

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CLARK COUNTY NEV., DEPT. OF
AVIATION

VS.

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

No. 83252 Electronically Filed
Aug 11 2021 04:12 p.m.
DOCKETING Elizabeth A. Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

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

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

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

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

2. Attorney filing this docketing statement:

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

Firm Fisher Phillips, LLP

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

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

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

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

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

Firm Christensen James & Martin

Address 7440 W. Sahara Avenue
Las Vegas, Nevada 89117

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

Attorney Andrea Nichols, Esq. (Sr. Deputy A.G.) Telephone (775) 684-1218

Firm Office of the Attorney General

Address 100 N. Carson Street,
Carson City, NV 897011

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

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

Case No. 80798

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:
None.

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

This Action is an appeal of the February 7, 2020 Findings of Fact, Conclusions of Law and Order Granting the Petition for Judicial Review and supplemental order of June 28, 2021 (collectively the "Order"), of the final agency determination of the Office of the Labor Commissioner ("OLC"). The Order contains several legal and factual errors and internal contradictions which render the Order unenforceable, and deprive the CCDOA of its right to due process. Among those errors, the District Court ("DC") retained jurisdiction over future proceedings while simultaneously ceding jurisdiction to the OLC. The Order further improperly included factual and legal findings that went well beyond the Labor Commissioner's sole "public money" determination that was before the DC. Relatedly, the DC's Order made factual findings, including finding that "the Project did not constitute maintenance" that could not be implied from the scant record developed in the proceedings before the OLC, and limited the OLC's authority to consider new evidence or review the scope of the work or project. To correct such errors, the Appellant now appeals the Order issued by the DC. The DC also denied the CCDOA's Request for a Stay Pending Appeal thereby improperly compelling the OLC to issue a money judgment further prejudicing CCDOA.

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

- (1) Whether the District Court can retain jurisdiction over future proceedings beyond merely enforcing its Order, while simultaneously remanding the matter, and ceding jurisdiction to, the Office of the Labor Commissioner?
- (2) Whether the District Court erred by making factual and legal findings that went beyond the Labor Commissioner's sole "public money" determination and the scant, undeveloped administrative record that was before the District Court?
- (3) Whether the District Court erred by improperly limiting the Labor Commissioner's authority to hold a hearing, receive and consider evidence and reach an original determination regarding the scope of the work and whether the nature of the work was maintenance (and thereby excluded from prevailing wage)?
- (4) Whether the District Court erred by denying the CCDOA's Request for a Stay Pending Appeal?

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

None.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☐ A ballot question

If so, explain: NRS Chapter 338, including its prevailing wage requirement, is explicitly excluded from contracts issued under NRS Chapter 332 related to the normal maintenance of property. The CCDOA's carpet maintenance contract has never before been challenged as a public works project requiring prevailing wages. The Order "concludes that the Project did not constitute maintenance." Such findings exceed the scope of the Petition for Judicial Review and are completely unsupported by the scant administrative record developed to date, is contrary to NRS Chapters 332 and 338, and is otherwise unsupported by law. The Order also inappropriately limits the authority of the Labor Commissioner to receive and consider additional evidence, hold a full and complete hearing and make original findings on the nature and scope of the work and whether the work should be properly designated as maintenance.

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

This is an Appeal of a Final Order Granting a Petition for Judicial Review of the final agency determination issued by the Office of the Labor Commissioner under the Administrative Procedure Act, NRS Chapter 233B.150. The District Court exceeded its authority and jurisdiction by making findings beyond the administrative record and OLC's "public money" determination. The DC also denied the CCDOA's Request for a Stay Pending Appeal and the Supreme Court is set to hear and determine the issue of a stay. Thus, the Supreme Court should retain this case despite it being presumptively assigned to the Court of Appeals under NRAP 17(b)(9). Additionally, the Supreme Court previously issued two Orders to Show Cause in Case No. 80798, designating the Motion for Reconsideration filed in the District Court as a tolling motion. The parties previously attended the Court Mandated Settlement Program in Case No. 80798 without success and repeat attendance is likely to result in further delay. The Supreme Court should retain jurisdiction in the interest of judicial efficiency and consistency.

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

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

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

TIMELINESS OF NOTICE OF APPEAL

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

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

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

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing NRCP 60: Motion for Reconsideration or

☐ NRCP 52(b) Date of filing Clarification filed **February 21, 2020**

☐ NRCP 59 Date of filing _____

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

(b) Date of entry of written order resolving tolling motion June 25, 2021

(c) Date written notice of entry of order resolving tolling motion was served June 28, 2021

Was service by:

☐ Delivery

☒ Mail

19. Date notice of appeal filed July 16, 2021

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

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

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This appeal is over a final Order of the District Court granting a Petition for Judicial Review under the Administrative Procedure Act, NRS Chapter 233B.

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

(a) Parties:

Southern Nevada Labor Management Cooperation Committee (Petitioner Below)

Clark County Department of Aviation (Respondent Below)

Office of the Labor Commissioner (Respondent Below)

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

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

Petitioner's claim for Judicial Review of the Final Determination of the OLC granted on Feb. 7, 2020 and supplemented on June 28, 2021.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☒ Yes

☐ No

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

☒ Yes

☐ No

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

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

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

VERIFICATION


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

Clark County Department of Aviation
Name of appellant

August 11, 2021
Date

Clark County, Nevada
State and county where signed

Allison List Kheel, Esq.
Name of counsel of record /s/ .


