

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Electronically Filed
Nov 18 2021 05:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX – VOLUME 3 OF 3

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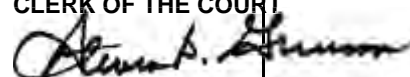
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Dated this 18th day of November, 2021.

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



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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,)

NOTICE OF APPEAL

vs.)

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

Respondents.)

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

Court's Order on Clark County Department of Aviation's Motion for Reconsideration
 ("Order"), attached hereto as **Exhibit A**, with Notice of Entry of Order dated June 28,
 2021; and the District Court's Findings of Fact, Conclusions of Law and Order Granting
 Petition for Judicial Review dated February 4, 2020 (the "February Order"), with Notice

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

6 Dated this 16th day of July, 2021.

7 FISHER & PHILLIPS LLP

8
9 /s/ Allison L. Kheel, Esq.
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15 *Attorneys for Respondent*
16 *Clark County Department of Aviation*
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25 ¹ In the event that the Supreme Court determines that this matter is not a final judgment
26 ripe for appeal, Appellant requests in the alternative that the Supreme Court treat this as
27 a Petition for a Writ of Prohibition to prohibit the District Court from exercising
28 jurisdiction beyond the statutory authority and prohibiting the District Court from
improperly limiting the scope of the Hearing and matter before the OLC.

CERTIFICATE OF SERVICE

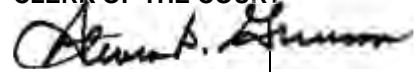
This is to certify that on the 16th day of July, 2021, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **NOTICE OF APPEAL**, via the Court's e-file and e-service system on those case participants who are registered users as follows:

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Southern Nevada Labor
Management Cooperation
Committee*

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

EXHIBIT A



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

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

18 Petitioner,

19 vs.

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

25 Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

NOTICE OF ENTRY OF ORDER

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

27 DATED this 7th day of February 2020.

CHRISTENSEN JAMES & MARTIN

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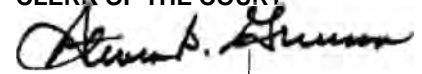
CERTIFICATE OF SERVICE

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

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

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

CLARK COUNTY, NEVADA

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

vs.

CLARK COUNTY NEVADA,
DEPARTMENT OF AVIATION, a
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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."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 CONCLUSION OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 ORDER

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

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

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

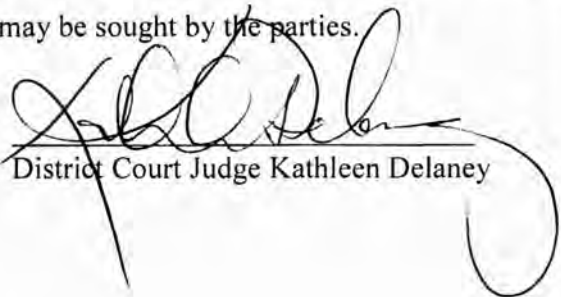
12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of
13 determining the amount, if any, of the completed work that constitutes maintenance and
14 to whom and how much additional wages should be paid for work subject to NRS 338 et
15 seq.'s prevailing wage requirements.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

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

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

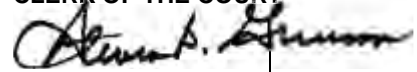
21 7. The Court further Orders that it retains jurisdiction over any subsequent
22 proceedings that may be necessary for the collection of information, the enforcement of
23 this Order or for further review, if any, as may be sought by the parties.

24 Dated: January 28, 2020.

25 
26 District Court Judge Kathleen Delaney
27

1 Submitted by:
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EXHIBIT B



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

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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

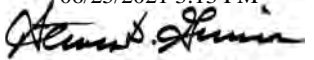
On the date of filing with the Court, I caused a true and correct copy of the foregoing Notice of Entry of Order to be served as follows:

☒ 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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| Andrea Nichols, Esq. | anichols@ag.nv.gov |
| Melissa Flatley, Esq. | mflatley@at.nv.gov |
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| Sara Griffin | sgriffin@fisherphillips.com |

CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville
Natalie Saville


CLERK OF THE COURT

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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.: 25

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

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

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

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

9 Retention of jurisdiction.

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

(KED)

15 Improper conclusion of law regarding maintenance.

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

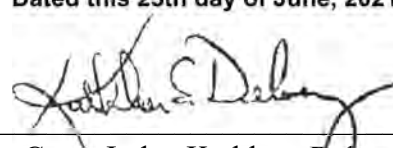
1 wages due and ensure that the unpaid wages are properly paid. The Court considers these
2 tasks to be ministerial in nature.

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.~~

16 
District Court Judge Kathleen Delaney

17
18 Submitted by:

19 CHRISTENSEN JAMES & MARTIN

20 By: /s/ Evan L. James

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

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

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-18-781866-J

DEPT. NO. Department 25

9 vs.

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

12
13 **AUTOMATED CERTIFICATE OF SERVICE**

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

16 Service Date: 6/25/2021

17 Allison Kheel akheel@fisherphillips.com

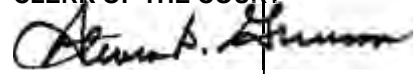
18 Natalie Saville nat@cjmlv.com

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20 Andrea Nichols anichols@ag.nv.gov

21 Sarah Griffin sgriffin@fisherphillips.com

22 Melissa Flatley mflatley@ag.nv.gov



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E-Mail: akheel@fisherphillips.com
Attorneys for Respondent
Clark County Department of Aviation

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioner,

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

vs.

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

Respondents.

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

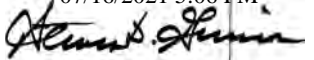
This is to certify that on the 16th day of July, 2021, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **NOTICE OF ENTRY OF ORDER ON MOTION TO STAY ON ORDER SHORTENING TIME** via the Court's e-file and e-service system on those case participants who are registered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

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

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

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

EXHIBIT A


CLERK OF THE COURT

FISHER & PHILLIPS LLP
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Clark County Department of Aviation

DISTRICT COURT
CLARK COUNTY, NEVADA

SOUTHERN NEVADA LABOR
MANAGEMENT COOPERATION
COMMITTEE, by and through its
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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

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

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

9 Dated this 16th day of July, 2021.

10 Respectfully submitted,

11 FISHER & PHILLIPS LLP

12 /s/ Allison L. Kheel, Esq.

