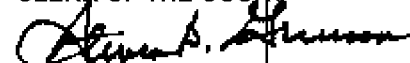


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Electronically Filed
7/16/2021 4:55 PM
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CLERK OF THE COURT



Electronically Filed
Jul 21 2021 02:38 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR) Case No. A-18-781866-J
MANAGEMENT COOPERATION)
COMMITTEE, by and through its Trustees) Department No.: 25
Terry Mayfield and Chris Christophersen,)

Petitioner,) **NOTICE OF APPEAL**

vs.)

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

Respondents.)

Notice is hereby given that Clark County Department of Aviation, Respondent in the above-named matter, hereby appeals to the Supreme Court of Nevada from the District Court's Order on Clark County Department of Aviation's Motion for Reconsideration ("Order"), attached hereto as **Exhibit A**, with Notice of Entry of Order dated June 28, 2021; and the District Court's Findings of Fact, Conclusions of Law and Order Granting Petition for Judicial Review dated February 4, 2020 (the "February Order"), with Notice

1 of Entry of Order dated February 7, 2020, attached hereto as **Exhibit B**. The February
2 Order and the Order must be read together to determine the final decision of the District
3 Court (“Order” and “February Order” collectively referred to as “Decision”), and the
4 Clark County Department of Aviation hereby appeals¹ the Decision to the Supreme
5 Court.

6 Dated this 16th day of July, 2021.

7 FISHER & PHILLIPS LLP

8
9 /s/ Allison L. Kheel, Esq.
10 MARK J. RICCIARDI, ESQ.
11 ALLISON L. KHEEL, ESQ.
12 300 South Fourth Street
13 Suite 1500
14 Las Vegas, Nevada 89101
15 *Attorneys for Respondent*
16 *Clark County Department of Aviation*
17
18
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25 ¹ In the event that the Supreme Court determines that this matter is not a final judgment
26 ripe for appeal, Appellant requests in the alternative that the Supreme Court treat this as
27 a Petition for a Writ of Prohibition to prohibit the District Court from exercising
28 jurisdiction beyond the statutory authority and prohibiting the District Court from
improperly limiting the scope of the Hearing and matter before the OLC.

CERTIFICATE OF SERVICE

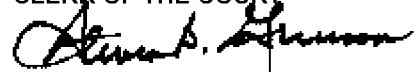
This is to certify that on the 16th day of July, 2021, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **NOTICE OF APPEAL**, via the Court's e-file and e-service system on those case participants who are registered users as follows:

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*Attorneys for Respondent
Office of the Labor
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*Attorneys for Petitioner
Southern Nevada Labor
Management Cooperation
Committee*

By: /s/ Darhyl Kerr
An Employee of Fisher & Phillips LLP

EXHIBIT A



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Attorneys for Petitioner

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

12 Petitioner,

13 vs.

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

17 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

NOTICE OF ENTRY OF ORDER

18
19 Please take notice that the attached order was entered on February 4, 2020.

20 DATED this 7th day of February 2020.

21 CHRISTENSEN JAMES & MARTIN

22 By: /s/ Evan L. James

23 Evan L. James, Esq.
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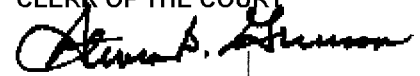
CERTIFICATE OF SERVICE

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

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

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CHRISTENSEN JAMES & MARTIN
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

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

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

FINDINGS OF FACT

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

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NOV 20 2019

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 17. On March 12, 2018, the DOA sent a letter to the OLC asserting that the Project
23 constituted normal maintenance and further asserting that the Project did not constitute
24 public funds as defined by NRS 338.010(17) because it was not "financed in whole or in
25 part from public money."
26
27

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.

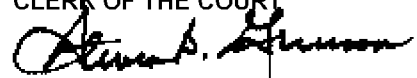
21 7. The Court further Orders that it retains jurisdiction over any subsequent
22 proceedings that may be necessary for the collection of information, the enforcement of
23 this Order or for further review, if any, as may be sought by the parties.

24 Dated: January 28, 2020.

25 
District Court Judge Kathleen Delaney
26
27

1 Submitted by:
2 CHRISTENSEN JAMES & MARTIN
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9 elj@cjmlv.com
10 *Attorneys for Petitioners*
11 Reviewed as to form and content:
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13 By: Refused to sign
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19 *Attorneys for Respondent Clark*
20 *County Department of Aviation*
21 ATTORNEY GENERAL AARON FORD
22 By: /s/ Andrea Nichols (email approval given)
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EXHIBIT B



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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 June 25, 2021.

27 Dated June 28, 2021.

CHRISTENSEN JAMES & MARTIN

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CERTIFICATE OF SERVICE

On the date of filing with the Court, I caused a true and correct copy of the foregoing Notice of Entry of Order to be served as follows:

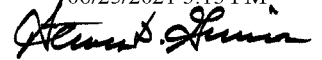
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- | | |
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CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville

Natalie Saville


CLERK OF THE COURT

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Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR
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Case No.: A-18-781866-J

Dept. No.: 25

**ORDER ON CLARK COUNTY
DEPARTMENT OF AVIATION'S
MOTION FOR RECONSIDERATION**

Respondent Clark County Department of Aviation's ("DOA") Motion for Reconsideration ("Motion") came before the Court on March 31, 2020. ~~The hearing was held in accordance Administrative Order 20-01 of the Eighth Judicial District Court.~~ At (KED) that time, all parties believed the Respondents' appeal to the Nevada Supreme Court divested the Court of jurisdiction. As such, the Court elected to treat the Motion as one for clarification. The Nevada Supreme Court disagreed and entered an order to show cause on June 5, 2020, compelling DOA to show cause why the appeal should not be dismissed for lack of jurisdiction. The Supreme Court identified the following four substantive allegations asserted by the DOA in its Motion: that the "district court order erroneously

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1 retained jurisdiction, contained an improper conclusion of law regarding whether the
2 project constituted maintenance, incorrectly made new factual findings, and improperly
3 limited the manner in which the administrative agency makes its determination.”