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 11th day of August, 2021, I served a copy of this completed docketing statement upon all counsel of record:

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

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

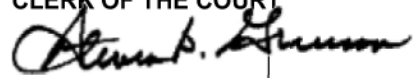
Evan L. James, Esq.
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Attorney for Southern Nevada Labor Management Cooperation Committee

Dated this 11th day of August, 2021


Signature

CLARK COUNTY NEVADA,) **Supreme Court No. 83252**
DEPARTMENT OF AVIATION, a) District Court Case No. A-18-781866-J
political subdivision of the State of)
Nevada;)
Appellant,)
)
vs.)
)
SOUTHERN NEVADA LABOR)
MANAGEMENT COOPERATION)
COMMITTEE, by and through its)
Trustees Terry Mayfield and Chris)
Christophersen, and THE OFFICE)
OF THE LABOR COMMISSIONER,)
)
)
Respondents.)
)

Date Filed	Document Title	Page Numbers
9/27/18	Petition for Judicial Review	1-8
2/7/20	Notice of Entry of Order and Findings of Fact, Conclusions of Law and Order Granting the Petition for Judicial Review (dated Feb.4, 2020)	9-19
2/21/20	CCDOA's Motion for Reconsideration	20-34
6/28/21	Notice of Entry of Order and Findings of Fact, Conclusions of Law and Order Granting the Petition for Judicial Review (dated June 25, 2021)	35-40
7/16/21	Notice of Entry of Order on Motion to Stay On Order Shortening Time (Motion filed July 16, 2021)	41-85
7/26/21	E-Mail Correspondence from Evan James to District Court, Department 25 Inbox Submitting Draft Order Denying Motion to Stay (No Signed Order Has Been Entered as of Aug. 11, 2021)	86-89



PTJR
CHRISTENSEN JAMES & MARTIN
EVAN L. JAMES, ESQ.
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7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: elj@cjmlv.com
Attorneys for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondents.

Case No.: **A-18-781866-J**

Dept. No.: **Department 25**

PETITION FOR JUDICIAL REVIEW

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

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

1 **I. JURISDICTIONAL STATEMENT**

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

10 **II. GROUNDS FOR PETITION**

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

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

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

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

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

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

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

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

3 **III. CONCLUSION**

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

7 DATED this 27th day of September 2018.

8 CHRISTENSEN JAMES & MARTIN

9 By: /s/ Evan L. James

10 Evan L. James, Esq.

11 Nevada Bar No. 7760

12 7440 W. Sahara Avenue

13 Las Vegas, NV 89117

14 Tel.: (702) 255-1718

15 Fax: (702) 255-0871

CERTIFICATE OF SERVICE

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

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

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

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

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

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

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

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

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

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

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

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

CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville
Natalie Saville

EXHIBIT

1

STATE OF NEVADA

BRIAN SANDOVAL
GOVERNOR

C.J. MANTHE
DIRECTOR

SHANNON CHAMBERS
LABOR COMMISSIONER



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

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

Department of Business & Industry OFFICE OF THE LABOR COMMISSIONER

www.labor.nv.gov

August 30, 2018

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

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

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

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

Clark County Department of Aviation:

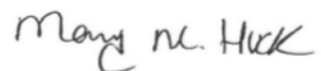
Thank you for your response to the complaint filed against Clark County Department of Aviation (DOA).

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

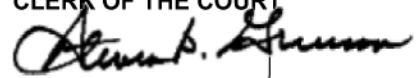
The Office of the Labor Commissioner has completed its review of the complaint. The compliance review conducted did not reveal violations of Nevada labor laws with regards to **NRS Chapter 338 or NAC Chapter 338**. This complaint has been closed.

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

Sincerely,

A handwritten signature in dark ink that reads "Mary N. Huck". The signature is written in a cursive, slightly informal style.

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



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

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

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

18 Petitioner,

19 vs.

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

25 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

NOTICE OF ENTRY OF ORDER

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

27 DATED this 7th day of February 2020.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James

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

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

1 **CERTIFICATE OF SERVICE**

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

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

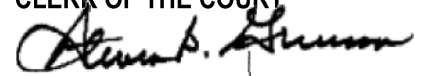
7 Mark J. Ricciardi, Esq. mricciardi@fisherphillips.com

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

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

10 CHRISTENSEN JAMES & MARTIN

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

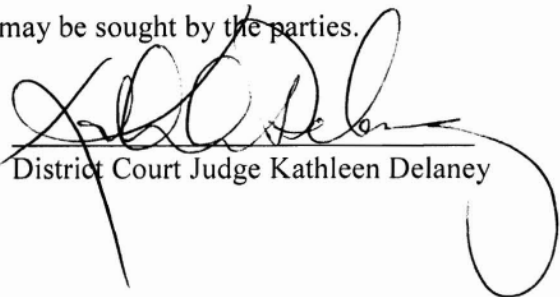
12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of
13 determining the amount, if any, of the completed work that constitutes maintenance and
14 to whom and how much additional wages should be paid for work subject to NRS 338 et
15 seq.'s prevailing wage requirements.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

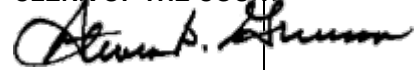
19 6. The Court further Orders that the LMCC must be included in the proceedings on
20 remand as a proper and interested party with appropriate standing to participate.

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 
26 District Court Judge Kathleen Delaney
27

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DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR)	Case No. A-18-781866-J
MANAGEMENT COOPERATION)	
COMMITTEE, by and through its Trustees)	Department No.: 25
Terry Mayfield and Chris Christophersen,)	
)	
Petitioner,)	MOTION FOR
)	RECONSIDERATION
vs.)	
)	HEARING REQUESTED
CLARK COUNTY NEVADA,)	(Pursuant to NRS 233B.133)
DEPARTMENT OF AVIATION, a)	
political subdivision of the State of Nevada;)	
and THE OFFICE OF THE LABOR)	
COMMISSIONER,)	
)	
Respondents.)	

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

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MEMORANDUM OF POINTS AND AUTHORITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ///

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

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

CONCLUSION

Dated this 21st day of February, 2020.

/s/ Allison L. Kheel, Esq.