13 MARK J. RICCIARDI, ESQ.

14 ALLISON L. KHEEL, ESQ.

15 300 S. Fourth Street, Suite 1500

16 Las Vegas, NV 89101

17 Attorneys for Respondent Clark County

18 Department of Aviation

19 **ORDER SHORTENING TIME ON CLARK COUNTY DEPARTMENT OF**
20 **AVIATION'S MOTION TO STAY (1) ENFORCEMENT OF ORDER ON**
21 **MOTION FOR RECONSIDERATION, (2) ENFORCEMENT OF ORDER**
22 **GRANTING PETITION FOR JUDICIAL REVIEW, AND (3) ANY**
23 **PROCEEDINGS BEFORE THE OFFICE OF THE LABOR COMMISSIONER**

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

28 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


DISTRICT COURT JUDGE
KATHLEEN DELANEY

5 Submitted by:
6 FISHER & PHILLIPS LLP

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

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

14 **NOTICE OF MOTION**

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

22 DATED this _____ day of July, 2021.

23 FISHER & PHILLIPS LLP

24 /s/ Allison L. Kheel, Esq.
25 MARK J. RICCIARDI, ESQ.
26 ALLISON L. KHEEL, ESQ.
27 300 S. Fourth Street, Suite 1500
28 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.

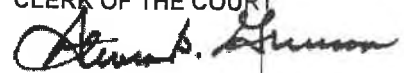
9 300 South Fourth Street, Suite 1500

10 Las Vegas, Nevada 89101

11 Attorneys for Respondent

12 Clark County Department of Aviation

EXHIBIT A



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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.

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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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Nevada Bar No. 7760
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1 CERTIFICATE OF SERVICE

2 On the date of filing with the Court, I caused a true and correct copy of the
3 foregoing Notice of Entry of Order to 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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12 Sara Griffin sgriffin@fisherphillips.com

13
14 CHRISTENSEN JAMES & MARTIN

15 By: /s/ Natalie Saville

16 Natalie Saville
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Case No.: A-18-781866-J

Dept. No.: 25

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

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

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

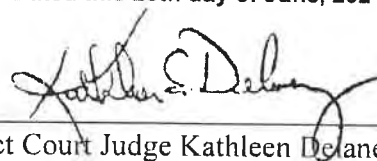
25 In remanding the matter to the Labor Commissioner, the Court intends for the
26 Labor Commissioner to use applicable prevailing wage rates to determine the value of
27

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

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 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

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**

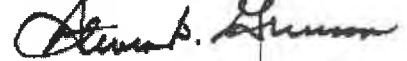
14 This automated certificate of service was generated by the Eighth Judicial District
15 Court. The foregoing Order was served via the court's electronic eFile system to all
16 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 6/25/2021

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

23
24
25
26
27
28

EXHIBIT B



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.

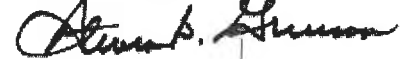
7 Mark J. Ricciardi, Esq. mricciardi@fisherphillips.com

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

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

10 CHRISTENSEN JAMES & MARTIN

11 By: /s/ Natalie Saville
12 Natalie Saville



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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

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

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

FINDINGS OF FACT

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

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

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APP 524

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."

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.

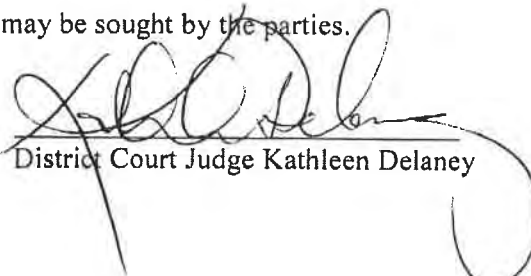
12 4. The Court further Orders the matter remanded to the OLC for the sole purposes of
13 determining the amount, if any, of the completed work that constitutes maintenance and
14 to whom and how much additional wages should be paid for work subject to NRS 338 et
15 seq.'s prevailing wage requirements. 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
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 Holly E. Walker, Esq.
15 Nevada Bar No. 14295
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*
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
27 100 N. Carson Nevada 89701
Carson City, NV 89701
Tel.: (775) 684-1218
anichols@ag.nv.gov
Attorneys for Respondent Office
of the Labor Commissioner

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

CONFIDENTIALITY NOTICE: This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.

IRS CIRCULAR 230 DISCLOSURE: To the extent this communication (or any attachment) addresses any tax matter, it may not be relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter herein addressed.

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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IRS CIRCULAR 230 DISCLOSURE: To the extent this communication (or any attachment) addresses any tax matter, it may not be relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter herein addressed.

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

CONFIDENTIALITY NOTICE: This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.

IRS CIRCULAR 230 DISCLOSURE: To the extent this communication (or any attachment) addresses any tax matter, it may not be relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter herein addressed.

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

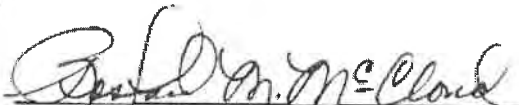
Clark County Department of Aviation
Administration Bldg., 3rd Floor
845 E. Russell Road
Las Vegas, Nevada 89119

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

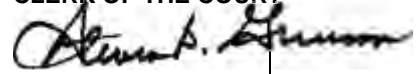
18 Natalie Saville nat@cjmlv.com

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



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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

**OPPOSITION TO MOTION TO STAY
(1) ENFORCEMENT FOR 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**

Petitioner hereby opposes Respondent Clark County Nevada Department of
Aviation's Motion to Stay (1) Enforcement for Order on Motion for Reconsideration, (2)
Enforcement of Order Granting Petition for Judicial Review, and (3) any Proceedings
Before the Labor Commissioner that was filed on July 16, 2021.

