IN THE SUPREME COURT OF THE STATE OF NEVADA

WASHOE COUNTY SCHOOL DISTRICT, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA

Appellant,

vs.

CAIDYN EDLUND,

Respondent.

Supreme Court No. 83713
District Court Case No. CV19-02058

APPELLANT'S REPLY BRIEF

CHRISTOPHER B. REICH, ESQ.
Nevada Bar No. 10198
Deputy Chief General Counsel
NEIL A. ROMBARDO, ESQ.
Nevada Bar No. 6800
Chief General Counsel
SARA K. MONTALVO, ESQ.
Nevada Bar No. 11899
General Counsel
ANDREA L. SCHULEWITCH, ESQ.
Nevada Bar No. 15321
Associate General Counsel
Washoe County School District
P.O. Box 30425
Reno, NV 89520-3425
Attorneys for Appellant
WASHOE COUNTY SCHOOL DISTRICT

NRAP 26.1 DISCLOSURE STATEMENT

As Appellant Washoe County School District is a governmental entity [NRS 41.0305; NRS 386.010(2)], no NRAP 26.1 disclosure is required.

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I. ROUTING STATEMENT

A. Mr. Edlund's Routing Statement Shows a Lack of Appreciation for Nevada's Strong Public Policy Favoring Arbitration Disputes.

The Routing Statement in Respondent Caidyn Edlund's (Mr. Edlund) Answering Brief (Answering Brief) is a bit flippant and illustrates the lack of understanding Mr. Edlund has as to the importance of the Supreme Court upholding the State of Nevada's strong public policy favoring arbitration of disputes. In fact, one of the Supreme Court's most recent Opinions held:

> Nevada has adopted the Uniform Arbitration Act of 2000, which is consistent with this state's long-standing public policy in favor of "efficient and expeditious enforcement of agreements to arbitrate." *Tallman v. Eighth Judicial Dist. Court,* 131 Nev. 713, 718, 359 P.3d 113, 117 (2015); *see Phillips v. Parker,* 106 Nev. 415, 417, 794 P.2d 716, 718 (1990). Arbitration has numerous benefits that lead parties to choose it over litigation. It is faster and permits the parties to rely on an arbitrator with "specialized knowledge and competence." *Clark Cty. Pub. Emps. Ass'n v. Pearson,* 106 Nev. 587, 597, 798 P.2d 136, 142 (1990) (quoting *Exber, Inc. v. Sletten Constr. Co.,* 92 Nev. 721, 729, 558 P.2d 517, 522 (1976)). It is also usually less expensive than litigation. *See Burch v. Second Judicial Dist. Court,* 118 Nev. 438, 442, 49 P.3d 647, 650 (2002). And arbitration typically enjoys a "presumption of privacy and confidentiality."[4] *See Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.,* 559 U.S. 662, 686, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010) (internal quotation marks omitted). In the context of a dispute about arbitrability, we have repeatedly held that courts must err on the side of arbitration and cannot lightly deprive parties of those benefits.

News+Media Capital Group LLC v. Las Vegas Sun, Inc., 137 Nev. Adv. Op. 45, 495 P.3d 108, 114 (2021).

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The Court concluded:

> Nevada law permits contracting parties to agree to binding private arbitration in order to take advantage of the benefits thereof: speed, privacy, lower cost, and adjudicators expert in a particular subject matter. Abbreviated judicial review is a feature, not a bug, of those parties' choice. If the parties or their counsel anticipate desiring substantive judicial review, that is something they must consider before agreeing to arbitration in the first place. Plenary judicial review of the merits would transform binding arbitration into little more than mediation and would make lengthy and expensive appeals common—as this case illustrates well.

Id., 495 P.3d at 119.

The Court reaffirmed:

> [T]he grounds for overturning an arbitration award are extremely limited and that errors of fact or law—even arguably serious ones—do not justify vacating an award. An arbitrator's misinterpretation of an agreement constitutes an excess of authority only if the adopted interpretation is not even minimally plausible. A factual finding is arbitrary and capricious only if it is not supported by substantial evidence in the record. And an arbitrator manifestly disregards the law only when he or she *knowingly* disregards clearly controlling law. Here, the parties alleged numerous errors, but none of those errors support vacatur or modification under the narrow statutory or common-law grounds stated above.

Id., 495 P.3d at 119.