4 The Court hereby enters its order on the Motion. The Motion must be denied as
5 one for reconsideration under EDCR 2.24 because it fails to present new evidence or
6 identify misapprehension of law. Nevertheless, the Court takes this opportunity to clarify
7 its prior Order entered February 4, 2020 (“February Order”) and address the issues
8 identified by the Supreme Court.

9 Retention of jurisdiction.

10 The Court clarifies that paragraph 7 on page 8 of the February Order was intended
11 to allow the Court to enforce and interpret the February Order, *See Travelers Indem. Co.*
12 *v. Bailey*, 129 S.Ct. 2195, 2205, 557 U.S. 137, 151 (2009), and not to interfere with the
13 Labor Commissioner in the performance of her duties. The Labor Commissioner is free
14 to perform her duties, but ~~the Labor Commissioner and the other parties are not free~~
~~she nor the other parties are free~~ to disobey this Court’s Order.

(KED)

15 Improper conclusion of law regarding maintenance.

16 The administrative record and argument presented to the Court by the DOA
17 indicated that the Labor Commissioner treated the contract at issue as a maintenance
18 contract paid for with repair and maintenance funds. The Court disagreed ~~and entered its~~ finding that
19 ~~the contract at issue is not a maintenance contract, which findings are~~
~~findings consistent with the administrative record, which also addressed the presented~~
20 ~~whether~~
~~argument that the contract at issue was a maintenance contract.~~

(KED)

21 Incorrectly made new factual findings.

22 The Court made no new factual findings. The Court’s findings were based upon
23 the administrative record as presented and argued to the Court.

24 Improper limitation on agency’s decision making.

25 In remanding the matter to the Labor Commissioner, the Court intends for the
26 Labor Commissioner to use applicable prevailing wage rates to determine the value of
27

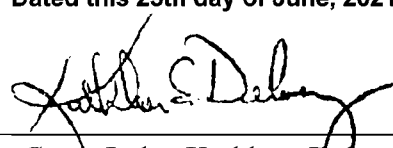
1 wages due and ensure that the unpaid wages are properly paid. The Court considers these
2 tasks to be ministerial in nature.

3 In response to the concern raised by the Labor Commissioner regarding the
4 possible discovery of additional work, the Court recognized that the Labor Commissioner
5 could encounter a situation where work was performed on the project that fell outside the
6 flooring contract. To be clear, if wages were earned for work performed on the project
7 pursuant to the flooring contract and its scope of work, those wages are to be paid at the
8 applicable prevailing wage rate because they were earned pursuant to a public works
9 construction contract. However, if the Labor Commissioner discovers that certain work
10 performed on the project fell outside the scope of work described in the flooring contract,
11 the Labor Commissioner may evaluate that work as she sees fit because it is not subject
12 to the contract at issue or these proceedings.

13 The February Order and this Order shall be construed together for purposes of
14 meeting the Court's stated intent and directives.

Dated this 25th day of June, 2021

15 ~~Dated: September _____, 2020.~~

16 
District Court Judge Kathleen Delaney

17
18 Submitted by:

19 CHRISTENSEN JAMES & MARTIN

20 By: /s/ Evan L. James

21 Evan L. James, Esq.
22 Nevada Bar No. 006735
23 7440 W. Sahara Avenue
24 Las Vegas, NV 89117
25 Tel.: (702) 255-1718
26 elj@cjmlv.com
27 Attorneys for Petitioners

**369 E30 22B6 7207
Kathleen E. Delaney
District Court Judge**

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Southern Nevada Labor
7 Management Cooperation
8 Committee, Petitioner(s)

CASE NO: A-18-781866-J

DEPT. NO. Department 25

9 vs.

10 Clark County Nevada
11 Department of Aviation,
Respondent(s)

12
13 **AUTOMATED CERTIFICATE OF SERVICE**

14 This automated certificate of service was generated by the Eighth Judicial District
15 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 6/25/2021

17 Allison Kheel akheel@fisherphillips.com

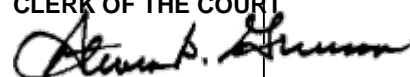
18 Natalie Saville nat@cjmlv.com

19 Evan James elj@cjmlv.com

20 Andrea Nichols anichols@ag.nv.gov

21 Sarah Griffin sgriffin@fisherphillips.com

22 Melissa Flatley mflatley@ag.nv.gov



FISHER & PHILLIPS LLP
MARK J. RICCIARDI, ESQ.
Nevada Bar No. 3141
ALLISON L. KHEEL, ESQ.
Nevada Bar No. 12986
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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/Appellant
Clark County Department of Aviation

DISTRICT COURT
CLARK COUNTY, NEVADA

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

1. Name of Appellant filing this Case Appeal Statement: Respondent Clark County Department of Aviation.

2. Judge Issuing the Judgment Appealed From: The Honorable Kathleen Delaney.

3. Appellant involved in this Appeal: Clark County Department of Aviation.

///

///

1 Counsel for Appellant:

2 Mark J. Ricciardi, Esq.
3 Nevada Bar No. 3141
4 Allison L. Kheel, Esq.
5 Nevada Bar No. 12986
6 Fisher & Phillips, LLP
7 300 S. Fourth Street, Suite 1500
8 Las Vegas, Nevada 89101
9 Email: mricciardi@fisherphillips.com
10 Email: akheel@fisherphillips.com
11 *Attorneys for Respondent/Appellant*
12 *Clark County Department of Aviation*

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

16 Counsel for Respondents:

17 Evan L. James, Esq.
18 Nevada Bar No. 07760
19 7440 W. Sahara Avenue
20 Las Vegas, Nevada 89117
21 Email: elj@cjmlv.com
22 *Attorney for Respondent (Petitioner in District Court)*
23 *Southern Nevada Labor Management Cooperation Committee*

24 Andrea Nichols, Esq.
25 Senior Deputy Attorney General
26 Nevada Bar No. 6436
27 100 N. Carson Street
28 Carson City, Nevada 89701
Email: anichols@ag.nv.gov
Attorney for Respondent (Respondent in District Court)
Office of the Labor Commissioner

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

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

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

1 8. Appellant/Respondent has not been granted leave to proceed in forma
2 pauperis.