Clark County Department of Aviation

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CERTIFICATE OF SERVICE

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

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Management Cooperation
Committee*

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

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

No. 68060

FILED

MAY 11 2016

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

ORDER OF AFFIRMANCE

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

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

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

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

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


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


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

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

ORDER the judgment of the district court AFFIRMED.¹


Hardesty


Saitta


Pickering

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

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

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

EXHIBIT B

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DISTRICT COURT

CLARK COUNTY, NEVADA

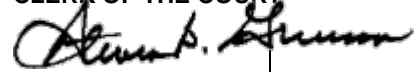
SOUTHERN NEVADA LABOR)	Case No. A-18-781866-J
MANAGEMENT COOPERATION)	
COMMITTEE, by and through its Trustees)	Department No.: XXV
Terry Mayfield and Chris Christophersen,)	
)	ORDER GRANTING PETITION
Petitioner,)	FOR JUDICIAL REVIEW
)	
vs.)	
)	
CLARK COUNTY NEVADA,)	
DEPARTMENT OF AVIATION, a political)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

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

///

///

///



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

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

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

18 Petitioner,

19 vs.

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

25 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

NOTICE OF ENTRY OF ORDER

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

27 Dated June 28, 2021.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James

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Fax: (702) 255-0871
Attorneys for Petitioner

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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:

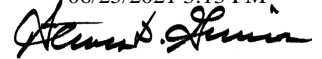
☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

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Andrea Nichols, Esq.	anichols@ag.nv.gov
Melissa Flatley, Esq.	mflatley@at.nv.gov
Evan L. James, Esq.	elj@cjmlv.com
Sara Griffin	sgriffin@fisherphillips.com

CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville

Natalie Saville



CLERK OF THE COURT

CHRISTENSEN JAMES & MARTIN, CHTD.
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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)

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

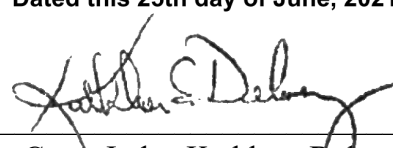
1 wages due and ensure that the unpaid wages are properly paid. The Court considers these
2 tasks to be ministerial in nature.

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

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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

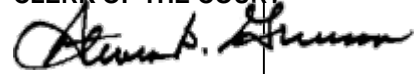
18 Natalie Saville nat@cjmlv.com

19 Evan James elj@cjmlv.com

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21 Sarah Griffin sgriffin@fisherphillips.com

22 Melissa Flatley mflatley@ag.nv.gov



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Attorneys for Respondent
Clark County Department of Aviation

DISTRICT COURT
CLARK COUNTY, NEVADA

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

NOTICE OF ENTRY OF ORDER
ON MOTION TO STAY ON
ORDER SHORTENING TIME

PLEASE TAKE NOTICE that an Order Granting Respondents' Motion to Stay

///

//

///

///

1 on an Order Shortening time was entered in the above-captioned matter on July 16,
2 2021. A true and correct copy of that Order is attached here to as Exhibit A.

3 Dated this 16th day of July, 2021.

4 FISHER & PHILLIPS LLP

5 /s/ Allison L. Kheel, Esq.

6 MARK J. RICCIARDI, ESQ.

7 ALLISON L. KHEEL, ESQ.

8 300 S. Fourth Street

9 Suite 1500

10 Las Vegas, NV 89101

11 Attorneys for Respondent Clark County
12 Department of Aviation
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CERTIFICATE OF SERVICE

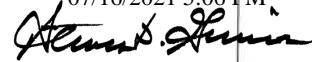
This is to certify that on the 16th day of July, 2021, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **NOTICE OF ENTRY OF ORDER ON MOTION TO STAY ON ORDER SHORTENING TIME** via the Court's e-file and e-service system on those case participants who are registered users.

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Deputy Attorney General
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Carson City, Nevada 89701
*Attorneys for Respondent
Office of the Labor
Commissioner*

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

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

EXHIBIT A


CLERK OF THE COURT

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Attorneys for Respondent
Clark County Department of Aviation

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

Department No.: 25

**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**

Hearing Requested

Respondent Clark County Department of Aviation ("DOA"), by and through its undersigned counsel, hereby moves this Court for an order staying the following: (1) enforcement of the June 25, 2021 Order ("Order") on Clark County Department of Aviation's Motion for Reconsideration; (2) enforcement of the February 4, 2020 ("February Order") Order granting the Southern Nevada Labor Management

Cooperation Committee ("LMCC")'s Petition for Judicial Review; and (3) any actions of the Nevada Office of the Labor Commissioner ("OLC") in connection with Case No. NLC-17-001486 pending resolution of the DOA's appeal of this matter to the Supreme Court of Nevada. The DOA further moves this Court, pursuant to EDCR 2.26, for an Order Shortening Time on which a hearing is to be held and a decision issued on the DOA's Motion for a Stay (hereinafter "Motion" or "Motion to Stay")

This Motion is made and based on the pleadings and papers on file herein, together with the following Memorandum of Points and Authorities.

Dated this 16th day of July, 2021.

Respectfully submitted,

FISHER & PHILLIPS LLP

/s/ Allison L. Kheel, Esq.

MARK J. RICCIARDI, ESQ.

ALLISON L. KHEEL, ESQ.

300 S. Fourth Street, Suite 1500

Las Vegas, NV 89101

Attorneys for Respondent Clark County

Department of Aviation

**ORDER SHORTENING TIME ON CLARK COUNTY DEPARTMENT OF
AVIATION'S 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**

The Court having considered the Motion for Order Shortening Time on the Motion To Stay filed by DOA and finding that good cause exists to hear said Motion on an expedited basis, the Court otherwise being fully advised in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED that a hearing on the DOA's Motion to Stay Enforcement be held on July 22, 2021 at the hour of 9:00 a.m. before the Honorable District Court Judge Kathleen Delaney, Department 25 of the Regional Justice Center at 200 Lewis Avenue, Las Vegas, Nevada. This Order shall be served on the OLC

1 and LMCC promptly by personal or electronic service. The OLC and the LMCC will
2 have until July 20, 2021 at 5:00 p.m. to file an opposition, ~~and the DOA will have~~
3 ~~until July _____, 2021 at 5:00 p.m. to file a reply brief.~~