Appellant Washoe County School District (District or WCSD), with no hyperbole, believes matters attacking arbitration awards are as significant to upholding Nevada's strong public policy as matters seeking to compel arbitration. The Supreme Court retains "[a]ppeals from orders denying motions to compel

arbitration" pursuant to NRAP 17(a)(1). As such, this matter should be retained by the Supreme Court to uphold strong public policy favoring arbitration of disputes.

II. ARGUMENT

A. Mr. Edlund Misconstrues the District Court Judge's Authority, Standards of Review and his Required Burden of Proof Needed to Vacate or Modify an Arbitration Award.

Mr. Edlund's Answering Brief is a conglomeration of distorted legal analysis, confusions and red herrings.

At section VI Summary of the Argument, Mr. Edlund announces an expansion of authority for Nevada district court judges when reviewing an arbitrator's award, to wit – "Judge Sigurdson was justified in exercising her inherent equitable powers to prevent a miscarriage of justice against Mr. Edlund." (Answering Brief at p. 10) Mr. Edlund cites no law or authority for this expanded authority.

Then, in section VII Standards of Review of the Answering Brief, Mr. Edlund fails to recognize the very limited scope afforded a district court in reviewing an arbitration award, and that, as the party attacking the arbitration award at the district court, he had the burden to prove his case by a 'clear and convincing evidence' standard. The law in Nevada is clear, "The scope of judicial review of an arbitration award is limited and is nothing like the scope of an appellate court's review of a trial court's decision. The party seeking to attack the validity of an arbitration award has the burden of proving, by clear and convincing evidence, the statutory or common-

law ground relied upon for challenging the award." Health Plan of Nevada, Inc. v. Rainbow Med., LLC., 120 Nev. 689, 695, 100 P.3d 172, 176 (2004). The law severely limits review of arbitration awards by the reviewing court.

> This is because the value of arbitration is that parties avoid the "higher costs and longer time periods associated with traditional" courts. And obviously, the more scrutiny courts apply to the arbitration process the less arbitration serves these purposes.
>
> To protect arbitration's efficiency, the law places two significant limitations on a party seeking to vacate an award in court. First, an evidentiary one: the challenging party must prove its case not merely by a preponderance of the evidence, but by clear and convincing evidence.[21] Second, the grounds for challenging an award are narrow. Simply pointing out that the arbitrator made some mistake about the law or facts is generally not enough.

Lift Equip. Certification Co., Inc. v. Lawrence Leasing Corp., 215CV01987JADGWF, 2016 WL 5346951, at *2 (D. Nev. Sept. 23, 2016).

Then, in order to try and make cupcakes out of cow pies, the Answering Brief cites to cases involving vacating or confirming arbitration awards pursuant to NRS 38.241 and the common law grounds for attacking an arbitration award and attempts to conflate those case with why the district court had authority to modify the merits of the Harris Arbitration Award. (*See*, Answering Brief at pp. 20-23) Mr. Edlund states, "Further, Edlund requested that the Court review and modify Arbitrator Harris' decision according to the provisions of the common law, which the Nevada Supreme Court has expressly adopted in reviewing arbitration awards. *Clark County Education Association and Isabell Stuart v. Clark County School District*, 122 Nev.

337, 341, 131 P.3d 5, 8 (2006). 'Nevada recognizes both common-law grounds and statutory grounds for examining an arbitration award.' *Health Plan of Nev., Inc. v. Rainbow Med., LLC*., 120 Nev. 689, 691, 100 P.3d 172, 174 (2004)." (Answering Brief at pp. 21- 22) In fact, neither of these cases discuss a district court having the authority to modify an arbitration award on common law grounds. The Stuart case is based off a motion to vacate an arbitration award brought by the employee union on behalf on the employee Isabell Stuart. The Court concluded, "The arbitrator's findings were not arbitrary, capricious, or unsupported by the arbitration agreement. Rather, the arbitrator's findings are supported by substantial evidence contained in the record. Similarly, the arbitrator did not manifestly disregard the law concerning NRS 391.313. Therefore, we affirm the district court's order confirming the arbitration award." Clark Cnty. Educ. Ass'n v. Clark Cnty. Sch. Dist., 122 Nev. 337, 346, 131 P.3d 5, 11 (2006). Similarly, the Health Plan case was a motion to vacate an arbitration award. The Health Plan Court concluded, "We recognize that the district court improperly remanded the case to the arbitrator for clarification. Nevertheless, we conclude that the arbitrator did not exceed the scope of his authority or manifestly disregard the law. Consequently, we affirm the district court's order confirming the arbitration award." Health Plan, 120 Nev. at 700, 100 P.3d at 179.