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

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

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

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

16 In response to the Petition, the District Court entered its Findings of Fact,
17 Conclusions of Law and Order Granting Petition for Judicial Review on February 4, 2020
18 (the “February Order”). Due to numerous legal and factual errors contained in the
19 February Order, the DOA filed a Motion for Reconsideration or Clarification of the
20 February Order on February 21, 2020. The DOA also filed a timely appeal of the
21 February Order on March 9, 2020, which was assigned Case No. 80798 (“Prior Appeal”).
22 The Prior Appeal was later dismissed by the Nevada Supreme Court on July 30, 2020,
23 finding that the DOA’s Motion for Reconsideration was a tolling motion and the Prior
24 Appeal was premature. The District Court subsequently issued an Order on Clark County
25 Department of Aviation’s Motion for Reconsideration dated June 25, 2021 (hereinafter
26 the “Order”). The Order modifies and clarifies several of the findings in the February
27 Order and the documents must be read together to determine the final decision of the
28 District Court. (“Order” and “February Order” collectively referred to as “Decision”).

1 The Decision contains several legal and factual errors and internally contradictory
2 findings which render the Decision unenforceable, and which deprive the CCDOA of its
3 right to due process. Among those errors, the District Court retained jurisdiction over
4 future proceedings while simultaneously ceding jurisdiction to the OLC, which is
5 contrary to Nevada law. The Order further clarified the February Order by limiting the
6 scope of the OLC on remand to ministerial determinations of the amount of wages due.
7 In doing so, the Decision exceeded the scope of the District Court’s limited statutory
8 authority on a petition for judicial review under NRS § 233B.135(3)(e) which is limited
9 to: (1) remand, (2) affirm, or (3) set it aside. The Decision finds that the work is “not
10 maintenance” and subject to prevailing wage, improperly including findings that went
11 well beyond the Labor Commissioner’s sole “public money” determination that was
12 before the District Court. These findings could not be implied from the scant record
13 developed in the proceedings before the OLC.

14 To correct such errors, and to avoid the potential for conflicting orders, the
15 Appellant now appeals the Decision issued by the District Court.¹

16 11. The DOA previously filed an appeal of the February Order on March 9,
17 2020, which was assigned Case No. 80798 (“Prior Appeal”). The Prior Appeal was later
18 dismissed by the Nevada Supreme Court on July 30, 2020 finding that the DOA’s Motion
19 for Reconsideration was a tolling motion and the Prior Appeal was premature. This
20 Appeal does not involve child custody or visitation.

21 ///

22 ///

23 ///

24 ///

25
26 _____
27 ¹ In the event that the Supreme Court determines that this matter is not a final judgment ripe for appeal,
28 Appellant requests in the alternative that the Supreme Court treat this as a Petition for a Writ of Prohibition
to prohibit the District Court from exercising jurisdiction beyond the statutory authority and prohibiting the
District Court from improperly limiting the scope of the Hearing and matter before the OLC.

1 12. This Appeal does not involve the possibility of settlement. The Parties
2 participated in the Supreme Court Mandated Settlement Program in the Prior Appeal
3 and the matter was removed from the settlement program.

4 Dated this 16th day of July, 2021.

5 FISHER & PHILLIPS LLP

6 /s/ Allison L. Kheel, Esq.

7 MARK J. RICCIARDI, ESQ.

8 ALLISON L. KHEEL, ESQ.

9 300 South Fourth Street

10 Suite 1500

11 Las Vegas, Nevada 89101

12 Attorneys for Respondent/Appellant

13 Clark County Department of Aviation

CERTIFICATE OF SERVICE

This is to certify that on the 16th day of July, 2021, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **CASE APPEAL STATEMENT**, via the Court's e-file and e-service system on those case participants who are registered users.

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

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

By: /s/ Darhyl Kerr
An employee of Fisher & Phillips LLP

EIGHTH JUDICIAL DISTRICT COURT

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

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

§
§
§
§
§
§

Location: **Department 25**
Judicial Officer: **Delaney, Kathleen E.**
Filed on: **09/27/2018**
Cross-Reference Case **A781866**
Number:
Supreme Court No.: **80798**







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

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

PARTY INFORMATION

Petitioner	Southern Nevada Labor Management Cooperation Committee	<i>Lead Attorneys</i> James, Evan L. <i>Retained</i> 702-255-1718(W)
Respondent	Clark County Nevada Department of Aviation	Ricciardi, Mark J. <i>Retained</i> 7022523131(W)
	Office of the Labor Commissioner	Nichols, Andrea H. <i>Retained</i> 775-684-1218(W)

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

09/27/2018	 Petition for Judicial Review <i>[1] Petition for Judicial Review</i>
09/27/2018	 Initial Appearance Fee Disclosure Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[2] Initial Appearance Fee Disclosure</i>
10/15/2018	 Statement of Intent to Participate in Petition for Judicial Filed By: Respondent Office of the Labor Commissioner <i>[3] Statement of Intent to Participate</i>
10/30/2018	 Certificate of Service Filed by: Respondent Office of the Labor Commissioner <i>[4] Certificate of Service</i>
10/30/2018	 Statement of Intent to Participate in Petition for Judicial Filed By: Respondent Clark County Nevada Department of Aviation <i>[5] Clark County Department of Aviation's Statement of Intent to Participate</i>
11/08/2018	 Administrative Record

CASE SUMMARY

CASE NO. A-18-781866-J

Party: Respondent Office of the Labor Commissioner
[6] Administrative Record

11/12/2018



Administrative Record

Party: Petitioner Southern Nevada Labor Management Cooperation Committee
[7] Administrative Record

11/13/2018



Administrative Record

Party: Respondent Office of the Labor Commissioner
[8] Amended Administrative Record (Part 1 of 2)

11/20/2018



Administrative Record

Party: Respondent Office of the Labor Commissioner
[9] Amended Administrative Record (Part 2 of 2)

12/11/2018



Memorandum of Points and Authorities

Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee; Trustee Mayfield, Terry; Trustee Christophersen, Chris
[10] Petitioner's Opening Memorandum of Points and Authorities