Dated July 20, 2021.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James
Evan L. James, Esq. (7706)
7440 W. Sahara Avenue
Las Vegas, NV 89117
Tel.: (702) 255-1718
Fax: (702) 255-0871
Attorneys for Petitioner

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

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Dear Ms. Chambers,

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.

The undersigned, on behalf of the Petitioner, responded as follows:

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

See Ex. 2, July 12, 2021 Email from Evan James to Commissioner Shannon Chambers.

Good afternoon,

1 This matter is pending before the Labor Commissioner until such
2 time as an Order granting the Clark County Department of
3 Aviation's request for a Stay is received by this office.

4 **The concerns of Mr. James would be similar to those shared by**
5 **the Labor Commissioner. A request for records/information**
6 **from the Labor Commissioner to the Clark County Department**
7 **of Aviation has been pending for several years.**

8 A pre-hearing conference will be set in this matter and the Clark
9 County Department of Aviation should produce records and/or a
10 response why they have not produced the requested records prior to
11 the pre-hearing conference.

12 *See* Ex. 3, Email from Commissioner Shannon Chambers dated July 12, 2021 (emphasis
13 added).

14 ARGUMENT

15 **1. The Court must not allow serious and irreparable harm to occur.**

16 The Court should allow for the preservation of evidence by not interfering with the
17 Labor Commissioner's activities. The Labor Commissioner needs to collect evidence,
18 evaluate the evidence for sufficiency, and calculate wages to identify wage claimants.
19 "Spoliation occurs when a party fails to preserve evidence it knows or reasonably should
20 know is relevant to actual or anticipated litigation, [so] ... courts have inherent authority
21 to manage the judicial process so as to achieve the fair, orderly, and expeditious disposition
22 of cases [, which allows them to address spoliation issues]." *MDB Trucking, LLC v. Versa*
23 *Prods. Co.*, 136 Nev. Adv. Rep. 72, 475 P.3d 397, 402-03 (Nev. 2020). The Labor
24 Commissioner has expressed her concern about evidence and her desire to perform her
25 duties based upon the evidence. The Court should allow her to do so as no harm will come
26 to DOA.

27 ///

///

///

1 **2. DOA is not entitled to a stay because no money judgment was issued and serious**
2 **and irreparable harm to wage claimants exists.**

3 The DOA's argument that it is entitled to a stay as a "matter of right" is premised upon
4 an incomplete application of *Clark Cty. Office of the Coroner/Medical Exam'r*. Here is the
5 holding from that case:

6 We conclude that NRCP 62(d) must be read in conjunction with
7 NRCP 62(e), such that, **upon motion**, state and local government
8 appellants are generally entitled to a stay of a **money judgment**
9 pending appeal, without needing to post a supersedeas bond or other
10 security. Further, in this case, LVRJ concedes that **no irreparable**
11 **or serious harm** will ensue if the stay is granted. Therefore, the
Coroner's Office is entitled to a stay of the attorney fees and costs
judgment pending appeal, and the stay motion is granted pending
further order of this court.

12 *Clark Cty. Office of the Coroner/Medical Exam'r v. Las Vegas Review-Journal*, 134 Nev.
13 174, 177-78, 415 P.3d 16, 19 (2018) (emphasis added). Application of that holding
14 requires the government to meet three requirements: (A) It must file a motion to stay; (B)
15 The judgment to be stayed must be a money judgment; (C) No irreparable or serious harm
16 will ensue if the stay is granted.

17 A. Filed Motion. The DOA has filed a motion to stay. This requirement is met.

18 B. Money Judgment. No money judgment was issued. Because no money
19 judgment was issued, this requirement is not met, so DOA is not entitled to
20 a stay as a matter of right.

21 C. Serious or Irreparable Harm. The Labor Commissioner has expressed her
22 concern that wage records may be disappearing and that DOA has – for
23 years – failed to comply with her request to produce wage records. Wage
24 records date back to at least 2017. The inability to identify unpaid workers
25 and calculate wages due because records are lost is a serious and irreparable
26 harm, so this requirement is not met.
27

1 **3. The LMCC agrees with DOA that the status quo should be preserved, and to do**
2 **so the Labor Commissioner must calculate wages and identify claimants to**
3 **preserve wage claims.**

4 The only way to preserve the status quo is to let the Labor Commissioner do her job
5 by collecting wage information and identifying potential wage claimants by calculating
6 their unpaid wages.

7 **4. No harm will come to DOA by letting the Labor Commissioner do her job.**

8 DOA has pointed to no harm it will suffer by letting the Labor Commissioner do her
9 job. If DOA is successful on appeal, then the Labor Commissioner may adjust her findings
10 accordingly.

11 Notably, no one is arguing that workers should be given the unpaid wages while the
12 appeal is pending. Thus, DOA has no risk of loss or harm.

13 **CONCLUSION**

14 DOA's motion should be denied for the above reasons.

15 Dated July 20, 2021.

CHRISTENSEN JAMES & MARTIN

16 By: /s/ Evan L. James
17 Evan L. James, Esq. (7706)
18 7440 W. Sahara Avenue
19 Las Vegas, NV 89117
20 Tel.: (702) 255-1718
21 Fax: (702) 255-0871
22 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.

- | | |
|------------------------|-----------------------------|
| Natalie Saville | nat@cjmlv.com |
| Allison L. Kheel, Esq. | akheel@fisherphillips.com |
| 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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondents.

Case No.: A-18-781866-J

Dept. No.: 25

DECLARATION OF EVAN L. JAMES

I hereby declare as follows:

1. A have personal knowledge of the matters asserted and am competent to testify.
2. Exhibit 1 is a true and correct copy of a July 9, 2021, email from Allison Kheel to Commissioner Shannon Chambers.
3. Exhibit 2 is a true and correct copy of a July 12, 2021, email from myself to Commissioner Shannon Chambers.
4. Exhibit 3 is a true and correct copy of a July 12, 2021, email from Commissioner Shannon Chambers.

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

Executed on July 20, 2021.

