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City of Reno v. Building & Construction Trades Council of Northern Nevada, 127 Nev. Adv. Op. No. 10 (March 31, 2011)¹
CIVIL PROCEDURE – JUDICIAL REVIEW

Summary

An appeal from district court order granting judicial review in a prevailing wage action.

Disposition/Outcome

The Court affirmed the district court’s judgment, that the City of Reno (“the City”) has a duty to investigate prevailing wage discrepancies, but rejected the district court’s reasoning. The Court also affirmed the district court’s ruling that the Labor Commissioner has jurisdiction to enforce prevailing wage laws to all STAR bond-funded projects.

Factual and Procedural History

In 2005, the Nevada Legislature enacted the Tourism Improvement District Law, NRS Chapter 271A, which enumerates requirements for sales tax anticipation revenue (“STAR”) bond funds. STAR bonds use sale taxes to assist in the funding of local improvement projects. In addition to STAR bonds, local governments fund these improvement projects by instating reimbursement payments after the project is completed.

The first project under this law was the construction of the retail store, Cabela’s in Reno. The City of Reno entered into a public financing agreement with Cabela’s. In the agreement, the parties “referred to NRS 338.010 to NRS 338.090, which provisions deal with publicly financed projects; specifically, NRS. 338.020 to NRS 338.090 mandate the payment of prevailing wages on all projects funded through a public body.”² Throughout the project’s construction, unions filed numerous complaints alleging that they were not receiving prevailing wages. Additionally, the unions contended that the City failed to fulfill its duty to investigate whether workers received prevailing wages, thus violating provisions NRS 338.020 through NRS 338.090. NRS 338.070(1) requires a public body that has awarded a contract to investigate prevailing wage discrepancies.

Respondents, Building & Construction Trades Council of Northern Nevada et. al., filed complaints with the Labor Commissioner alleging that workers on a construction project did not receive prevailing wages. The Labor Commissioner decided that the City did not have a statutory duty to investigate prevailing wage claims, and therefore the Labor Commissioner did not consider whether the City’s conduct, failing to investigate, was proper. The Labor Commissioner also concluded that he did not have the jurisdiction to consider the claims against the contractors.

The unions filed a petition for judicial review. The district court held, pursuant to NRS 338.070, that the city had a duty to investigate prevailing wage discrepancies on the Cabela’s

¹ By Marissa Pensabene.

² 127 Nev. Adv. Op. No. 10 at 5 (March 31, 2011).

project, and therefore the Labor Commissioner's decision was unreasonable. Since the district court also concluded that the Labor Commissioner had jurisdiction to review wage claims, the Labor Commissioner's order was reversed and remanded to the Labor Commissioner for further proceedings. The City of Reno appealed the district court's ruling.

Discussion

The City has a Contractual Duty to Investigate

Petitions for judicial review of administrative decisions are questions of law, which are decided "without deference to any agency determination."³ Additionally, the Court does not give any deference to the district court's decision when reviewing an order regarding a petition for judicial review.

The Court held that the City had a duty to investigate whether prevailing wages were being paid on the Cabela's project. However, this duty to investigate is not derived from the statutes: instead, it is a contractual duty rooted in the financing agreement between the City and Cabela's. The financing agreement specifically stated prevailing wages would be paid and that the parties would comply with NRS 338.010 through NRS 338.090. The City was contractually required to investigate prevailing wage discrepancies.

Carson-Tahoe is Inapplicable

The Court refuted the City's contention that a *Carson-Tahoe Hospital v. Building Construction Trades* analysis is applicable. In *Carson*, a private organization funded the construction of a new hospital using economic development bonds authorized by the city board. The Court held the duty to investigate prevailing wages was not statutorily mandated.⁴ The Court differentiated *Carson-Tahoe* from the present case by stating the economic development revenue bonds, which financed the construction of the new hospital, did not utilize public money. Therefore, the Court concluded, "the payment of prevailing wages was not required because the contract did not involve a public body or a public work."⁵

The Labor Commissioner has Jurisdiction

The Supreme Court of Nevada reviews a district court's interpretation of a statute *de novo*.⁶ The statute will be interpreted by its plain language, unless it is clearly evident that the Legislature did not intend such a meaning.⁷

NRS 271A.130(3) states that NRS 338.010 to 338.090 apply to any contract or agreement for projected financed with a STAR bond. Specifically, NRS 338.020 mandates prevailing

³ Jones v. Rosner, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986).

⁴ Carson-Tahoe Hospital v. Building Construction Trades, 122 Nev. 218, 128 P.3d 1065 (2006).

⁵ 127 Nev. Adv. Op. No. 10 at 8 (March 31, 2011) (citing Carson-Tahoe Hospital v. Building Construction Trades, 122 Nev. 218 at 222, 128 P.3d 1065 at 1068 (2006)).

⁶ State Dep't of Mtr. Vehicles v. Frangul, 110 Nev. 46, 48, 867 P.2d 397, 398 (1994).

⁷ *Id.*

wages be paid to public project workers and NRS 338.015 requires the Labor Commissioner to “enforce the provisions of NRS 338.010 to 338.130, inclusive.” The Court interpreted NRS 271A.130 by looking at the statute’s plain language and concluded that the Labor Commissioner has jurisdiction to enforce prevailing wage laws on projects funded with STAR bonds.

Conclusion

A city has a contractual duty to investigate the prevailing wage discrepancies when that city enters into a contract financed by STAR bonds. Furthermore, the Labor Commissioner has jurisdiction to enforce prevailing wages laws on projects receiving STAR bond funds.