01/15/2019



Stipulation and Order

Filed by: Respondent Clark County Nevada Department of Aviation
[11] Stipulation and Order for Extension of Time to File Reply Memorandum of Points and Authorities

01/15/2019



Notice of Entry

Filed By: Respondent Clark County Nevada Department of Aviation
[12] Notice of Entry of Stipulation and Order for Extension of Time to File Reply Memorandum of Points and Authorities

02/01/2019



Stipulation and Order

Filed by: Respondent Clark County Nevada Department of Aviation
[13] Stipulation and Order for Extension of Time to File Reply Memorandum of Points and Authorities (Second Request)

02/01/2019



Notice of Entry of Stipulation and Order

Filed By: Respondent Clark County Nevada Department of Aviation
[14] Notice of Entry of Order

02/13/2019



Stipulation and Order

Filed by: Respondent Clark County Nevada Department of Aviation
[15] Stipulation and Order for Extension of Time to File Reply Memorandum of Points and Authorities (Third Request)

02/13/2019



Notice of Entry

Filed By: Respondent Clark County Nevada Department of Aviation
[16] Notice of Entry of Order

02/21/2019



Motion

Filed By: Respondent Clark County Nevada Department of Aviation
[17] Motion to Extend Time to File Reply to Petition for Judicial Review

02/25/2019



Reply Points and Authorities

Filed by: Respondent Clark County Nevada Department of Aviation
[18] Clark County Department of Aviation's Reply Memorandum of Points and Authorities to

CASE SUMMARY














CASE NO. A-18-781866-J

Petition for Judicial Review

02/26/2019	 Respondent's Answering Brief Filed by: Respondent Office of the Labor Commissioner <i>[19] Office of the Labor Commissioner's Response to Petitioner's Opening Brief</i>
02/27/2019	 Non Opposition Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[20] Non Opposition to Motion to Extend Time</i>
03/27/2019	 Motion Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee; Trustee Mayfield, Terry; Trustee Christophersen, Chris <i>[21] Motion for Extension of Time</i>
04/02/2019	CANCELED Motion (9:00 AM) (Judicial Officer: Delaney, Kathleen E.) <i>Vacated - per Stipulation and Order</i> <i>Motion to Extend Time to File Reply to Petition for Judicial Review</i>
04/02/2019	 Stipulation and Order Filed by: Respondent Clark County Nevada Department of Aviation <i>[22] Stipulation and Order for Withdrawal of Motion and Extension of Deadlines Pursuant to NRS 233B.133</i>
04/02/2019	 Notice of Entry Filed By: Respondent Clark County Nevada Department of Aviation <i>[23] Notice of Entry of Stipulation and Order for Withdrawal of Motion and Extension of Deadlines</i>
04/05/2019	 Notice of Withdrawal of Motion Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee; Trustee Mayfield, Terry; Trustee Christophersen, Chris <i>[24] Notice of Withdrawal of Motion for Extension of Time</i>
04/16/2019	 Petitioner's Reply Brief Filed by: Petitioner Southern Nevada Labor Management Cooperation Committee; Trustee Mayfield, Terry; Trustee Christophersen, Chris <i>[25] Petitioner's Reply Brief</i>
04/16/2019	 Notice of Hearing Filed By: Respondent Clark County Nevada Department of Aviation <i>[26] Notice of Hearing on Petition for Judicial Review</i>
04/17/2019	 Request Filed by: Petitioner Southern Nevada Labor Management Cooperation Committee; Trustee Mayfield, Terry; Trustee Christophersen, Chris <i>[27] Petitioner's Request for Hearing</i>
06/18/2019	 Stipulation and Order Filed by: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[28] Stipulation and Order to Continue Hearing</i>
07/03/2019	 Substitution of Attorney Filed by: Respondent Office of the Labor Commissioner <i>[29] Substitution of Counsel</i>












CASE SUMMARY

CASE NO. A-18-781866-J

08/13/2019	 Petition for Judicial Review (9:00 AM) (Judicial Officer: Delaney, Kathleen E.) 08/13/2019, 08/20/2019, 08/27/2019
08/20/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Delaney, Kathleen E.)
08/20/2019	Decision (10:30 AM) (Judicial Officer: Delaney, Kathleen E.) 08/20/2019, 08/27/2019 <i>Decision: Petition for Judicial Review</i>
08/27/2019	 All Pending Motions (9:00 AM) (Judicial Officer: Delaney, Kathleen E.)
01/24/2020	 Motion Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[30] (2/7/2020 Withdrawn) Motion for Status Check (Hearing Requested)</i>
01/27/2020	 Clerk's Notice of Hearing <i>[31] Notice of Hearing</i>
02/04/2020	 Findings of Fact, Conclusions of Law and Order Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[32] Findings of Fact, Conclusions of Law and Order Granting Petition for Judicial Review</i>
02/04/2020	Order Granting Judicial Review (Judicial Officer: Delaney, Kathleen E.) Debtors: Clark County Nevada Department of Aviation (Respondent), Office of the Labor Commissioner (Respondent) Creditors: Southern Nevada Labor Management Cooperation Committee (Petitioner) Judgment: 02/04/2020, Docketed: 02/04/2020
02/07/2020	 Notice of Withdrawal of Motion Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[33] Notice of Withdrawal of Motion for Status Check</i>
02/07/2020	 Notice of Entry of Order Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[34] Notice of Entry of Order</i>
02/21/2020	 Motion to Reconsider Filed By: Respondent Clark County Nevada Department of Aviation <i>[35] Motion for Reconsideration</i>
02/21/2020	 Motion for Order Filed By: Respondent Clark County Nevada Department of Aviation <i>[37] Motion for Order Shortening Time on Respondent's Motion for Reconsideration</i>
02/24/2020	 Clerk's Notice of Hearing <i>[36] Notice of Hearing</i>
02/24/2020	 Clerk's Notice of Hearing <i>[38] Notice of Hearing</i>
02/28/2020	 Opposition to Motion Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[39] Opposition to Motion for Reconsideration</i>