Evan L. James

EXHIBIT

1

Re: So. NV Labor v Clark County Aviation

Kheel, Allison <akheel@fisherphillips.com>

Fri 7/9/2021 4:50 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>

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

APP 556

EXHIBIT

2

Re: So. NV Labor v Clark County Aviation

Evan James <elj@cjmlv.com>

Mon 7/12/2021 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>

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

CONFIDENTIALITY NOTICE: This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.

IRS CIRCULAR 230 DISCLOSURE: To the extent this communication (or any attachment) addresses any tax matter, it may not be relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter herein addressed.

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

APP 558

EXHIBIT

3

Re: So. NV Labor v Clark County Aviation

Shannon Chambers <shannonchambers@labor.nv.gov>

Mon 7/12/2021 2:36 PM

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

Good afternoon,

This matter is pending before the Labor Commissioner until such time as an Order granting the Clark County Department of Aviation's request for a Stay is received by this office.

The concerns of Mr. James would be similar to those shared by the Labor Commissioner. A request for records/information from the Labor Commissioner to the Clark County Department of Aviation has been pending for several years.

A pre-hearing conference will be set in this matter and the Clark County Department of Aviation should produce records and/or a response why they have not produced the requested records prior to the pre-hearing conference.

Thank you.

Shannon M. Chambers
Labor Commissioner
State of Nevada

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,

APP 560

1 STATE OF NEVADA)

2 COUNTY OF CLARK)

3

4

IN THE EIGHTH JUDICIAL DISTRICT COURT

5

CLARK COUNTY, NEVADA

6

7 SOUTHERN NEVADA LABOR)

8 MANAGEMENT COOPERATION)

9 COMMITTEE,)

10 Plaintiffs,) Supreme Ct. No. 83252

11 Vs.) District Ct. No. A-18-781866-J

12 CLARK COUNTY NEVADA) Dept. No. 25

13 DEPT. OF AVIATION,)

14 Defendants.)

15

16

MOTIONS

17

18 Before the Hon. Kathleen Delaney, District Court Judge

19 Thursday, July 22, 2021, 9:00 a.m.

20

21 Reporter's Transcript of Proceedings

22

23 Reported By:

24 Bill Nelson, RMR, RPR, CCR #191

25 Certified Court Reporter

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APPEARANCES:

For the Plaintiffs: Evan James, Esq.

Attorney at Law.

For the Defendants: Allison Kheel, Esq.

Andrea Nichols, Esq.

Attorneys at Law

1 Las Vegas, Nevada, Thursday, July 22, 2021

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

8 We're going to go ahead and proceed.

9 We may consider switching over and maybe trying
10 to see if IT could assist us for the next hearing
11 because that is going to be much lengthier I believe and
12 much more involved, so let's take care of of this one
13 first.

14 So we have of course on the calendar today the
15 Department of Aviation's motion for stay, and the stay
16 seeks to have the stay apply to not only the enforcement
17 of the original order granting the petition for judicial
18 review, but also the enforcement of the order on the
19 motion for reconsideration, and then also staying any
20 proceedings before the office of the labor commissioner
21 because these things all tie together.

22 Interestingly, in terms of the orders that the
23 stay is seeking to apply to these are all activities
24 that would move forward with the labor commissioner and
25 findings to be made, and review of documentation and do

1 not have monetary component directly, and that seems to
2 be the gist of what the request for the stay
3 automatically without bond is tied to, and any
4 opposition related to that, and the review ultimately of
5 of the coroner's office case seems relevant obviously
6 for today, along with the other citations given.

7 So I have reviewed the briefing because this was
8 set on order shortening time.

9 We do only have the motion for stay and the
10 opposition to the motion for stay.

11 But I'm going to go ahead and let you highlight
12 from the brief, and of course Miss Kheel, any rebuttal
13 argument I'm going to give you that opportunity as well
14 because we did not timewise give you the opportunity for
15 a reply of course.

16 So I'm going to start with Miss Kheel, start
17 wherever you wish.

18 I appreciate that we're late starting, and that
19 is not any responsibility of counsel, but again we don't
20 need to to hash everything over, but I do want to of
21 course give you the opportunity to highlight your
22 argument as you wish, and then we'll hear from Mr.
23 James, and then ultimately come back, but before we
24 start, as I have already forgotten, we don't technically
25 still have Miss Nichols with audio, so Miss Nichols one

1 more time, say something somehow.

2 MS. NICHOLS: Good morning, Your Honor.

3 THE COURT: Is a miracle we can hear you.

4 MS. NICHOLS: Great.

5 Thank you so much.

6 Andrea Nichols appearing on behalf of the Nevada
7 Labor Commissioner.

8 THE COURT: Thank you.

9 There was no briefing here, but I do know
10 obviously that there is probably some input you would
11 have if only sort of factually what might transpire
12 should the stay not be granted, versus should the stay
13 be granted, there it would be beneficial perhaps for us
14 to hear, but let me come over to Miss Kheel first for
15 what argument she would like to put in the record at
16 this time.

17 MS. KHEEL: Thank you, Your Honor.

18 So our arguments are very straightforward, in
19 this matter has been appealed to the Supreme Court. We
20 filed our appeal.

21 We are entitled to a stay as a matter of right.

22 We would suffer harm if we participate because we
23 potentially waive our rights and arguments on appeal by
24 participating in the proceedings with the labor
25 commissioner.

1 Additionally, it creates potential for
2 simultaneous proceedings if the labor commissioner is
3 making findings and issuing orders while this case is
4 pending appeal over the scope of the labor
5 commissioner's hearing and ability to make a
6 determination.

7 Additionally, the concerns are not really
8 founded, we actually responded to the labor
9 commissioner's letter, and we would be under an
10 obligation to preserve any evidence that is in our
11 possession, custody, or control regardless while this
12 matter is pending in litigation.

13 So I know there are concerns about spoliation
14 that both counsel raised, but it really doesn't matter
15 so much because if when the labor commissioner -- or we
16 don't (Inaudible) we're still under an obligation to
17 preserve the evidence.

