal we are confined with what we
11 can do, and so I think the best course of action, it
12 really was the Court's intent, you know, if the
13 Court's review of the order as it came in, as it was
14 written, was deficient, and the Court did not
15 hand-correct or send back for correction certain
16 things that were perhaps incorrect or inconsistent
17 with its order, that's the Court obligation to have
18 been more on top of things.

19 And that's the Court's fault, that the Court
20 can at least clarify a couple of things now.

21 So, on the fact that this was styled as a
22 motion for reconsideration, I believe that really
23 that's not what's being sought.

24 I agree with Mr. James that it is not really
25 seeking reconsideration, because it is not following

1 the well settled case law as to what would be
2 necessary to seek reconsideration, meaning a change
3 of outcome, meaning something based on either the
4 Court's misapplication of the law or misapprehension
5 of fact.

6 I think that this is a motion seeking
7 clarification. On that limited basis, the Court is
8 going to give the clarification that it was not the
9 Court's intention to retain jurisdiction for any
10 Labor Commissioner proceedings.

11 And to the extent that the order was worded
12 that way, that was not the Court's intent, and would
13 issue the advisory understanding that it was the
14 Court's intent for the jurisdiction only to be
15 retained for purposes of enforcing the order, or
16 other appropriate basis upon which it would have had
17 further jurisdiction.

18 It was the intent that the decision be
19 final, that all issues before the Court were
20 resolved, and that it was going back to the Labor
21 Commissioner to do their thing.

22 To the extent that there is the issue with
23 regard to the finding of maintenance, or not
24 maintenance, as the case would be, it was the
25 Court's intention that the order reflect that the

1 Court found that this was not a maintenance
2 contract, and that not necessarily that the Court
3 was simply reiterating something that had been
4 previously determined, but that the Court was making
5 that determination.

6 To the extent that that's unclear, that
7 needs to be clarified.

8 And, so, the work being done in the contract
9 would not be maintenance, and there was some
10 indication in the opposition that I think is
11 accurate that the Court however did recognize that
12 there may have been some workers who performed
13 maintenance outside of the contract work, and that
14 it would be improper to pay prevailing wage on that
15 work.

16 But it ultimately it was up to the matter
17 being returned, and the Labor Commissioner can do
18 what they needed to do.

19 So, those clarifications, I think, as far as
20 just an advisory outcome based on what was put
21 before the Court today would be necessary to make
22 that a final and appealable order.

23 So at this time what I would ask is that
24 Mr. James prepare an order related to the motion for
25 reconsideration that denies the motion for

1 reconsideration on the basis that this matter really
2 isn't being put forward as a motion for
3 reconsideration, that it is does not provide an
4 order what I think intends seeks to provide new
5 facts or newly discovered evidence, or point to the
6 Court where it misapprehended facts or misapplied
7 law, but really is seeking to be sure that there was
8 clarification on what was intended.

9 And this is advisory only, because we are
10 with the order that we have, bound to that, but that
11 the advisory that it was this Court's intention to
12 clarify today these things.

13 And to the extent that's of any value to the
14 Appellate Court.

15 So, Mr. James, I think you have a good
16 handle on this. I think you know where the parties
17 are at on this, and what is needed.

18 I would ask you to please prepare the order
19 denying the motion for reconsideration, but granting
20 to the extent that it can be viewed as a motion for
21 clarification, advisory information only, those
22 issues that you identified in your opposition.

23 I believe that it is persuasive and correct
24 what you have said, and give Ms. Kheel an
25 opportunity to review it, and give Ms. Nichols an

1 opportunity to review it, who I think is over all
2 neutral, because what we are clarifying doesn't
3 impact their role.

4 And then we will let the appeal go forward
5 as it is, and if the Court erred in what it did,
6 then the Appellate Courts will tell us, and we will
7 respect that.

8 And if we did not, so be it. But I think
9 that's how we have to wrap this one up today.

10 Mr. James, are you aware of the Court's
11 Administrative Order 20-10 that requires any orders
12 to be submitted to the Court to be submitted
13 electronically?

14 MR. JAMES: I am not.

15 THE COURT: I will ask all counsel to
16 please avail themselves of all of the administrative
17 orders that have been issued by the Court.

18 There are 10 total. Not all are relevant to
19 the civil calendar, but many are, including
20 Administrative Order 20-10, the last one issued.