CASE SUMMARY

CASE NO. A-18-781866-J

03/03/2020	CANCELED Motion (9:00 AM) (Judicial Officer: Delaney, Kathleen E.) <i>Vacated</i> <i>Petitioner Motion for Status Check</i>
03/09/2020	 Notice of Appeal Filed By: Respondent Clark County Nevada Department of Aviation <i>[40]</i>
03/09/2020	 Case Appeal Statement <i>[41] Case Appeal Statement</i>
03/25/2020	 Notice of Intent Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[42] Notice of Intent to Appear by Communication Equipment</i>
03/27/2020	 Reply in Support Filed By: Respondent Clark County Nevada Department of Aviation <i>[43] Reply Memorandum of Points and Authorities in Support of Respondent's Motion for Reconsideration</i>
03/31/2020	Motion For Reconsideration (9:00 AM) (Judicial Officer: Delaney, Kathleen E.) <i>Respondent's Motion for Reconsideration</i>
03/31/2020	Motion for Order (9:00 AM) (Judicial Officer: Delaney, Kathleen E.) <i>Respondent's Motion for Order Shortening Time on Respondent's Motion for Reconsideration</i>
03/31/2020	 All Pending Motions (9:00 AM) (Judicial Officer: Delaney, Kathleen E.)
04/15/2020	 Request Filed by: Respondent Clark County Nevada Department of Aviation <i>[44] Request for Rough Draft of Transcript of Proceedings of August 13, 2019 Hearing</i>
06/26/2020	 Notice Filed By: Respondent Clark County Nevada Department of Aviation <i>[45] Joint Notice of Order to Show Cause from Supreme Court of Nevada</i>
08/07/2020	 Motion Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[46] Joint Motion for Status Check</i>
08/10/2020	 Clerk's Notice of Hearing <i>[47] Clerks Notice of Hearing</i>
08/26/2020	 NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>[48] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed</i>
08/26/2020	Clerk's Certificate (Judicial Officer: Delaney, Kathleen E.) Debtors: Clark County Nevada Department of Aviation (Respondent) Creditors: Southern Nevada Labor Management Cooperation Committee (Petitioner), Office of the Labor Commissioner (Respondent), Terry Mayfield (Trustee), Chris Christophersen (Trustee) Judgment: 08/26/2020, Docketed: 08/28/2020 Comment: Supreme Court No. 80798 Appeal Dismissed
09/09/2020	 Notice of Telephonic Hearing Filed by: Respondent Office of the Labor Commissioner

CASE SUMMARY

CASE NO. A-18-781866-J

[49] Notice of Intent to Appear by Communication Equipment

09/10/2020



Miscellaneous Filing

Filed by: Petitioner Southern Nevada Labor Management Cooperation Committee

[50] Notice of Intent to Appear by Communication Equipment

09/15/2020



Motion (9:00 AM) (Judicial Officer: Delaney, Kathleen E.)

Joint Motion for Status Check

11/02/2020



Motion

Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee

[51] Motion for Status Check

11/03/2020



Clerk's Notice of Hearing

[52] Notice of Hearing

12/02/2020



Notice of Telephonic Hearing

Filed by: Respondent Office of the Labor Commissioner

[53] Notice of Intent to Appear By Communication Equipment

12/02/2020



Notice of Intent

Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee

[54] Notice of Intent to Appear by Communication Equipment

12/08/2020



Motion (9:00 AM) (Judicial Officer: Delaney, Kathleen E.)

12/08/2020, 12/15/2020, 12/22/2020

Petitioner Motion for Status Check

02/01/2021



Motion for Order

Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee

[55] Motion for Order

02/03/2021



Clerk's Notice of Hearing

[56] Notice of Hearing

02/16/2021



Opposition to Motion

Filed By: Respondent Clark County Nevada Department of Aviation

[57] Opposition to Petitioner's Motion for Order

03/02/2021



Reply to Opposition

Filed by: Petitioner Southern Nevada Labor Management Cooperation Committee

[58] Reply to Opposition

03/08/2021



Minute Order (10:00 AM) (Judicial Officer: Delaney, Kathleen E.)

Minute Order Regarding Dept. 25 Formal Request to Appear Remotely

03/09/2021



Motion for Order (9:00 AM) (Judicial Officer: Delaney, Kathleen E.)

Events: 02/01/2021 Motion for Order

Petitioner's Motion for Order

05/19/2021











Motion for Order

Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee

[59] Motion for Order - Hearing Requested

EIGHTH JUDICIAL DISTRICT COURT

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

05/20/2021	 Clerk's Notice of Hearing <i>[60] Notice of Hearing</i>
06/02/2021	 Opposition to Motion Filed By: Respondent Clark County Nevada Department of Aviation <i>[61] Opposition to Petitioner's Motion for Order</i>
06/25/2021	 Order Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[62] Order on Clark County Department of Aviation's Motion for Reconsideration</i>
06/28/2021	 Minute Order (7:30 AM) (Judicial Officer: Delaney, Kathleen E.) <i>Minute Order Vacating Motion for Order</i>
06/28/2021	 Notice of Entry of Order Filed By: Petitioner Southern Nevada Labor Management Cooperation Committee <i>[63] Notice of Entry of Order</i>
06/29/2021	CANCELED Motion for Order (9:00 AM) (Judicial Officer: Delaney, Kathleen E.) <i>Vacated - per Judge</i> <i>Petitioner's Motion for Order</i>
07/16/2021	 Notice of Appeal Filed By: Respondent Clark County Nevada Department of Aviation <i>[64] Notice of Appeal</i>
07/16/2021	 Case Appeal Statement Filed By: Respondent Clark County Nevada Department of Aviation <i>[65] Case Appeal Statement</i>
07/16/2021	 Order Shortening Time <i>[66] Motion to Stay (1) Enforcement of Order on Motion for Reconsideration, (2) Enforcement of Order Granting Petition for Judicial Review, and (3) Any Proceedings Before the Office of the Labor Commissioner on an Order Shortening Time</i>
07/16/2021	 Notice of Entry of Order Filed By: Respondent Clark County Nevada Department of Aviation <i>[67] Notice of Entry of Order on Motion to Stay on Order Shortening Time</i>
07/22/2021	Motion to Stay (9:00 AM) (Judicial Officer: Delaney, Kathleen E.) <i>Motion to Stay (1) Enforcement of Order on Motion for Reconsideration, (2) Enforcement of Order Granting Petition for Judicial Review, and (3) Any Proceedings Before the Office of the Labor Commissioner on an Order Shortening Time</i>