18 THE COURT: I'm curious about the first statement
19 you made, and honestly it wasn't something that I
20 connected to in a meaningful way in the briefing, so
21 that's why I want to focus on it quickly here, is the
22 argument that somehow you would be waiving any argument
23 or position issued that you are taking a position on in
24 the appeal by somehow going forward here.

25 I understand that what your position is of

1 course, and I understand what your position on appeal
2 is, and I think we can all benefit from having the
3 Appellate Court weigh in on this, but the argument that
4 seems to be being made is why not move forward, let
5 documentation be sure to be had, let the labor
6 commissioner be doing their thing, but in the end if you
7 prevail on the appeal, you prevail on the appeal.

8 I guess it's harder for me to see like how you
9 waive anything.

10 MS. KHEEL: Well, one of the arguments were
11 taking on appeal, and no disrespect to the Court, is
12 that the Court's order limited the labor commissioner's
13 ability to issue a determination finds this was a
14 maintenance contract and accept certain evidence, so if
15 the labor commissioner proceeds and issues a
16 determination in accordance with the Court's order, by
17 the time we get it up on appeal and come back down we
18 could have resulting prejudice, and we would be arguing
19 the labor commissioner shouldn't be hearing something in
20 that limited scope because the Court exceeded its
21 authority when it issued the determination that this was
22 not a maintenance contract, as opposed to just simply
23 remanding it to the labor commissioner to make all
24 determinations besides that issue.

25 THE COURT: Can you back up to then the basis for

1 which you claim you are entitled to this appeal as a
2 matter of right without a bond?

3 Again, I saw the reference through the Coroner
4 case, and I saw the arguments being made both ways, and
5 I'm just -- is that what you're relying on for the
6 purposes of saying that you get the appeal as a matter
7 of right?

8 Because obviously you can ask for an appeal, and
9 the Court can make the analysis on whether the appeal is
10 appropriate, and we kind of started off with an argument
11 goes more specifically to that analysis, but your asking
12 for an appeal as a matter of right, as if you're
13 entitled to it by right, but you don't have to post the
14 bond, there's no impediment, but what is the basis at
15 law for that position?

16 MS. KHEEL: For the stay pending appeal?

17 THE COURT: Yeah.

18 I'm sorry if I'm asking the question badly.

19 You made a motion for stay pending appeal, and
20 your argument is we are entitled as a matter of right to
21 have it.

22 The rule that you have cited says that you can
23 have it as a matter of right when you post a bond, but
24 then you have argued a case says that because you're
25 governmental entities, etcetera you don't have to post a

1 bond, but I'm trying to understand how you believe that
2 it's a matter of right, period.

3 Is it simply because you don't have to post a
4 bond that you think you get this as a matter of right?

5 Because the case law being cited I don't believe
6 stands for the proposition you would be entitled to a
7 matter of appeal in a case such as this.

8 MS. KHEEL: I think that if the Supreme Court
9 wants to decide it's not entitled to appeal, we've also
10 moved in the alternative for a writ of prohibition.

11 So either way the matter is currently disputed
12 and up on appeal for appellate review, and therefore it
13 just makes sense to have the stay of the labor
14 commissioner proceedings, so there's not dual
15 litigation, and I believe that the case law that we
16 cited says that we are entitled to that stay as a matter
17 of right.

18 THE COURT: Okay.

19 So I'm going to try approach this a little bit
20 differently, and I take responsibility for the fact I'm
21 not probably articulating my questions well enough, but
22 so the case law that you have cited, the Clark County
23 Office of the Coroner Medical Examiner versus Las Vegas
24 Review-Journal, the very first line of that case says:

25 Appellants may obtain a stay of money judgment

1 pending appeal upon supersedeas bond pursuant to, and
2 then it goes onto discuss why the bond is not necessary
3 in certain circumstances, but the case as argued in the
4 opposition persuasively to the Court and the Court's
5 review of the case is, that is applicable in a situation
6 where there is a monetary judgment at stake, and
7 ultimately the appeal is directly related to that, and
8 because it a governmental entity, and there are physical
9 responsibilities and ways to get at that money the bond
10 is unnecessary.

11 But that is the situation where again the typical
12 stay request is a stay request, it's not automatic stay
13 as a matter of right.

14 There's an opportunity to ask for a stay and a
15 reference in the opposition also to even grant it, but
16 at the end there's a direction to ask the District Court
17 for a stay, and if the District Court denies, you can
18 ask the Appellate Court for the stay, but that's the
19 general stay request.

20 You only come over to the local rule that allows
21 a stay as a matter of right when the party posts the
22 bond, and you're arguing well, but we don't have to post
23 the bond, but that case is specific, is it not, to a
24 specific situation in which it would be a matter of
25 right we post a bond, we shouldn't have to post a bond

1 for a governmental entity, etcetera, that may not be
2 applicable here.

3 What I'm trying to articulate is, I don't find
4 that case persuasive as being factually similar to this
5 case that you should be entitled to a stay as a matter
6 of right, and I'm looking for argument in that regard.

7 MS. KHEEL: So two things.

8 One is the way the Court's order reads is, the
9 matter was remanded to the labor commissioner for the
10 ministerial task of determining the amount that would be
11 due as prevailing wage.

12 So in effect it is a monetary judgment and -- in
13 the first place.

14 And in the second place, the rule -- both the
15 Rule 62 and NRAP 8 both refer to other types of matters
16 that can be appealed, including injunctions and other
17 things, and they say you're allowed to take appeal from
18 that, and you are entitled to the stay pending that
19 appeal with the posting of a bond.

20 We're a government agency, so we don't have to
21 post a bond, so it would basically be an automatic stay
22 if we posted the bond.

23 THE COURT: Let me make sure I'm understanding.

24 Your argument is, we are a governmental entity,
25 any time we appeal, no matter what the appeal is, we get

1 it as a matter of right because we're not required to
2 post a bond, is that your argument?

3 MS. KHEEL: If we would be entitled to it as a
4 matter of right with posting a bond, then yes, we get it
5 without posting a bond.

6 THE COURT: That's what I thought.

7 So I'm trying to understand how you're entitled
8 to it as a matter of right regardless of the bond issue,
9 that is what I'm not connecting to.