Also in section VII(c) of the Answering Brief, Mr. Edlund attempts a slight of hand maneuver to turn his burden of proof into the District's burden, just as he attempted to do in his Reply to Opposition to Motion to Vacate, or in the Alternative, Modify the Arbitrator's Opinion and Award (MTV/M Reply) at the district court level. Mr. Edlund states in his Answering Brief, "Although the Court has expressly stated that a court may vacate an arbitration award under the common law if it is arbitrary and capricious, unsupported by the agreement, or when an arbitrator has manifestly disregarded the law, a court may also modify an arbitrator's award under its inherent powers under the common law, *and WCSD has cited no authority that the Court's powers under the common law that state otherwise*." (Answering Brief at p. 22) (Emphasis added.) Plaintiff cited to no case law where a court modified an arbitration award based upon common law grounds. In his MTV/M Reply, Mr. Edlund argued, "Although the Nevada Supreme Court has expressly stated that a court may vacate an arbitration award if it is arbitrary and capricious, unsupported by the agreement, or when an arbitrator has manifestly disregarded the law, *the undersigned counsel has found no authority for the proposition that a Court may not also modify an arbitrator's award under these same circumstances.*" (JA0503-0504, vol. 3) Mr. Edlund fails to recognize that his acknowledgement that there is no authority to support his arguments does not help him meet his high burden to prove his case by clear and convincing evidence. Mr. Edlund has cited no Nevada case

specifically upholding a district court's use of common law grounds of arbitrary and capricious or manifest disregard of the law to modify an arbitration award let alone modify the merits of an award. However, Mr. Edlund does try to stretch and distort this Court's Opinion in the recent News+Media matter by stating in the Answering Brief, "Recently, this Court held that where an arbitrator manifestly disregards the law, "those errors support ***vacatur or modification*** under the narrow statutory or common-law ground[s]. [sic] [***emphasis added***] *News-Emedia* [sic] *Capital Grp. Ltd. Liab. Co. v. Las Vegas Sun, Inc.*, 495 P.3d 108, 119 (Nev. 2021). Although the Court has expressly stated that a court may vacate an arbitration award under the common law if it is arbitrary and capricious, unsupported by the agreement, or when an arbitrator has manifestly disregarded the law, a court may also modify an arbitrator's award under its inherent powers under the common law, . . ." (Answering Brief at p. 22)

Mr. Edlund egregiously takes a partial footnote (not properly cited to in the Answering Brief) in the News+Media Opinion out of context and emphasizes the "or modification" excerpt from the footnote in order to insinuate the Court modified an arbitration award based upon manifestly disregarding the law. The full language of the News+Media Opinion that Mr. Edlund's inaccurate citation is footnoted to states, "Thus, the Sun has not met its burden to prove this ground for vacatur with "clear and convincing evidence." *Health Plan,* 120 Nev. at 695, 100 P.3d at 176.[9]"

News+Media, 495 P.3d at 117–18. Footnote 9 states, "We reach the same conclusion under NRS 38.242(l)(a), which permits a court to modify or correct, rather than vacate, an award. Even if the arbitrator made a "mathematical miscalculation" by failing to include the Sun's transcription and related costs, such mistake is not "evident" in the absence of evidence showing the amount of those costs." Id., 495 P.3d at 119. The Court's footnote 9 is directly related to NRS 38.242(1)(a), not some common law ground. Mr. Edlund's use of the News+Media case is a red herring and another example of his using a vacatur/confirmation of arbitration award cases to inappropriately morph into modification of award cases.[1]

The Court should disregard Mr. Edlund's incorrect and inappropriate distorted legal analysis regarding the district court's review authority, standards of review and his burden of proof.

B. The Court Should Disregard Mr. Edlund's Erroneous and Ineffective use of the "Minimally Plausible" Standard in the Court Analysis used for the "arbitrator exceeded his or her powers" to show Arbitrator Harris Finding Mr. Edlund was "Reckless".

The Answering Brief argues, "Based on the contradictory nature of Arbitrator Harris' finding that Mr. Edlund was "reckless," Arbitrator Harris' finding is not "minimally plausible." *News-Emedia* [sic] *Capital Grp. Ltd. Liab. Co. v. Las Vegas Sun, Inc*., 495 P.3d 108, 119 (Nev. 2021)." (Answering Brief at pp. 11-12)

[1] The Court may take judicial notice of the News+Media Supreme Court briefs, which reveal the scant discussions of modification of an award.