DATE

FINANCIAL INFORMATION

Petitioner Southern Nevada Labor Management Cooperation Committee	
Total Charges	285.00
Total Payments and Credits	285.00
Balance Due as of 7/20/2021	0.00
 Respondent Clark County Nevada Department of Aviation	
Total Charges	48.00
Total Payments and Credits	48.00
Balance Due as of 7/20/2021	0.00

CASE SUMMARY

CASE NO. A-18-781866-J

DISTRICT COURT CIVIL COVER SHEET

A-18-781866-J

County, Nevada

Department 25

Case No. _____

(Assigned by Clerk's Office)

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

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

Southern Nevada Labor Management Cooperation Committee;

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

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

Attorney (name/address/phone):

Christensen James & Martin

Evan L. James, Esq.

7440 W. Sahara Ave., LV, NV 89117

(702) 255-1718

Attorney (name/address/phone):

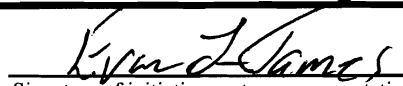
II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

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

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

9/27/2018

Date


 Signature of initiating party or representative

See other side for family-related case filings.

Heaven S. Martin

CLERK OF THE COURT

ORDR
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**ORDER ON CLARK COUNTY
DEPARTMENT OF AVIATION'S
MOTION FOR RECONSIDERATION**

Respondent Clark County Department of Aviation's ("DOA") Motion for Reconsideration ("Motion") came before the Court on March 31, 2020. ~~The hearing was held in accordance Administrative Order 20-01 of the Eighth Judicial District Court.~~ At (KED) that time, all parties believed the Respondents' appeal to the Nevada Supreme Court divested the Court of jurisdiction. As such, the Court elected to treat the Motion as one for clarification. The Nevada Supreme Court disagreed and entered an order to show cause on June 5, 2020, compelling DOA to show cause why the appeal should not be dismissed for lack of jurisdiction. The Supreme Court identified the following four substantive allegations asserted by the DOA in its Motion: that the "district court order erroneously

1 retained jurisdiction, contained an improper conclusion of law regarding whether the
2 project constituted maintenance, incorrectly made new factual findings, and improperly
3 limited the manner in which the administrative agency makes its determination.”

4 The Court hereby enters its order on the Motion. The Motion must be denied as
5 one for reconsideration under EDCR 2.24 because it fails to present new evidence or
6 identify misapprehension of law. Nevertheless, the Court takes this opportunity to clarify
7 its prior Order entered February 4, 2020 (“February Order”) and address the issues
8 identified by the Supreme Court.

9 Retention of jurisdiction.

10 The Court clarifies that paragraph 7 on page 8 of the February Order was intended
11 to allow the Court to enforce and interpret the February Order, *See Travelers Indem. Co.*
12 *v. Bailey*, 129 S.Ct. 2195, 2205, 557 U.S. 137, 151 (2009), and not to interfere with the
13 Labor Commissioner in the performance of her duties. The Labor Commissioner is free
14 to perform her duties, but ~~the Labor Commissioner and the other parties are not free~~
~~she nor the other parties are free to disobey this Court’s Order.~~ (KED)

15 Improper conclusion of law regarding maintenance.

16 The administrative record and argument presented to the Court by the DOA
17 indicated that the Labor Commissioner treated the contract at issue as a maintenance
18 contract paid for with repair and maintenance funds. The Court disagreed ~~and entered its~~ finding that
19 the contract at issue is not a maintenance contract, which findings are
20 findings consistent with the administrative record, which also addressed ~~the presented~~
~~whether~~
~~argument that the contract at issue was a maintenance contract.~~ (KED)

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22 The Court made no new factual findings. The Court’s findings were based upon
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24 Improper limitation on agency’s decision making.

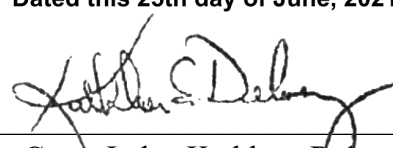
25 In remanding the matter to the Labor Commissioner, the Court intends for the
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2 tasks to be ministerial in nature.

3 In response to the concern raised by the Labor Commissioner regarding the
4 possible discovery of additional work, the Court recognized that the Labor Commissioner
5 could encounter a situation where work was performed on the project that fell outside the
6 flooring contract. To be clear, if wages were earned for work performed on the project
7 pursuant to the flooring contract and its scope of work, those wages are to be paid at the
8 applicable prevailing wage rate because they were earned pursuant to a public works
9 construction contract. However, if the Labor Commissioner discovers that certain work
10 performed on the project fell outside the scope of work described in the flooring contract,
11 the Labor Commissioner may evaluate that work as she sees fit because it is not subject
12 to the contract at issue or these proceedings.

13 The February Order and this Order shall be construed together for purposes of
14 meeting the Court's stated intent and directives. Dated this 25th day of June, 2021

15 ~~Dated: September _____, 2020.~~

16 
District Court Judge Kathleen Delaney

17
18 Submitted by:

19 CHRISTENSEN JAMES & MARTIN

20 By: /s/ Evan L. James

21 Evan L. James, Esq.
22 Nevada Bar No. 006735
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24 Las Vegas, NV 89117
25 Tel.: (702) 255-1718
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27 Attorneys for Petitioners

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Kathleen E. Delaney
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Southern Nevada Labor
7 Management Cooperation
8 Committee, Petitioner(s)

CASE NO: A-18-781866-J

DEPT. NO. Department 25

9 vs.