10 Is your argument then, you're entitled to it as a
11 matter of right because it's a monetary judgment, at
12 some point in time going to turn into some moneys having
13 to be paid?

14 MS. KHEEL: We're saying that the statute
15 entitles us to file an appeal and receive a stay because
16 we're appealing a final order of the Court.

17 THE COURT: But that is the part that doesn't
18 work for me is, I'm not doubting that you can do an
19 appeal here, and I understand you don't have an
20 alternative writ of prohibition, I don't think there's a
21 doubt you can do an appeal here, but that argument then
22 is, I can appeal, but in every appeal because of my
23 governmental entity, and I don't have to post a bond for
24 certain types of appeals, then I don't have to, it's a
25 matter of right -- it's not connecting.

1 I mean, maybe it never will for me, I don't know,
2 but I think you have an appeal here, that is not the
3 issue, but the rule that you're citing and the case that
4 you are citing talk about monetary judgment appeals and
5 the ultimate ability to get an appeal as a matter of
6 right by posing the bond that corresponds with the
7 monetary judgment.

8 Then there's some case law, and not a lot, but
9 there's a little here and there we can count to, some
10 that is favorable on your side, some that is not, but
11 all seem to key on it's a monetary judgment, that as a
12 matter of right you can get your appeal, meaning a stay
13 for the appeal, not the appeal itself as far as perhaps
14 losing the discussion, but the stay for the appeal as a
15 matter of of right because we post a bond, and then in
16 these cases I think are persuasive the government would
17 not have have to post a bond in the situation where the
18 stay is available as a matter of right. That rule
19 appears to be for monetary judgments.

20 I'm not connecting because I get you have an
21 appeal, but I'm not connecting to the fact that you get
22 a stay as a matter of right for this appeal.

23 Does that help?

24 MS. KHEEL: Well, I think I understand what
25 you're saying, but the Rule 62 is broader than that,

1 also deals with injunctions pending appeal and other
2 types of matters that you would be requesting a stay in,
3 and it seems as if the question for the Court is, would
4 the Court be willing to grant the stay if a bond was
5 posted?

6 It seems like the answer -- or the position the
7 Court's taking is, yes, we're arguing that under 62
8 we're entitled to a stay pending appeal, so that we're
9 not forced to potentially waive our rights by having
10 duplicative proceedings, etcetera, and since we're
11 entitled to that appeal, and in the Court's mind would
12 be entitled to that by posting a bond, we don't have to
13 post the bond.

14 THE COURT: Okay.

15 I'm not going to further speak of this now in
16 terms of maybe some slight differences I would take with
17 your language in terms of what the Court's thinking, but
18 that doesn't matter.

19 Let hear from Mr. James, and then a final word
20 before we come back to you for your rebuttal from Miss
21 Nichols, but let's hear from Mr. James.

22 MR. JAMES: Thank you, Your Honor.

23 Let me start where I think we can agree.

24 I would stipulate with Miss Kheel right now that
25 anything that happens before the labor commissioner does

1 not constitute a waiver of that right, that is not the
2 our opposition. So whatever the labor commissioner does
3 with regards to collecting information and calculating
4 wages, I don't think that is going to prejudice the
5 Court at all, so I want to put that on the record that
6 is not our intent, I wouldn't even argue that in the
7 future, so that is on the record.

8 So I think that probably should take care of any
9 concerns we might have with regard to waiver of rights.

10 With regard to the issue of an automatic stay,
11 I'm in agreement with the statement you have made, that
12 I don't believe in this case the government is entitled
13 to a stay as a matter of right.

14 The information that was in the briefing
15 indicates that they get a stay after it's a monetary
16 judgment, and we're not asking the airport to pay a
17 monetary judgment, but what we would ask is, we have a
18 concern the claimants be identified, and then we can
19 proceed from there, but I would agree with -- hopefully
20 Miss Nichols will agree with me, if we were seeking to
21 have the claimants actually paid the money, that might
22 be some sort of irreparable harm to the Department of
23 Aviation. I'm not asking that. I don't think that
24 should occur.

25 But what we do need to have happen is, we need to

1 have the evidence preserved and the claimants
2 identified, and that is the job of the labor
3 commissioner.

4 Miss Kheel made one statement with regards to
5 producing evidence. The Department of Aviation has
6 produced some evidence but has never produced the wage
7 records, and those wage records were requested years
8 ago. That is what the labor commissioner from my
9 understanding wants to collect, so she can identify the
10 claimants and calculate the wages.

11 At that point I think the labor commissioner will
12 be done, the appeal can proceed, and in the due course.

13 And with regards to this spoliation issue, if it
14 was just the Department of Aviation has the records, it
15 might be a little bit different for me, but in this
16 particular case the work was performed by third-party
17 vendors, and those third-party vendors have information
18 with regards to the employees and the hours worked, so
19 the information that the labor commissioner should be
20 collecting through the Department of Aviation isn't just
21 specific to the Department of Aviation, that information
22 should be collected from them as well, and I think that
23 is an important fact.

24 I see one other item I think I have here.

25 Nope, that's it.

1 I'll answer any questions you may have.

2 THE COURT: I don't think I really have any
3 questions for you.

4 I understand what your position is.

5 I think it does dovetail into what I was talking
6 to Miss Nichols would be beneficial to have an
7 understanding is from the labor commissioner's
8 perspective if the Court does not grant the stay here.

9 I would still say there would be the opportunity
10 obviously for the Department of Aviation to ask the
11 Appellate Court for the stay, but let's assume the stay
12 is not granted, what would transpire, and in what time
13 frame would it happen, and to help us understand that?

14 MS. NICHOLS: The labor commissioner at this
15 point requested the parties appear for a pre-hearing or
16 conference, but she does join with Mr. James' concerns
17 that the evidence needed for a determination be
18 preserved.