4 DATED this _____ day of July, 2021.

Dated this 16th day of July, 2021

5
6 
DISTRICT COURT JUDGE
KATHLEEN DELANEY

7 Submitted by:
8 FISHER & PHILLIPS LLP

ED9 CAC E462 5F96
Kathleen E. Delaney
District Court Judge

9 By /s/ Allison L. Kheel, Esq.
10 Mark J. Ricciardi, Esq.
11 Allison L. Kheel, Esq.
12 300 South Fourth Street, Suite 1500
13 Las Vegas, Nevada 89101
14 *Attorneys for Respondent*
15 *Clark County Department of Aviation*

16 **NOTICE OF MOTION**

17 PLEASE TAKE NOTICE that the CLARK COUNTY DEPARTMENT OF
18 AVIATION'S MOTION TO STAY (1) ENFORCEMENT OF ORDER ON MOTION
19 FOR RECONSIDERATION, (2) ENFORCEMENT OF ORDER GRANTING
20 PETITION FOR JUDICIAL REVIEW, AND (3) ANY PROCEEDINGS BEFORE THE
21 OFFICE OF THE LABOR COMMISSIONER ON AN ORDER SHORTENING will be
22 heard before District Court Judge Kathleen Delaney in Department 25 on the _____ day
23 of July, 2021 at the hour of _____ a.m./p.m.

24 DATED this _____ day of July, 2021.

25 FISHER & PHILLIPS LLP

26 /s/ Allison L. Kheel, Esq.
27 MARK J. RICCIARDI, ESQ.
28 ALLISON L. KHEEL, ESQ.
300 S. Fourth Street, Suite 1500
Las Vegas, NV 89101
Attorneys for Respondent Clark County
Department of Aviation

**MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO STAY ENFORCEMENT**

I. ARGUMENT

A. Stay Pending Appeal Must Issue As A Matter of Right

The February Order granting the Petition for Judicial Review is a final judgment of the District Court and immediately appealable under Nevada Rule of Appellate Procedure (“NRAP”) 3A(b)(1). Nevada Rule of Civil Procedure (“NRCP”) 62 authorizes the District Court to stay the enforcement of a judgment pending appeal.¹ NRAP 8(a)(1) requires any party aggrieved by a judgment or order of the District Court to first seek a stay from the issuing court pending appeal. A stay to preserve the *status quo* and prevent enforcement of the challenged final judgment is presumptively reasonable and must be granted as a matter of right. *Clark County Office of Coroner/Medical Examiner v. Las Vegas Review Journal*, 134 Nev. 174, 176-177 (2018). Under NRCP 62(e), when an appeal is taken by the State or by any county, city, town, or other political subdivision of the State, the requested stay of the operation or enforcement of the judgment should issue without requiring a bond, obligation, or other security from the appellant. *Id.* at 176-177. As the DOA is a local government entity and political subdivision of Clark County, the requested stay must issue as a matter of right without requiring the DOA to post a bond.

B. The Court Should Hold A Hearing And Issue A Stay On An Order Shortening Time

EDCR. 2.26 allows for motions to be heard on an expedited basis on a showing of “good cause.” As set forth in the Declaration of Allison L. Kheel, Esq. (hereinafter “Kheel Decl.” and attached hereto as **Exhibit C**), and based on the content thereof, good cause exists for hearing the Motion and issuing a stay on an expedited basis because allowing the OLC to hold a hearing and make a determination while the DOA is seeking review of the Decision of the District Court and arguing that the Decision inappropriately

¹ The DOA has filed its appeal in the alternative and seeks in as an alternative to the appeal a writ of prohibition to prohibit the District Court from exercising jurisdiction beyond its statutory authority on the petition for judicial review.

1 narrowed the authority of the OLC to fully consider this matter on remand would
2 necessarily result in prejudice to the DOA and the potential for simultaneous litigation
3 and conflicting orders. In the interest of judicial efficiency, the Court should hear the
4 Motion for a Stay on an expedited basis so the decision to grant or deny a stay can be
5 decided prior to the prehearing conference presently set for July 26, 2021.

6 Contemporaneous with submitting this Motion, the DOA has filed its Notice of
7 Appeal seeking review of the District Court's June 25, 2021 Order on Clark County
8 Department of Aviation's Motion for Reconsideration (hereinafter the "Order") for abuse
9 of discretion and manifest disregard of the law² and of the substantial evidence in the
10 Record. *See* Order attached hereto as **Exhibit A**. The Order purports to clarify and
11 modify its prior Order entered February 4, 2020 ("February Order") (the "Order" and the
12 "February Order" collectively referred to as the "Decision") to address issues identified
13 by the Supreme Court. *See* February Order attached as **Exhibit B, Ex. A** at p. 2:6-8.

14 The DOA's Appeal argues that the District Court exceeded its authority by
15 limiting the Labor Commissioner's authority and scope of review on remand to
16 "ministerial" determinations of "the value of wages due." *See Ex. B* at pp. 2:26-3:2.
17 The Appeal also argues that the Decision reached the conclusion that the project was "not
18 maintenance" without *any* evidence in the Record actually describing the work; and even
19 if there had been a complete evidentiary record (which there was not), the District Court
20 still exceeded its statutory authority on a Petition for Judicial Review by making
21 additional findings beyond the sole "public money" findings set forth in the final agency
22 determination of the OLC. *See Revert v. Ray*, 95 Nev. 782, 603 P.2d 262 (Nev. 1979).
23 For these reasons, the DOA's Appeal seeks that the District Court's Decision be reversed
24 and set aside, and the matter remanded back to the Labor Commissioner to hold a full
25 and complete (unlimited) hearing and make a determination regarding whether the
26 project was "maintenance" and, thus, exempt from prevailing wage.

27 ² The DOA reserves its right to assert all errors in its appeal to the Nevada Supreme Court, notice
28 of which is filed concurrently herewith.

1 However, in accordance with the Decision, **the OLC has scheduled a pre-**
2 **hearing conference for July 26, 2021 at 11:00 a.m.** See Kheel Decl., and Notice of
3 Prehearing Conference from the OLC (**Exhibit 2 to Ex. C.**) Consequently, the DOA
4 will be unfairly prejudiced if the OLC proceeds to hold a hearing while the Decision (and
5 the question of the proper scope of the Labor Commissioner's authority on remand) is
6 pending appeal and could be modified or reversed. A stay of enforcement of the Decision
7 is necessary to preserve the *status quo* and avoid irreparable harm to the DOA while its
8 Appeal is pending resolution.