10 Clark County Nevada
11 Department of Aviation,
Respondent(s)

12
13 **AUTOMATED CERTIFICATE OF SERVICE**

14 This automated certificate of service was generated by the Eighth Judicial District
15 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 6/25/2021

17 Allison Kheel akheel@fisherphillips.com

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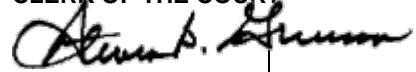
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10 *Attorneys for Petitioner*

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

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

18 Petitioner,

19 vs.

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

25 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

NOTICE OF ENTRY OF ORDER

26 Please take notice that the attached order was entered on June 25, 2021.

27 Dated June 28, 2021.

CHRISTENSEN JAMES & MARTIN

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CERTIFICATE OF SERVICE

On the date of filing with the Court, I caused a true and correct copy of the foregoing Notice of Entry of Order to be served as follows:

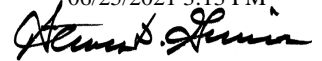
☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

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CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville

Natalie Saville



CLERK OF THE COURT

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District Court Judge Kathleen Delaney

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18 Submitted by:

19 CHRISTENSEN JAMES & MARTIN

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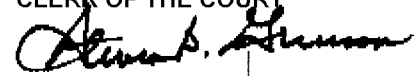
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Dept. No.: 25

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

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

FINDINGS OF FACT

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

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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:
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7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

12 Petitioner,

13 vs.

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

17 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

NOTICE OF ENTRY OF ORDER

18
19 Please take notice that the attached order was entered on February 4, 2020.

20 DATED this 7th day of February 2020.

21 CHRISTENSEN JAMES & MARTIN

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1 **CERTIFICATE OF SERVICE**

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

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

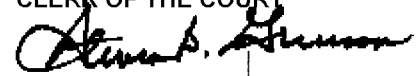
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10 CHRISTENSEN JAMES & MARTIN

11 By: /s/ Natalie Saville
12 Natalie Saville



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Petitioner,

vs.

CLARK COUNTY NEVADA,
DEPARTMENT OF AVIATION, a
political subdivision of the State of
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LABOR COMMISSIONER,

Respondents.

Case No.: A-18-781866-J

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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.

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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*
24
25
26
27 ATTORNEY GENERAL AARON FORD
By: */s/ Andrea Nichols (email approval given)*
Andrea Nichols, Esq.
Senior Deputy Attorney General,
Nevada Bar No. 6436
Office of the Attorney General
100 N. Carson Nevada 89701
Carson City, NV 89701
Tel.: (775) 684-1218
anichols@ag.nv.gov
Attorneys for Respondent Office
of the Labor Commissioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

August 13, 2019

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

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

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

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Renee Silvaggio

PARTIES

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

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

August 20, 2019

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

August 20, 2019

9:00 AM

All Pending Motions

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT:

JOURNAL ENTRIES

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

COURT ORDERED, matters CONTINUED.

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

August 27, 2019

A-18-781866-J	Southern Nevada Labor Management Cooperation Committee, Petitioner(s) vs. Clark County Nevada Department of Aviation, Respondent(s)
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August 27, 2019 9:00 AM All Pending Motions

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

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Sharon Howard

PARTIES

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

JOURNAL ENTRIES

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

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

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

March 31, 2020

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

March 31, 2020

9:00 AM

All Pending Motions

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Robert Cangemi

PARTIES

PRESENT: James, Evan L. Attorney
Kheel, Allison L. Attorney
Nichols, Andrea H. Attorney

JOURNAL ENTRIES

- RESPONDENT'S MOTION FOR RECONSIDERATION..RESPONDENT'S MOTION FOR ORDER
SHORTENING TIME ON RESPONDENT'S MOTION FOR RECONSIDERATION

All counsel appeared telephonically. COURT NOTED, there does not seem to be any dispute the Court's Order needs to be clarified or more pointed in some of the issues it handled. Ms. Kheel has pointed out some potential ways in which the Order could be misconstrued. There only seems to be a dispute whether or not this is a Motion for Reconsideration and if Court has jurisdiction to hear it in light of the appeal, and whether or not Court can hear it, of if this is just a Motion for Clarification, and if the Court should be considered to be divested of jurisdiction and not be able to hear the matter. Arguments by counsel regarding potential issues regarding the matter being fully remanded, tolling and the appeal. COURT ADVISED, It is not changing the outcome; COURT is FINDING that it WAS NOT maintenance, COURT is FINDING that it should be REMANDED to the Labor Commission to proceed as directed.

Additional arguments regarding the District Court's ability to change Its Order. Ms. Kheel stated she respects the Court's decision on the public money findings on appeal, and argued the challenge is

whether or not the Court found it to be maintenance or not, or whether that issue should go back to the Labor Commissioner. It is their opinion there wasn't a full record developed below in reviewing the transcripts from when Court provided Its findings; they feel that is consistent with the position Court was intending to take. Mr. James argued since the matter has been appealed, this Court has lost jurisdiction therefore It does not have the ability to change Its Order. Court could enter an Advisory Order for the Nevada Supreme Court to review. Court has the ability to review Its view on the Order. Further arguing, if Pltf. is arguing the Court got it wrong Pltf. needs to proceed with new evidence or say how the Court got it wrong; they do neither. His issue with the Motion for Reconsideration as they won't address the appropriate issues. Ms. Nichols stated as far a procedural issues, the Labor Commission is neutral.

COURT STATED FINDINGS, and ORDERED, Motion DENIED as a Motion for Reconsideration. Motion GRANTED as a Motion for Clarification. Court agrees with Mr. James this is not really a Motion for Consideration as it is not following the necessary well settled case law. COURT CLARIFIED, it was not the Court's intention to retain jurisdiction for any Labor Commissioner proceedings, and to the extent that the Order was worded that way that was not the Court's intent. COURT would ISSUE the advisory understanding that it was the Court's intent for the jurisdiction only to be retained for purposes of enforcing the Order, or other appropriate basis upon which It would have had further jurisdiction. It was Court's intent that the decision be FINAL and that all other issues before the Court were resolved, that it was going back to the Labor Commissioner to do their thing.