19 The labor commissioner of course believes that
20 any -- what will -- what most likely is to happen is,
21 that the Nevada Supreme Court will remand the matter
22 back to the Nevada Labor Commissioner with instructions
23 for how to proceed. That may take a year or two before
24 the matter comes back to the labor commissioner, and
25 she's just concerned that she wouldn't have the records

1 necessary to make a determination based on whatever
2 guidance the Nevada Supreme Court provides.

3 THE COURT: Alright.

4 MS. NICHOLS: Of course I can answer any
5 questions.

6 THE COURT: No.

7 I think you answered the question of why the
8 positioning here would be maybe there's no down side so
9 to speak to keep going forward now potentially, and some
10 upside potentially in terms of the record, etcetera now,
11 but it's just if we don't grant the stay, I remember the
12 reason we set this on the calendar if I recall was some
13 sort of procedure hearing, something coming up pretty
14 quick, or at least it was set, I don't know if it's been
15 reset, but I was trying to maybe get a little specifics
16 on what transpires next.

17 MS. NICHOLS: Your Honor, as I said, there's just
18 been as far as I know just been a pre-hearing conference
19 set.

20 THE COURT: A pre-hearing conference, that's the
21 terminology.

22 Thank you.

23 I'm not familiar with the process in all candor.
24 I didn't want the wrong terminology.

25 MR. JAMES: Your Honor, Evan James.

1 I may be able to shed some light on that.

2 I don't want to interrupt if you don't want me
3 to.

4 THE COURT: No, please.

5 That's fine.

6 MR. JAMES: So at the pre-hearing conference it's
7 actually governed by regulations.

8 Typically what you have is, you have a situation
9 where you start, and you discuss the issues that would
10 take place at an actual hearing. In this particular
11 case the issues I think are set, so that is not really
12 not the big issue.

13 The other things that happens at the pre-hearing
14 conference -- or is supposed to -- is the parties are
15 supposed to discuss the possibility of resolution.

16 Those are the two main items that happen at
17 pre-hearing conference, just this process of what is
18 going to happen at the hearing, and how long might it
19 take, what might be involved, and then you also have the
20 situation where the parties discuss settlement. That
21 has been my experience.

22 THE COURT: Alright.

23 I appreciate that very much.

24 Back to you, Miss Kheel, for the final word then
25 for today on whether or not the Court should consider a

1 stay under any auspices for a stay and in these
2 circumstances, and ultimately any final argument you
3 want to make.

4 MS. KHEEL: Thank you.

5 So basically the authority we're citing comes
6 from Nevada Rules of Civil Procedure 62(d)(1) that says
7 a stay pending appeal, if an appeal is taken, the
8 appellant may obtain a stay by supersedeas bond as
9 described in Rule 62(a)(2) which deals with
10 receivership, and that applies here. So we feel like
11 that entitles us to an automatic stay pending the
12 appeal.

13 Additionally, prejudice would result because the
14 labor commissioner isn't obligated if there's no stay in
15 place to stop with just receiving the record.

16 The labor commissioner would in accordance with
17 the Court's order have to continue to hold a hearing and
18 make the limited determination of money owed, and that
19 would potentially prejudice us if it comes back down to
20 the labor commissioner, and the instructions make a
21 determination about whether or not this is maintenance,
22 they've already found money is owed.

23 Prejudice results to us because the labor
24 commissioner's against us and doesn't afford the labor
25 commissioner the full scope of her authority.

1 Finally --

2 THE COURT: Let me just interrupt you.

3 Last question.

4 Isn't there -- Doesn't the labor commissioner
5 have the ability for lack of a better word to pivot?

6 If the labor commissioner does what the labor
7 commissioner does based on the Court's current order,
8 and the Appellate Court gives us guidance the Court
9 erred in some fashion, and there really should have been
10 a different analysis, or whatever the ultimate outcome
11 is from the Appellate Court, can't the labor
12 commissioner just pivot and reposition its findings?

13 MS. KHEEL: Potentially, but they've already made
14 findings, and so it creates a bias against us because
15 they've made findings money is owed, and they weren't
16 allowed to consider the maintenance issue, and we
17 believe that if it came back on appeal, and they were
18 instructed to once again consider the maintenance issue,
19 it would be likely that the potential exists to find
20 against us because they've already essentially found
21 that we owed money.

22 Finally, addressing Mr. James' point about the
23 wage records, as he stated this is a third-party
24 contractor, and they've been notified of this, but it's
25 not records that the Department of Aviation has in its

1 possession, it's in the possession of a third-party
2 contractor. So it doesn't seem like you don't have
3 certified payroll here if they are not our employees, it
4 was a bid by a subcontractor, and it was three years
5 ago, so I would argue that they're either going to have
6 them or not have them at this point.

7 THE COURT: Okay. I see.

8 Anything else for the final record?

9 MS. NICHOLS: Your Honor, if I may, there is a
10 specific regulation that would allow the labor
11 commissioner to deviate from her -- from the procedures
12 that are set forth by statute, and also I just want to
13 address Miss Kheel's very last comment that the records
14 are in the possession of a contractor from three years
15 ago, and at this point they either have them or they
16 don't.

17 The concern is, that by the time this matter is
18 remanded back from the Nevada Supreme Court that if they
19 have them now, they might not have them when this matter
20 is remanded.

21 THE COURT: Alright. I appreciate that.

22 This is how we're going to handle the matter
23 today, and everything in this case is in some fashion to
24 me sort of feels like we're treading some water without
25 really a lot of good guidance to tell us what to do, but

1 in the end it is my determination today to deny the
2 motion for stay.

3 I'm going to ask Mr. James to prepare the order,
4 and I'm going to try to articulate here as best as I can
5 what I'm doing and why.

6 So I'm not necessarily keen on the fact that
7 speculatively there could be documentation lost or some
8 other factors, maybe the converse being should there be
9 something done, and the Appellate Court sends it back,
10 there would be some prejudice or some bias has been
11 occurring because something happened in the interim.
12 Those really aren't persuasive arguments to me.

13 I really focused on this coming in here today as
14 does the Department of Aviation have an entitlement to
15 get a stay of the appeal as a matter of right.