9 Enforcement of the Decision while the Appeal is pending will expose the DOA
10 to litigation in multiple forums and create the potential for conflicting decisions.
11 Enforcement also further violates the automatic stay presumption in NRCP 62(a)(1) that
12 no enforcement action will occur until 30 days have passed after service of written notice
13 of the entry of the judgment (in this case the Decision).³ NRCP 62(a)(1). As
14 communications with the OLC have indicated that the OLC plans to proceed with the
15 hearing absent a court order staying this matter, good cause exists to hear this on an
16 expedited basis. See Kheel Decl., Ex. C at ¶¶ 7-10, and **Exhibit 1 to Ex. C.**

17 The Court must grant a Stay of Enforcement of the Decision as a matter of right
18 in accordance with NRS § 233B.140, NRCP 62 and NRAP 8, and thus good cause exists
19 to hear this Motion on an expedited basis to avoid unfair prejudice to the DOA while its
20 Appeal is pending before the Supreme Court.

21 **II. CONCLUSION**

22 For the reasons set forth above, the Court should grant the DOA's Motion to Stay
23 the Enforcement of the District Court's Decision on an order shortening time while the
24 DOA's Appeal is pending. The DOA urges the Court to immediately grant a stay of
25 ///

26
27 ³ The Notice of Entry of the Order is dated June 28, 2021, meaning no Enforcement should occur
28 prior to Wednesday, July 28, 2021.

1 enforcement of the Decision and all proceedings before the OLC pending appeal, to
2 immediately docket the notice of appeal and forward the record to the Nevada Supreme
3 Court.

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.

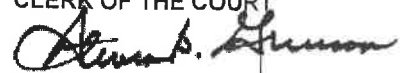
9 300 South Fourth Street, Suite 1500

10 Las Vegas, Nevada 89101

11 Attorneys for Respondent

12 Clark County Department of Aviation

EXHIBIT A



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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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DISTRICT COURT
CLARK COUNTY, NEVADA

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

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vs.

CLARK COUNTY NEVADA,
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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~~
~~findings consistent with the administrative record, which also addressed the presented~~
20 ~~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.

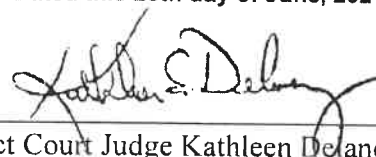
25 In remanding the matter to the Labor Commissioner, the Court intends for the
26 Labor Commissioner to use applicable prevailing wage rates to determine the value of
27

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.~~



District Court Judge Kathleen Delaney

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

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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,
12 Respondent(s)

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
16 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 6/25/2021

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18 Natalie Saville	nat@cjmlv.com
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21 Sarah Griffin	sgriffin@fisherphillips.com
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EXHIBIT B



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10 *Attorneys for Petitioner*

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

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

18 **Petitioner,**

19 **vs.**

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

25 **Respondents.**

Case No.: A-18-781866-J

Dept. No.: 25

NOTICE OF ENTRY OF ORDER

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

27 DATED this 7th day of February 2020.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James

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1 **CERTIFICATE OF SERVICE**

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

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

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

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

10 CHRISTENSEN JAMES & MARTIN

11 By: /s/ Natalie Saville
12 Natalie Saville



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DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR
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COMMITTEE, by and through its
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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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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 Statute, NRS 332 et seq. and specifically NRS 332.065.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 ORDER

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

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

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

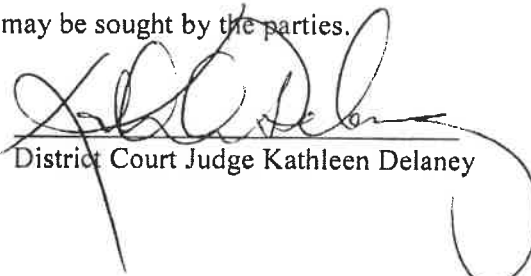
12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of
13 determining the amount, if any, of the completed work that constitutes maintenance and
14 to whom and how much additional wages should be paid for work subject to NRS 338 et
15 seq.'s prevailing wage requirements.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

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

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

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

24 Dated: January 28, 2020.

25 
26 District Court Judge Kathleen Delaney
27

1 Submitted by:
2 CHRISTENSEN JAMES & MARTIN
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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
14 Holly E. Walker, Esq.
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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)
23 Andrea Nichols, Esq.
24 Senior Deputy Attorney General,
25 Nevada Bar No. 6436
26 Office of the Attorney General
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Attorneys for Respondent Office
of the Labor Commissioner

EXHIBIT C

DECLARATION OF ALLISON L. KHEEL, ESQ. IN SUPPORT OF CLARK COUNTY DEPARTMENT OF AVIATION'S 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

Allison L. Kheel, Esq. states as follows:

1. I am an attorney representing the Appellant (Respondent in the District Court), Clark County Department of Aviation ("DOA") in this proceeding. I have personal knowledge of, and am competent to testify to, the facts set forth herein. I make this Declaration in Support of DOA's 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 ("Motion" or "Motion to Stay").

2. Attached as **Exhibit A** to the Motion is a true and correct copy of the Notice of Entry of Order Dated June 28, 2021 on the District Court's June 25, 2021 Order on Clark County Department of Aviation's Motion for Reconsideration (hereinafter the "Order").

3. The Order purports to clarify and modify its findings as set forth in its prior Order Granting the LMCC's Petition for Judicial Review entered February 4, 2020 ("February Order").

4. Attached as **Exhibit B** to the Motion is a true and correct copy of the Notice of Entry of Order Dated February 7, 2020, on the District Court's February Order dated February 4, 2020.

5. The Order and the February Order must be read together and are collectively referred to in the Motion as the "Decision."

6. On June 29, 2021, immediately following the District Court's Order, the Nevada Office of the Labor Commissioner ("OLC") reached out to the parties in this case to schedule a pre-hearing conference in Case No. NLC-17-001486.

