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Redevelopment Agency of the City of Sparks v. Nevada Labor Commissioner, 140 Nev. Adv. Op. 44 (June 27, 2024)

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UNDER NRS 279.500(2), FUTURE COMPENSATION DOES NOT AUTOMATICALLY EQUATE A FINANCIAL INCENTIVE THAT WOULD REQUIRE PREVAILING-WAGES.

Summary

Considering the language of NRS §279.500(2)(c), the Nevada Supreme Court answered whether non-cash consideration, rather than money up front, created a financial incentive that would require the payment of prevailing wages on a development project. In this case, the City of Sparks and the Sparks Redevelopment Agency (“RDA”) conveyed property to a developer in exchange for the maintenance of public parking on the property for fifty years. The Court stated that this future compensation did not create a financial incentive, and therefore, NRS 279.500(2)(c) was not invoked. Subsequently, the developer was not required to pay prevailing wages on the project.

Background

This is an appeal from a district court order denying judicial review of a Labor Commissioner decision. The Nevada Supreme Court considered Nevada’s Community Redevelopment Law, which requires a redevelopment agency’s agreement with a property developer to include a clause requiring payment of prevailing wages where the agency transfers property to the developer for less than its fair market value,² or provides financial incentives to a developer worth more than \$100,000.³

Here, the RDA conveyed city-owned property to a developer. Further, the property included an aging four-story public parking garage. Initially, the RDA rejected the developer’s proposal to pay cash for the property, equal to its fair market value, because of the need for public parking in the downtown redevelopment area. However, the parties eventually reached an agreement in which the developer agreed to a deed restriction requiring the developer to provide and maintain free public parking on the property for at least fifty years in exchange for the property.

The RDA appraised the property to establish the property’s fair market value and determined whether it needed to require the developer to pay prevailing wages under NRS 279.500(2). The RDA concluded that the parking garage would yield a value of \$54,000 per year, with the benefit over fifty years being \$1.4 million – more than the property’s fair market value of \$950,000. Based on these findings, the transaction was outside the scope of NRS 279.500(2) and the Disposition and Development Agreement (DDA) included a clause stating that the developer did not have to pay prevailing wages on the project.

When the developer did not pay prevailing wages on the project, respondent Laborers’ International Union of North America, filed a complaint against the RDA with the Office of the Labor Commissioner. Subsequently, the Labor Commissioner conducted an evidentiary hearing,

¹ By Alyson Smith.

² NEV. REV. STAT. § 279.500(2)(a).

³ NEV. REV. STAT. § 279.500(2)(c).

holding that the RDA's public parking covenant provided future compensation. The Labor Commissioner held that because the RDA did not require the developer to pay any money up front, the developer had a financial incentive worth more than \$100,000.

Finally, the RDA filed a petition for judicial review of the Labor Commissioner's decision. The petition was denied and the Labor Commissioner's decision in regard to the application of NRS 279.500(2) was upheld.

Discussion

The question on appeal was whether the future compensation satisfied the intent of NRS 279.500, or whether it created a financial incentive because the terms of the DDA spread the future compensation and contractual rights over fifty years. The Labor Commissioner broadened the reach of NRS 279.500(2)(c) by concluding that it would violate the statute's intent to allow a developer to acquire property for future compensation rather than cash without requiring the developer to pay prevailing wages. The Nevada Supreme Court found this to be error, holding that the plain language of NRS 279.500 did not require the payment of prevailing wages. Although the compensation was spread over fifty years, the Court held that transferring property in exchange for future services does not automatically provide a financial incentive.

In reaching its decision, the Nevada Supreme Court looked to the plain language of the statute, which does not mention future compensation or require prevailing wages where a property is sold for anything besides cash. The statute also does not contain language stating that a redevelopment agency must include prevailing-wage language in a DDA if it sells a property for anything besides cash up-front. The Court held that it was error for the Labor Commissioner to equate future compensation with financial incentive and concluded that the acceptance of non-cash consideration does not automatically create a financial incentive. Equating financial incentive with future compensation would require prevailing wages in any situation where a redevelopment agency transfers property to a developer for any non-cash consideration, impermissibly expanding the reach of NRS 279.500(2)(c).

The Court went on to state that even if the RDA's transfer of the property in exchange for future public parking rights could create a financial incentive, substantial evidence does not exist to support a finding that such an incentive existed in this case. Rather, the evidence established that the developer preferred a cash transaction, indicating that the non-cash consideration operated as more of a disincentive than a financial incentive. Because the RDA did not provide a financial incentive exceeding \$100,000, NRS 279.500 did not require the application of prevailing-wage provisions to the agreement between the RDA and developer.

Conclusion

In the context of NRS 279.500(2)(c), the Nevada Supreme Court held that transferring property in exchange for future services does not automatically provide a financial incentive that would invoke the prevailing-wage provisions of the statutes. In this case, the RDA's transfer of the property to the developer in exchange for future public parking did not create a financial incentive that would require the developer to pay prevailing wages on the project. Without a finding that the value of the parking obligation was less than the fair market value of the property, or evidence of a financial incentive worth more than \$100,000, prevailing wages were

not required. The Nevada Supreme Court reversed and remanded to the district court with instructions to grant the RDA's petition for judicial review.