

No. 83252

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

CLARK COUNTY DEPARTMENT OF AVIATION, a political
subdivision of the State of Nevada,

Appellant,

v.

SOUTHERN NEVADA LABOR MANAGEMENT COOPERATION
COMMITTEE, by and through its Trustees Terry Mayfield and Chris
Christopherson; and OFFICE OF THE LABOR COMMISSIONER,

Respondents.

On Appeal from the
Eighth Judicial District Court of the State of Nevada
Case No. A-18-781866-J

**RESPONDENT NEVADA LABOR COMMISSIONER'S
ANSWERING BRIEF**

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The Nevada Labor Commissioner, through counsel, Attorney General Aaron D. Ford, and Senior Deputy Attorney General Andrea Nichols, submits her Answering Brief.

JURISDICTIONAL STATEMENT

This is an appeal from a final order of the District Court entered on June 25, 2021. Appellant timely filed its Notice of Appeal on July 21, 2021. This Court has jurisdiction pursuant to NRS 233B.150.

STATEMENT OF THE CASE

Nature of the Case

This appeal concerns two District Court Orders granting a Petition for Judicial Review of a Decision issued by the Office of the Labor Commissioner (“OLC”).¹ The OLC Decision, issued August 30, 2018, found that the Complaint and evidence submitted to the OLC could not establish that carpet work at the Clark County Airport was paid for with public money and subject to Nevada’s prevailing wage laws.² The OLC Decision did not address the issue of “normal maintenance.”³ After the

¹ App 391-399 and App 477-480.

² App 007-008.

³ *Id.*

issuance of the OLC Decision, this Court addressed the issue of “normal maintenance” for contracts financed by public money in *Bombardier Transportation (Holdings) U.S.A., Inc. v. Nevada Labor Commissioner*, 135 Nev. 15, 433 P.2d 248 (2019).

Course of Proceedings

These proceedings began in April of 2017 when the Southern Nevada Labor Management Cooperation Committee (“LMCC”) submitted a Complaint to the OLC alleging the Clark County Department of Aviation (“DOA”) violated Nevada’s prevailing wage requirements in connection with a contract for carpet repair and maintenance.⁴ After reviewing the Complaint, reviewing the evidence provided, and conducting an investigation, the OLC issued a Determination on August 30, 2018.⁵ LMCC filed a Petition for Judicial Review.⁶ On February 4, 2020, the District Court issued Findings of Fact, Conclusions of Law and Order Granting Petition for Judicial Review.⁷

⁴ App 014-162.

⁵ App 007-008.

⁶ App 001-008.

⁷ App 391-399.

DOA filed a Motion for Reconsideration and a Notice of Appeal.⁸ This Court found the Motion for Reconsideration was a tolling motion and dismissed the appeal.⁹

The Disposition Below

On June 25, 2021, the Eighth Judicial District Court issued its Order on Clark County Department of Aviation's Motion for Reconsideration, which is to be construed together with the District Court's February 4, 2020, Findings of Fact, Conclusions of Law and Order Granting Petition for Judicial Review.¹⁰

SUMMARY OF ARGUMENT

The OLC expects this matter will be remanded with instructions and will comply with any Order issued by this Court.

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⁸ App 400-414 and App 421-435.

⁹ App 473-474

¹⁰ App 477-480.

STANDARD OF REVIEW

The applicable standard of review is set forth in NRS 233B.135. This Court reviews, “an administrative decision in the same manner as the District Court.” *Home Warranty Administrator of Nevada, Inc. v. Dept. of Business and Industry*, 137 Nev. Adv. Op. 5, 481 P.3d 1242, 1246 (2021).

ARGUMENT

In its Opening Brief the DOA alleges that the District Court made several errors.¹¹ The DOA requests that this Court, “remand the case to the OLC for an unrestricted hearing and determination on the scope of the carpet work and whether such work is subject to the prevailing wage requirements or exempt as normal maintenance work.”¹² The OLC neither joins nor opposes the DOA’s arguments concerning errors allegedly made by the District Court. The OLC acknowledges that its Decision may have reached a different conclusion if it had been issued after this Court issued its decision in the *Bombardier* case. The OLC

¹¹ Appellant’s Opening Brief, filed herein on November 19, 2021.

¹² *Id.* at p. 37, ll. 15-20.

expects this matter will be remanded and the OLC will comply with any instructions or guidance issued by this honorable Court.

The OLC requests that this Court affirm its Order Denying Stay, issued August 23, 2021, so that the OLC may gather information concerning the wage claims at issue in this matter.

CONCLUSION

Based on the foregoing the Nevada Labor Commissioner respectfully requests that this Court enter its Order concerning the Orders issued by the District Court on February 4, 2020, and June 25, 2021.

Respectfully Submitted this 16th day of December 2021

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in font size 14 and font style Century Schoolbook.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 1,179 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be

subject to sanctions if the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 16th day of December 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on this 16th day of December 2021.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

/s/ S. Messina

An employee of the Office of the
Attorney General