Executed on this 16th day of July, 2021.

Allison L. Kheel, Esq.

EXHIBIT 1
to
EXHIBIT C

Kheel, Allison

From: Shannon Chambers <shannonchambers@labor.nv.gov>
Sent: Wednesday, July 14, 2021 7:51 AM
To: Evan James; Kheel, Allison
Cc: Walker, Holly; Dylan Lawter; Ricciardi, Mark; Kerr, Darhyl
Subject: Re: So. NV Labor v Clark County Aviation

Good morning,

A pre-hearing conference will be set for July 26, 2021, at 11:00 a.m. A notice will be sent out with the details and call-in information.

Thank you.

From: Evan James <elj@cjmlv.com>
Sent: Monday, July 12, 2021 11:37 AM
To: Kheel, Allison <akheel@fisherphillips.com>; Shannon Chambers <shannonchambers@labor.nv.gov>
Cc: Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>
Subject: Re: So. NV Labor v Clark County Aviation

Dear Commissioner Chambers,

At present, there is no stay in the litigation. Thus, it is incumbent upon all involved to comply with the Court's Order.

The matter to be resolved before your office is the value of the unpaid wages to the workers and the payment of wages to the underpaid workers. This is a simple calculation and collection of money owed. Unfortunately, the DOA has refused to provide payroll and work records that will allow for the calculations to be made. Given the passage of time, the LMCC is concerned that records and workers will be lost and that workers will not be paid. It is the LMCC's position that records need to be collected, workers identified, and unpaid wage calculations made as soon as possible and regardless of any appeal that the DOA may make.

Thank you,

Evan L. James, Esq.
Christensen James & Martin
7440 W Sahara Ave.
Las Vegas, Nevada 89117
(702) 255-1718

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From: Kheel, Allison <akheel@fisherphillips.com>

Sent: Friday, July 9, 2021 4:49 PM

To: Shannon Chambers <shannonchambers@labor.nv.gov>

Cc: Evan James <elj@cjmlv.com>; Walker, Holly <hwalker@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>; Kerr, Darhyl <dkerr@fisherphillips.com>; Kheel, Allison <akheel@fisherphillips.com>

Subject: Re: So. NV Labor v Clark County Aviation

Dear Ms. Chambers,

The Department of Aviation will be appealing this matter and will be seeking a stay of any proceedings before the Labor Commissioner as part of that Appeal as the District Court did not have the authority to limit the Labor Commissioner's power to hold a full hearing and make determinations regarding the type, designation and scope of the work in this matter.

Thus, it is the DOA's position that holding any kind of prehearing conference would be premature until the Supreme Court can rule on the Appeal and Stay.

If you have any questions please feel free to contact me directly at 702-467-1066.

Very Truly Yours,
Allison Kheel

Sent from my iPhone

On Jul 9, 2021, at 1:58 PM, Shannon Chambers <shannonchambers@labor.nv.gov> wrote:

Good morning Mr. Ricciardi,

Please see the email below along with the original email string. If you could please let me know what attorney is assigned to this matter for Clark County Aviation and dates of availability for a pre-hearing.

Good morning Ms. Kheel,

Could you please provide your availability for a pre-hearing conference in this matter by close of business today?

Thank you.

Shannon M. Chambers
Labor Commissioner
State of Nevada

From: Evan James <elj@cjmlv.com>

Sent: Friday, July 9, 2021 10:47 AM

To: Shannon Chambers <shannonchambers@labor.nv.gov>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>
Cc: Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>; Ricciardi, Mark <mricciardi@fisherphillips.com>
Subject: Re: So. NV Labor v Clark County Aviation

Commissioner Chambers,

You may wish to reach out to Mark Ricciardi who practices with Allison. He is copied on this email.

Thank you,

Evan L. James, Esq.
Christensen James & Martin
7440 W Sahara Ave.
Las Vegas, Nevada 89117
(702) 255-1718

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From: Shannon Chambers <shannonchambers@labor.nv.gov>
Sent: Friday, July 9, 2021 8:12 AM
To: Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>
Cc: Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>
Subject: Re: So. NV Labor v Clark County Aviation

Good morning Ms. Kheel,

Could you please provide your availability for a pre-hearing conference in this matter by close of business today?

Thank you.

Shannon M. Chambers
Labor Commissioner
State of Nevada

From: Shannon Chambers <shannonchambers@labor.nv.gov>
Sent: Tuesday, June 29, 2021 12:44 PM
To: Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>
Cc: Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>
Subject: Re: So. NV Labor v Clark County Aviation

Good afternoon,

Thank you, Mr. James.

Will wait to hear back from Ms. Kheel.

From: Evan James <elj@cjmlv.com>
Sent: Tuesday, June 29, 2021 12:22 PM
To: Shannon Chambers <shannonchambers@labor.nv.gov>; hwalker@fisherphillips.com
<hwalker@fisherphillips.com>
Cc: Kheel, Allison <akheel@fisherphillips.com>; Dylan Lawter <DJL@CJMLV.COM>
Subject: Re: So. NV Labor v Clark County Aviation

I believe Ms. Walker is no longer employed at Fisher Phillips. Allison Kheel is the attorney now handling the case for the Department of Aviation. She is copied on this email.

My current availability for July is as follows:

Thursday, 8th all day.
Friday, 9th all day.

Tuesday, 13th after 2:00 p.m.
Wednesday, 14th all day.
Thursday, 15th, after 1:00 p.m.
Friday, 16th before 12:00 p.m.

Monday, 19th after 1:00 p.m.
Tuesday, 20th all day.
Thursday, 22nd all day.
Friday, 23rd all day.

Monday, 26th all day.
Tuesday, 27th all day.
Wednesday, 28th all day.

NAC 307.300(7) requires the parties to make a good faith effort to settle the matter at the prehearing conference. The LMCC is a labor organization governed by trustees. One group of trustees represents employers. Another group of trustees represents the unions. It is impermissible for a single trustee to make a unilateral determination. As such, an employer trustee and a labor trustee must be designated to attend the conference as representatives of the LMCC. If agreeable to you Commissioner Chambers and to Allison, I would like three dates in July that the conference may be held on and then present those dates to the clients so that representatives may be selected to attend.