Mr. Edlund's use of "minimally plausible" in an arbitrary and capricious analysis is misapplied and misrepresents the Court's holding in the News+Media case. In that case the Court holds:

> The statutory grounds for vacatur are delineated in NRS 38.241. The only one arguably relevant here is that the "arbitrator exceeded his or her powers." NRS 38.241(l)(d). "Arbitrators exceed their powers when they address issues or make awards outside the scope of the governing contract.... [But arbitrators do not exceed their powers if their interpretation of an agreement, even if erroneous, is rationally grounded in the agreement."

News+Media, 495 P.3d at 115, citing to Health Plan, 120 Nev. at 697-98, 100 P.3d at 178 (Footnote omitted). "A court will not find that the arbitrator exceeded his or her powers by misinterpreting the contract unless there is not even a minimally plausible argument to support the arbitrator's decision." News+Media, 495 P.3d at 116.

The Court should disregard Mr. Edlund's "minimally plausible" argument because it does not relate to the arbitrary and capricious analysis.

C. The District Court Had No Authority to Modify the Merits of the Harris Award by Summarily Rejecting Arbitrator Harris' Interpretation of NRS 391.750(4) and Inserting Its Own Interpretation "Reckless".

Mr. Edlund, for the first time during the course of this entire matter and apparently out of thin air, puts forth the specious argument that now, somehow, NRS 1.030 is controlling law and a district court judge has "inherent equitable powers" to "prevent manifest injustice" "where an arbitrator acts so completely without

justification, or acts irrationally, or outside of the scope of the law." (Answering Brief at p. 2) In another misleading analysis, as authority to support this argument Mr. Edlund cites to Jones v. Eighth Judicial Dist. Court of the State, 130 Nev. 493, 498, 330 P.3d 475, 479 (2014) quoting Jordan v. State ex rel. DMV & Pub. Safety, 121 Nev. 44, 59, 110 P.3d 30, 41 (2005). These cases are easily distinguished from the case at bar. In both cases cited by Mr. Edlund, the issue is the courts authority to limit vexatious litigants' access the courts. "[T]his court recognized that Nevada courts have 'the power to permanently restrict a litigant's right to access the courts,' *Jordan v. State ex rel. Dep't of Motor Vehicles & Public Safety,* 121 Nev. 44, 59, 110 P.3d 30, 41–42 (2005), and approved procedures to guide courts in determining whether to restrict a litigant's access to the courts and in narrowly tailoring a restrictive order, *id.* at 60–62, 110 P.3d at 42–44." Jones, 130 Nev. at 497, 330 P.3d at 478. Also, unlike the case at bar in which NRS 38.241 and NRS 38.242 are controlling, the Jones and Jordan courts are recognizing the court's power because there is no Nevada statute on point.

> Although Nevada does not have a specific vexatious-litigant statute, we conclude that the district courts have inherent authority to issue orders that restrict a litigant's filings that challenge a judgment of conviction and sentence if the court determines that the litigant is vexatious. Similar to the federal and state courts and this court's conclusions in *Jordan,* the authority to issue a restrictive order is based on the fact that the courts are constitutionally authorized to issue all writs proper and necessary to complete the exercise of their jurisdiction and that "courts possess inherent powers of equity and of control over the

> exercise of their jurisdiction." *Jordan,* 121 Nev. at 59, 110 P.3d at 41 (citing Nev. Const. art. 6 §§ 4, 6(1)).

Jones, 130 Nev. at 498, 330 P.3d at 479.

The cases cited by Mr. Edlund do not stand for the proposition that a district court has "inherent equitable powers" to "prevent manifest injustice" by substituting its opinions and interpretations of law and fact for that of an arbitrator selected by parties to a collective bargaining agreement. The statutes and case law in Nevada spell out the very limited scope of review of district court judges in such matters.

Mr. Edlund then cites to a Minnesota case[2] holding, Minnesota did not abrogate its common law arbitration, specifically oral contracts to arbitrate, when it adopted the Minnesota Uniform Arbitration Act in 1957. (Answering Brief at p. 24) The case is not relevant and not persuasive. The District is not arguing the Court should abrogate Nevada common law. The District is arguing that under Nevada law the district court has very limited scope of review and cannot modify the merits an arbitrator's award pursuant to some common law or "inherent equitable power" in order to give the parties a different remedy (back pay) even if the arbitrator was arbitrary and capricious or manifestly disregarded the law. In such cases, the district court can confirm, vacate and remand back to a different arbitrator pursuant to NRS

[2] Anderson v. Federated Mut. Ins. Co., 481 N.W.2d 48, 49 (Minn. 1992).