21 They have available through the District
22 Court's website.

23 There is a top navigation button that
24 indicates general information, and that when you
25 click on that, about 2 or 3 down, you will see one

1 that is reflective of the administrative orders.

2 All 10 are listed there.

3 And in Administrative Order 20-10, it
4 changes very significantly how paper is being
5 handled with the courthouse.

6 All proposed orders are supposed to be
7 submitted electrically to a particular e-mail
8 address that each department has.

9 I will give you ours in a minute. And,
10 also, for your knowledge, the Court then will file
11 the order once it is signed, so that there is no
12 issues with regard to directives that attorneys
13 maintain original orders, because obviously you
14 can't maintain something that you don't have.

15 So the Court will file the order. And, of
16 course, everybody will be noticed of that through
17 the file and serve.

18 So the e-mail address where you are to
19 submit the order after giving Ms. Nichols and
20 Ms. Kheel an opportunity to review it, and we would
21 like you to please submit it within 10 days is the
22 e-mail address, DC25inbox@ClarkCountyCourts.US.

23 So any further clarification or record that
24 anybody needs to make, Mr. James?

25 MR. JAMES: No. I am fine. Thank you so

1 much.

2 THE COURT: Ms. Kheel.

3 MS. KHEEL: Just that we will be permitted to
4 submit a competing order?

5 THE COURT: The process in terms of
6 competing orders has not changed. It is just how
7 you submit your paper.

8 So the process is always the same. If you
9 disagree with what Mr. James prepares, and you have
10 a competing order which you wish to submit, do so.

11 If you just want to identify for the Court
12 what you think is wrong with the order, and ask the
13 Court to make the corrections, you can do that by
14 letter copied to the other side, whatever is easier.

15 Just make sure you let the Court know what
16 your intentions are.

17 Or, Mr. James, if you know that there is
18 going to be a competing order that is submitted, so
19 that we are not getting an order thinking we are
20 good to go, and processing it, and then finding out
21 later that there is something in the works.

22 So, the process has not changed. So, if you
23 have any questions about that, that's also available
24 on the website under our particular District Court
25 page.

1 MR. JAMES: Sure, Your Honor.

2 This is Mr. James again.

3 I would be happy to, if there is a competing
4 order that opposing counsel wants submitted, I would
5 be happy to submit those both at the same time.

6 THE COURT: I appreciate it.

7 And is there anything further, Ms. Nichols?

8 MS. NICHOLS: No, Your Honor.

9 Thank you.

10 THE COURT: All right.

11 Thank you. And, again, you the have contact
12 information for my reporter so that you can get the
13 transcript.

14 But I appreciate your time, everybody today,
15 your patience with us doing this telephonically.

16 Thank you very much.

17 MR. JAMES: Thank you.

18 Good bye.

19 MS. KHEEL: Thank you, Your Honor.

20
21 (Proceedings concluded.)
22
23
24
25

1 REPORTER'S CERTIFICATE

2
3 STATE OF NEVADA)

4) ss.

5 CLARK COUNTY)
6
7

8 I, Robert A. Cangemi, a certified court
9 reporter in and for the State of Nevada, hereby
10 certify that pursuant to NRS 239B.030 I have not
11 included the Social Security number of any person
12 within this document.

13 I further certify that I am not a relative
14 or employee of any party involved in said action,
15 nor a person financially interested in said action.
16
17

18 (signed) /s/ Robert A. Cangemi
19 _____

20 ROBERT A. CANGEMI, CCR NO. 888
21
22
23
24
25

C E R T I F I C A T E

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Robert A. Cangemi, CCR 888, do hereby
certify that I reported the foregoing proceedings,
and that the same is true and accurate as reflected
by my original machine shorthand notes taken at said
time and place.

(signed) /s/ Robert A. Cangemi

Robert A. Cangemi, CCR 888

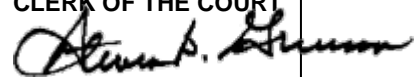
Certified Court Reporter

Las Vegas, Nevada

EXHIBIT 7

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
2/24/2020 9:05 AM
Steven D. Grierson
CLERK OF THE COURT



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

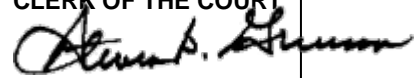
I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

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

EXHIBIT 8

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Electronically Filed
2/24/2020 2:50 PM
Steven D. Grierson
CLERK OF THE COURT



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 Order Shortening Time on 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