Also, if settlement is really going to be discussed, we will need to have a valuation of unpaid wages. To date, I am unaware of any wage documents being supplied by the Department of Aviation despite the Office of the Labor Commissioner's request to produce them. See the August 18, 2017 letter that is attached to this email.

Best wishes,

Evan L. James, Esq.
Christensen James & Martin
7440 W Sahara Ave.
Las Vegas, Nevada 89117
(702) 255-1718

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From: Shannon Chambers <shannonchambers@labor.nv.gov>
Sent: Tuesday, June 29, 2021 7:07 AM
To: Evan James <elj@cjmlv.com>; hwalker@fisherphillips.com <hwalker@fisherphillips.com>
Subject: So. NV Labor v Clark County Aviation

Good morning Mr. James and Ms. Walker,

Based on the most recent orders (attached), the Labor Commissioner would like to set up a pre-hearing conference with the parties in the next 30-days. It is anticipated that the pre-hearing conference will be by telephone or webex.

If you could please provide your availability over the next 30-days.

Thank you.

Shannon M. Chambers
Labor Commissioner
State of Nevada

EXHIBIT 2
to
EXHIBIT C

1 **BEFORE THE NEVADA STATE LABOR COMMISSIONER**
2 **CARSON CITY, NEVADA AND LAS VEGAS, NEVADA**
3
4
5

6 IN THE MATTER OF:)

Case No. NLC-17-001486

7 Southern Nevada Labor Management)
8 Cooperation Committee, by and through its)
9 Trustees Terry Mayfield & Chris)
Christophersen,)

10 Complainants,)

11 v.)

12 Clark County Department of Aviation and)
The Office of the Labor Commissioner,)

13 Respondents.)

14 Clark County Department of Aviation)
15 Project: McCarran International Airport)
16 Bid No. 17-694273, Carpet and Base Cove)
Installation)

FILED

JUL 14 2021

NEVADA
LABOR COMMISSIONER-CC

17 **NOTICE OF TELEPHONIC PRE-HEARING CONFERENCE**

18 On April 28, 2017, Southern Nevada Labor Management Cooperation
19 Committee (LMCC) filed a complaint against Clark County Department of Aviation
20 (CCDOA) for possible violations of Nevada Revised Statutes (NRS) sections 338.010
21 to 338.090, inclusive, and/or Nevada Administrative Code (NAC) sections 338.005 to
22 338.125, inclusive, on Bid No. 17-694273, Carpet and Base Cove Installation at
23 McCarran International Airport (Project). The Office of the Labor Commissioner
24 (OLC) issued an order on August 30, 2018, that the compliance review conducted did
25 not reveal violations of Nevada labor laws with regards to NRS Chapter 338 or
26 NAC Chapter 338 and closed the matter.

27 LMCC filed a Petition for Judicial Review on September 27, 2018, in the 8th
28 Judicial District Court in Clark County, Nevada (Court) as Case No. A-18-7818660J in

1 Dept. No. 25, asking the Court to reverse the OLC's ruling. On June 25, 2021, the
2 Court ordered this matter be remanded back to the OLC.

3 NOTICE IS HEREBY GIVEN that a Telephonic Pre-Hearing Conference will be
4 held before Labor Commissioner, Shannon M. Chambers, commencing on **Monday,**
5 **July 26, 2021, at 11:00 AM. The call-in information is: 1 (888) 782-2120 and**
6 **Pass Code 7822120.**

7 The matters to be addressed at the Pre-Hearing Conference may include, but
8 are not limited to:

- 9 1. Clearly identifying the issue(s) in dispute.
- 10 2. Providing all claimants/parties with an opportunity to resolve any or all
11 issues in dispute.
- 12 3. Set a date and time for the Hearing if necessary.

13 The legal authority and jurisdiction for the Pre-Hearing Conference is pursuant
14 to Nevada Administrative Code (NAC) section 607.300 - Prehearing conference.

15 1. If any party disputes a claim or complaint, the Commissioner may
16 require the parties to appear before him or her at a prehearing
17 conference at a time and place designated by the Commissioner to
establish the issues to be resolved at the hearing and discuss the
settlement of the matter.

18 2. The Commissioner may enter reasonable orders governing the
19 conduct of the prehearing conference and, for good cause, allow a party
to appear via telephone.

20 3. The parties may be represented by counsel at the prehearing
conference. An attorney representing a party at the prehearing
conference must comply with subsection 2 of NAC 607.090.

21 4. The parties shall present all evidence then known to them that
22 substantiates their respective positions during the prehearing conference.

23 5. A prehearing conference conducted pursuant to this section may
not be recorded.

24 6. Offers of settlement discussed at the prehearing conference may
25 not be used as an admission at any subsequent hearing, and the
Commissioner will so inform the parties at the beginning of the
prehearing conference.

26 7. At the prehearing conference, the parties shall make a good faith
effort to resolve the matter through settlement or stipulation.

27 8. If the Commissioner determines that the matter cannot be resolved
28 at the prehearing conference, he or she may issue a determination in the
matter pursuant to NAC 607.065.

1 On or before July 26, 2021, CCDOA shall provide a response to the OLC's
2 letter dated August 18, 2017, which requested information and/or documents and
3 records from the CCDOA.

4 IT IS HEREBY ORDERED.

- 5 1. A Telephonic Pre-Hearing Conference be held on Monday, July 26,
6 2021, at 11:00 AM and all parties be in attendance.
- 7 2. CCDOA shall provide a response to the OLC's letter dated August 18,
8 2017, on or before July 26, 2021.