38.241. *See*, Health Plan, 120 Nev. at 697, 100 P.3d at 177; *see also*, Manor Health Care Ctr., Inc. v. Monsour, 126 Nev. 735, 367 P.3d 796 (2010).

There is no evidence, argument or case law contained in the Answering Brief or the arbitration record to find that Mr. Edlund proved by clear and convincing evidence that Arbitrator Harris was arbitrary and capricious or manifestly disregarded the law allowing the Court to affirm the district court's order modifying the Harris Award by changing the remedy or to vacate the Harris Award. Therefore, the Court must reverse the district court order and confirm the Harris Award.

III. CONCLUSION

The Court should find and order:

1. The Harris Award is not arbitrary and capricious;

2. The lower court exceeded its limited review of whether the Harris Award was arbitrary and capricious;

3. Arbitrator Harris did not manifestly disregard the provisions of NRS 391.760 in the Harris Award;

4. The lower court exceeded its extremely limited reviewing authority regarding the issue of whether Arbitrator Harris manifestly disregarded the law;

5. The lower court erroneously and improperly modified the Harris Award pursuant to NRS 38.242 because the limited statutory reasons allowing modification of an award contained in NRS 38.242 are not present in this case;

6. Mr. Edlund's Motion to Vacate, or in the Alternative to Modify, Arbitrator's Opinion and Award is denied in its entirety and the Harris Award is confirmed pursuant to NRS 38.241(4); and

7. The District is entitled to attorney's fees, costs and expenses pursuant to NRS 38.243.

AFFIRMATION PURSUANT TO NRS 239B.030: The undersigned does hereby affirm that the preceding document **DOES NOT** contain the social security number of any person.

DATED this 25th day of May, 2022.

WASHOE COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: /s/Christopher B. Reich, Esq.
CHRISTOPHER B. REICH, ESQ.
Nevada Bar No. 10198
Deputy Chief General Counsel
NEIL A. ROMBARDO, ESQ.
Nevada Bar No. 6800
Chief General Counsel
SARA K. MONTALVO, ESQ.
Nevada Bar No. 11899
General Counsel
ANDREA L. SCHULEWITCH, ESQ.
Nevada Bar No. 15321
Associate General Counsel
Washoe County School District
P.O. Box 30425
Reno, NV 89520-3425

Attorneys for Appellant
WASHOE COUNTY SCHOOL DISTRICT

ATTORNEY'S CERTIFICATE OF COMPLIANCE

I hereby certify that this Appellant's Reply 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 it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font and type style Times New Roman.

I further certify that this Appellant's Reply Brief complies with the page limitations of NRAP 32(a)(7)(A)(i).

I hereby certify that I have read this this Appellant's Reply 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.

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I understand that I may be subject to sanctions in the event that this Appellant's Reply Brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 25th day of May, 2022.

WASHOE COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: /s/Christopher B. Reich, Esq.
CHRISTOPHER B. REICH, ESQ.
Nevada Bar No. 10198
Deputy Chief General Counsel
NEIL A. ROMBARDO, ESQ.
Nevada Bar No. 6800
Chief General Counsel
SARA K. MONTALVO, ESQ.
Nevada Bar No. 11899
General Counsel
ANDREA L. SCHULEWITCH, ESQ.
Nevada Bar No. 15321
Associate General Counsel
Washoe County School District
P.O. Box 30425
Reno, NV 89520-3425

Attorneys for Appellant
WASHOE COUNTY SCHOOL DISTRICT

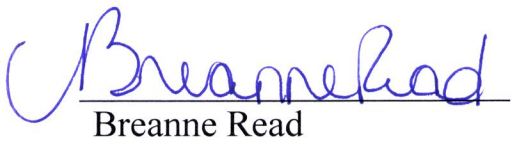
CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certify that I am an employee of the WASHOE COUNTY SCHOOL DISTRICT OFFICE OF THE GENERAL COUNSEL and that on this date I served a true and correct copy of the preceding document upon:

Luke Busby, Esq.
Luke Andrew Busby, Ltd.
316 California Ave. #82
Reno, Nevada 89509
Attorney for Caidyn Edlund

by electronically filing the foregoing document with the Clerk of the Court which served Mr. Busby electronically.

DATED this 25th day of May, 2022.



Breanne Read