16 I do not find that the rule that is being cited
17 to, and in conjunction with the case law that is being
18 cited to, stands for the proposition in this particular
19 Court's decision, and we have a couple of difficult
20 situations, we have the order on the motion for
21 reconsideration, as well as the order granting the
22 petition for judicial review to begin with, but that
23 these rulings do not invoke the situation that's
24 expressed in the coroner's office case, and the
25 situation that we would understand where the Department

1 of Aviation would be entitled to as a matter of right
2 and not be required to post a bond in the circumstances.

3 I believe now it's more properly and simply
4 whether or not this situation warrants a stay at the
5 District Court level, taking into account, all of the
6 factors genuinely that would apply to a motion for stay.

7 We have argued them in the brief, and today in
8 the terms of prejudice, and would it defeat the purpose
9 of the appeal, all of these things that we consider, and
10 in the end I find that there on balance is a necessity
11 and an appropriateness to deny the stay at this stage,
12 allow the proceedings to go forward, the preliminary
13 matters and discussions to go forward, perhaps even all
14 the way to the point where the labor commissioner does
15 make the findings because I believe that there is some
16 concern that we want to make sure that everything is
17 where it's supposed to be, being analyzed the way it's
18 supposed to be, and I think waiting two years to do that
19 does a disservice.

20 I don't think it fosters judicial economy, party
21 economy, or otherwise.

22 I think they can go forward, and I think it's one
23 of these types of unique situations perhaps, but a
24 situation where if the Appellate Court says this Court
25 was wrong, and respectfully so, that can happen of

1 course, then I think the labor commissioner can simply
2 revisit as directed and ultimately make different
3 outcomes, but I don't see where anyone's harmed, and I
4 see where there can be great benefit to actually allow
5 these matter's to proceed while the Appellate Court is
6 reviewing the maintenance issue and other matters put
7 before it on the appeal.

8 So I respectfully think that there is not a basis
9 to grant the stay generally.

10 I have already determined as I said before why
11 there is not a basis to grant the stay as a matter of
12 right, but I don't believe there's a basis to grant the
13 stay.

14 Now, I would certainly respect and I certainly
15 believe under NRAP 8 the Department of Aviation still
16 has the right to seek a stay from the Appellate Court,
17 and I think that is more properly where the request goes
18 because if the Appellate Court believes that there is
19 some defeating purpose of the appeal, or there's some
20 basis upon which the stay should be granted to stop the
21 proceedings down here, rather than -- while they're
22 pending their decision making, then fair enough, I think
23 they are in the better position perhaps to make that
24 call.

25 From the District Court's perspective all things

1 are gained, and advantage is gained, and again judicial
2 and party economy is gained, to allow this to proceed
3 while the appeal is pending to determine whether the
4 Court erred on the scope of the labor commissioner's
5 responsibilities, and then ultimately if we did, then
6 the labor commissioner, maybe they have some additional
7 work to do, but in the end we haven't lost time, lost
8 records, haven't lost other things, so I'm not
9 necessarily concerned too much about the speculation of
10 future potential actual or future spoliation as much as
11 I am why don't we use this time to our advantage, and
12 that I don't really see the factors that would be in
13 place that would warrant a general stay request being
14 present.

15 So I'm going to for those reasons deny the motion
16 for stay.

17 Again, as I indicated, Mr. James can prepare the
18 order.

19 Please of course let Miss Kheel have an
20 opportunity to review, and please get the order to the
21 order inbox, and we'll get that executed here as soon as
22 we see it.

23 And I appreciate the time with you all this
24 morning.

25 I apologize again for our delay being able to get

1 to the substantive stuff, so thank you for your time.

2 MR. JAMES: Thank you.

3 MS. KHEEL: Your Honor, could the order be
4 prepared I'd ask quicker than ten days?

5 THE COURT: Under the rules now it's actually 14,
6 but I got the impression Mr. James will be ready to rock
7 and roll right away.

8 MR. JAMES: Allison, I'll work with Allison,
9 prepare the order today, and gt it to her, so she
10 doesn't suffer any prejudice.

11 THE COURT: I know it's being reported. I know
12 you're going to want to get a transcript, but there
13 could also be a nunc pro tunc on an order on something
14 if need be, but why don't we get the order in so that
15 the order then can be folded in as needed to the appeal,
16 or at least the stay.

17 I think you can make the stay request, Miss
18 Kheel. If you look at NRAP 8, it says the District
19 Court -- you have to ask the District Court, or if there
20 some indicia they are not going to grant the stay, you
21 have the eligibility to ask for the stay from the
22 Appellate Court.

23 I don't have that right in front of me, but I
24 know that just this ruling today is enough I think for
25 you to say that you're asking them because you got

1 denied here.

2 They are not going to require you to have the
3 order because it's not about this order, it's really
4 about you asked, I said no, so now you can ask them.

5 I think that is fair.

6 But let's get the order down sooner rather than
7 later if we can.

8 MR. JAMES: Thank you.

9 MS. KHEEL: Thank you.

10 MS. NICHOLS: Thank you, Your Honor.

11 THE COURT: Thank you.

12 (Proceedings concluded.)

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C E R T I F I C A T E

I, Bill Nelson, Certified Court Reporter in and for the State of Nevada hereby certify that the above transcript is true and correct to the best of my ability under the facemask mandate put in place by the District Court do the Covid 19 pandemic.

_____/s/ Bill Nelson

Bill Nelson, CCR # 191

Las Vegas, Nevada

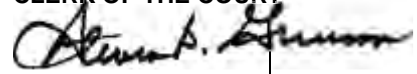
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12 **CLARK COUNTY, NEVADA**

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 September 16, 2021.

27 Dated September 21, 2021.

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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:

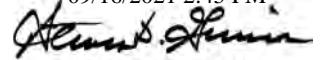
☒ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

- | | |
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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,

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

DECISION AND ORDER

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

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

Dated this 16th day of September, 2021

25 _____
District Court Judge Kathleen Delaney

26 2C8 5DF 4798 2662
Kathleen E. Delaney
District Court Judge
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1 **CSERV**

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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 Decision and 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: 9/16/2021

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