9 Dated this 14th day of July 2021.

10 
11 Shannon M. Chambers
12 Labor Commissioner
13 State of Nevada
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CERTIFICATE OF MAILING

I, Rosiland M. McCloud, do hereby certify that I mailed a true and correct copy of the foregoing **NOTICE OF PRE-HEARING CONFERENCE**, via the United States Postal Service, Carson City, Nevada, in a postage-prepaid envelope to the following:

Evan L. James, Esq.
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117

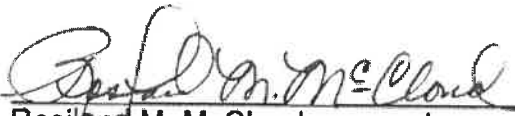
Clark County Department of Aviation
Administration Bldg., 3rd Floor
845 E. Russell Road
Las Vegas, Nevada 89119

Timothy Baldwin, Esq.
Clark County District Attorney
500 So. Grand Central Pkwy.
Las Vegas, Nevada 89106

Allison Kheel, Esq.
FISHER PHILLIPS
300 So. 4th St., Suite 1500
Las Vegas, Nevada 89101

Andrea Nichols, Sr. Deputy Attorney General
Office of the Attorney General
5420 Kietzke Lane, #202
Reno, Nevada 89511

Dated this 14th day of July 2021.


Rosiland M. McCloud, an employee of the
Nevada State Labor Commissioner

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 Shortening Time 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: 7/16/2021

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

Kheel, Allison

From: Evan James <elj@cjmlv.com>
Sent: Monday, July 26, 2021 1:53 PM
To: dc25inbox@ClarkCountyCourts.us
Cc: Kheel, Allison; Andrea H. Nichols
Subject: Re: LMCC v. DOA, A-18-781866-J, Order on Motion to Stay
Attachments: 210722.Order Denying Motion to Stay.docx; 210726.Order Denying Motion to Stay.pdf

Please see the attached order.

Thank you,

Evan L. James, Esq.
Christensen James & Martin
7440 W Sahara Ave.
Las Vegas, Nevada 89117
(702) 255-1718

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From: Evan James <elj@cjmlv.com>
Sent: Monday, July 26, 2021 1:45 PM
To: dc25inbox@ClarkCountyCourts.us <dc25inbox@ClarkCountyCourts.us>
Cc: Kheel, Allison <akheel@fisherphillips.com>; Andrea H. Nichols <ANichols@ag.nv.gov>
Subject: LMCC v. DOA, A-18-781866-J, Order on Motion to Stay

Please see attached.

Evan L. James, Esq.
Christensen James & Martin
7440 W Sahara Ave.
Las Vegas, Nevada 89117
(702) 255-1718

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

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

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

18 Petitioner,

19 vs.

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

25 Respondents.
26
27

Case No.: A-18-781866-J

Dept. No.: 25

DECISION AND ORDER

18 The Court hereby enters a Decision and Order denying Clark County Nevada
19 Department of Aviation's ("DOA") Motion to Stay (1) Enforcement for Order on Motion
20 for Reconsideration, (2) Enforcement of Order Granting Petition for Judicial Review, and
21 (3) any Proceedings Before the Labor Commissioner ("Motion").

22 The matter was heard on July 22, 2021 pursuant to a granted motion for order
23 shortening time. The Court reviewed the Motion and the opposition thereto filed by the
24 Southern Nevada Labor Management Cooperation Committee ("LMCC"). DOA was
25 provided an opportunity to argue in rebuttal to the LMCC's opposition. The Office of the
26 Labor Commissioner was also provided an opportunity to and did argue.

1 DOA argues that as a governmental entity it is entitled to a stay of proceedings as
2 a matter of right. It premises its argument upon a reading of NRCP 62(d) and the case of
3 *Clark Cty. Office of the Coroner/Medical Exam'r v. Las Vegas Review-Journal*, 134 Nev.
4 174, 177-78, 415 P.3d 16, 19 (2018). The Court disagrees because nothing in NRCP 62(d)
5 states that governmental entities are automatically entitled to a stay as a matter of right
6 and the *Coroner* case addresses the propriety of a stay for a governmental entity when
7 there is a money judgment at issue. The Court's Judgment sought to be stayed is not a
8 money judgment. The *Coroner* case is therefore distinguishable and not applicable.

9 The Court therefore considers the Motion under the general factors applicable to a
10 party requesting a stay of a judgment. The Court finds that under the particular
11 circumstances of this case judicial economy will be served by allowing the Labor
12 Commissioner to collect wage records, calculate the value of unpaid wages, and identify
13 potential wage claimants. Under the facts of this case, the parties will be able to use the
14 time during the pendency of the appeal to prepare for the Supreme Court's decision. The
15 Court finds that no prejudice will come to any party by having wage records produced,
16 potential wage claims calculated, and potential wage claimants identified. Such activities
17 will not defeat the object of DOA's appeal because the Labor Commissioner's activities
18 will not affect the appeal to the Supreme Court. Further, the Labor Commissioner is
19 subject to the Supreme Court's decision and it appears will be able to adjust the wage
20 calculations in accordance with the Supreme Court's ruling in the event that she needs to
21 do so. As for whether or not DOA is likely to succeed on the appeal's merits, that is a
22 matter for the Supreme Court as this Court has already issued its judgment.

23 The Court therefore denies the Motion.

24 Dated July _____, 2021.

25 District Court Judge Kathleen Delaney
26
27

1 Submitted by:
2 CHRISTENSEN JAMES & MARTIN

3 By: /s/ Evan L. James
4 Evan L. James, Esq.
5 Nevada Bar No. 006735
6 7440 W. Sahara Avenue
7 Las Vegas, NV 89117
8 Tel.: (702) 255-1718
9 elj@cjmlv.com
10 *Attorneys for Petitioners*

11 Reviewed as to form and content:

12 FISHER & PHILLIPS, LLC

13 By: Refused to sign
14 Allison L. Kheel, Esq.
15 Nevada Bar No. 12986
16 300 South Fourth Street, Suite 1500
17 Las Vegas, NV 89101
18 hwalker@fisherphillips.com
19 *Attorneys for Respondent Clark*
20 *County Department of Aviation*

ATTORNEY GENERAL AARON FORD

By: Andrea Nichols
Andrea Nichols, Esq.
Senior Deputy Attorney General
Nevada Bar No. 6436
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