To the extent there is the issue with regard to the finding of maintenance or not maintenance, as the case would be, it was the Court's intention that the Order reflect that the COURT FOUND that this was not a maintenance contract and, that not necessarily that the Court was simply reinterating something that had previously been determined, but that the Court was making that DETERMINATION. To the extent that is unclear, that needs to be clarified. The work being done under the contract would not be maintenance. COURT did RECOGNIZE that there may have been some workers that performed maintenance outside the contract work and that it would be improper to pay prevailing wage on that work. Ultimately it was up to the matter being returned and the Labor Commissioner to do what they needed to do. COURT STATED ADDITIONAL FINDINGS.

Mr. James is to prepare the Order, provide the Order, provide a copy to opposing counsel for review as to form and content, and return it back to the Court within 10 days. Colloquy regarding submission of competing Orders and Administrative Order 20.10 directing counsel to provide electronic submissions.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

September 15, 2020

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

September 15, 2020 9:00 AM Motion

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT: James, Evan L. Attorney
Kheel, Allison L. Attorney
Nichols, Andrea H. Attorney

JOURNAL ENTRIES

- Counsel appeared telephonically.

COURT NOTED, at the Nevada Supreme Court level the case was DISMISSED for lack of jurisdiction on 07/30/20, with the Court indicating the matter was not ripe for appeal. Additionally there is an indication the Appeal was prematurely filed and lacking jurisdiction. Colloquy regarding how the parties would like to proceed and their request from this Court. Ms. Kheel stated the parties submitted competing Orders, she believes if parties strike the word "advisory" out of the competing Orders then the parties can proceed. Mr. James noted a Final Order was never entered by the Court.

COURT ADVISED, due to the new electronic filing system implemented due the Covid-19 pandemic, the Orders are likely on the Court's desk. Following colloquy regarding small revisions to counsel's orders based upon the Nevada Supreme Court's ruling, COURT DIRECTED counsel to submit their competing Orders within 10 days. Chambers is to be contacted when the Orders are resubmitted. Court will respond back to counsel by 09/25/20 or sooner.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

December 08, 2020

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

December 08, 2020 9:00 AM Motion

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

COURT CLERK: Kathryn Hansen-McDowell

RECORDER:

REPORTER: Bill Nelson

PARTIES

PRESENT: James, Evan L. Attorney
 Kheel, Allison L. Attorney

JOURNAL ENTRIES

- This was Petitioner's Motion for a Status Check regarding an outstanding order. Colloquy regarding why the order had not been signed. Court advised it should be completed by next week. COURT ORDERED, matter CONTINUED. Court noted appearance of counsel was not necessary.

CONTINUED TO: 12/15/20 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

December 15, 2020

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

December 15, 2020 9:00 AM Motion

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Dana Richardson

PARTIES

PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED. Court noted appearance of counsel was not necessary.

CONTINUED TO: 12/22/20 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

December 22, 2020

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

December 22, 2020 9:00 AM Motion

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER: Bill Nelson

PARTIES

PRESENT:

JOURNAL ENTRIES

- No appearance. Court noted it has determined it will sign off on the second of the two proposed orders with some additional revisions. Court to issue the order as soon as possible.

CLERK'S NOTE: Minutes prepared upon a review of the JAVS recording. /mk 2/3/21

ID number, followed by the # sign:

Call-in number: 1-408-419-1715

Meeting ID number: 633737743

Again, until further notice, the Meeting ID number for all DC 25 Civil Calendars will be the same.

Finally, PLEASE NOTE the following protocol each participant will be required to follow:

Place your telephone on mute while waiting for your matter to be called.

Do not place the conference on hold, as it may play wait/hold music.

Identify yourself before speaking each time, as a record is being made.

Please be mindful of ambient noises, e.g. rustling papers.

[CLERK S NOTE: A copy of this Minute Order has been electronically served to all registered users in this case through the Eighth Judicial District Court Electronic Filing System.] aw

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

March 09, 2021

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

March 09, 2021	9:00 AM	Motion for Order	Petitioner's Motion for Order
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HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15B

COURT CLERK: April Watkins

RECORDED:

REPORTER: Bill Nelson

PARTIES

PRESENT: James, Evan L. Attorney
Kheel, Allison L. Attorney
Nichols, Andrea H. Attorney

JOURNAL ENTRIES

- The Court was not able to complete review and order due to unforeseen circumstances. Further, order is now ready for the Court to complete and the order will be filed later today. Court noted motion for order asked the matter be placed on calendar and also referenced some activity in the Appellate Court and the opposition did ask to address that and Department of Aviation is in agreement that the order needs to be properly issued. Colloquy. COURT ORDERED, motion GRANTED to the extent that there is information in there indicating how there may have been need to adjust order subsequent to the Appellate review and the Court will address that in order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

June 28, 2021

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

June 28, 2021

7:30 AM

Minute Order

**Minute Order
Vacating Motion for
Order**

HEARD BY: Delaney, Kathleen E.

COURTROOM: Chambers

COURT CLERK: April Watkins

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- In keeping with the continued need to limit the Court's calendars to essential matters only, pursuant to the directives set forth in the District Court's Administrative Orders issued in response to the COVID-19 pandemic; Court having reviewed the competing orders at issue in the Motion for Order filed by Petitioner and having finally executed an Order on Clark County Department of Aviation's Motion for Reconsideration; and good cause appearing, COURT ORDERED the Petitioner's Motion for Order is hereby DENIED as MOOT. COURT FURTHER ORDERED the hearing on Petitioner's Motion for Order currently set for Tuesday, June 29, 2021 at 9:00 a.m. is VACATED.

CLERK'S NOTE: Copy of this minute order was served on all parties through the Court's electronic filing system. aw 6/28/2021

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER ON CLARK COUNTY DEPARTMENT OF AVIATION'S MOTION FOR RECONSIDERATION; NOTICE OF ENTRY OF ORDER; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PETITION FOR JUDICIAL REVIEW; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

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

Plaintiff(s),

vs.

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

Defendant(s),

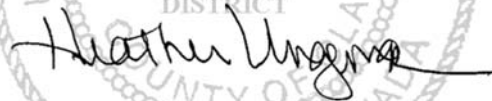
Case No: A-18-781866-J

Dept No: XXV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 20 day of July 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk