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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

**BUILDING & CONSTRUCTION TRADES
COUNCIL OF NORTHERN NEVADA;
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 401;
PAINTERS AND ALLIED TRADES, LOCAL 567;
and SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION, LOCAL 26,**

**Case No. CV08-01727
Dept. No. 8**

Petitioners,

vs.

**OFFICE OF THE LABOR COMMISSIONER OF
THE STATE OF NEVADA; and CITY OF RENO,**

Respondents.

ORDER REMANDING LABOR COMMISSIONER'S OPINION

Building & Construction Trades Council of Northern Nevada; International Brotherhood of Electrical Workers, Local 401; Painters and Allied Trades, Local 567; and Sheet Metal Workers International Association, Local 26, ("Petitioners") present this Court with a *Petition for Judicial Review* ("Petition"). The Office of the Nevada State Labor Commissioner ("Labor Commissioner"), and the City of Reno ("City") each present this Court with an *Answering Brief*. Cabela's Wholesale, Inc. ("Cabela's"), as a Party in Interest, also presents this Court with an *Answering Brief*. This Court having considered all papers and pleadings on file herein, finds and concludes as follows.

This action arose out of the construction of a retail store in Reno called "Cabela's." Cabela's was the first project undertaken under Nevada Revised Statute Chapter 271A,

1 the "Tourism District Improvement Law," adopted in 2005, which set out the requirements
2 for sales tax anticipation revenue bonds, commonly referred to as "STAR Bonds."

3 The Labor Commissioner received various complaints regarding the construction of the
4 Cabela's retail store, claiming that the project was a public works project and subject to the
5 provisions of NRS 338. Notices of prevailing wage complaints were sent by the Labor
6 Commissioner to various parties, and on January 9, 2008, an answer was filed by the City
7 to those complaints. A Motion to Dismiss was filed by the City, which was opposed.

8 The Labor Commissioner denied the motion, and the matter was scheduled for hearing
9 on April 15, 2008. The Labor Commissioner rendered an Opinion and Order ("Opinion") in
10 favor of the City, and against the Petitioners in this matter. The Petition for Judicial Review
11 followed.

12 Petitioner contends that the Labor Commissioner committed error when he concluded
13 that he lacked jurisdiction to review this matter, that Cabela's does not meet the definition
14 of a contractor, that the City of Reno is not a party to the construction contract, and that the
15 Cabela's project is not a "public work."

16 Judicial Review

17 This Court's review is confined to the record. NRS 233B.135. The court may remand
18 or affirm the final agency decision, or set it aside in whole or in part, if substantial rights of
19 the petitioner have been prejudiced because the final decision is: (a) In violation of
20 constitutional or statutory provisions; (b) In excess of the statutory authority of the agency;
21 (c) Made upon unlawful procedure; (d) Affected by other error of law; (e) Clearly erroneous
22 in view of the reliable, probative and substantial evidence on the whole record; or (f)
23 Arbitrary or capricious or characterized by abuse of discretion. NRS 233B.135(3).

24 "The standard of deference accorded to an administration decision on review turns
25 largely on whether the issues raised by that decision are more appropriately deemed
26 questions of law or fact. An administrative fact-based determination is entitled to a
27 deferential standard of review." Southern Nevada Operating Engineers v. Labor

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1 Commissioner, 121 Nev. 523, 527-28, 119 P.3d 720, 724 (2005) (citations omitted); NRS
2 233B.135. Legal questions are reviewed de novo. Id.

3 As a preliminary matter, the Court finds that the Labor Commissioner is charged with
4 the enforcement of prevailing wage laws. "The Labor Commissioner shall enforce the
5 provisions of NRS 338.010 to 338.130, inclusive." NRS 338.015(1). NRS 271A.130(3)(a)
6 provides: "The provisions of NRS 338.010 to 338.090, inclusive, apply to any contract or
7 other agreement for the construction, improvement, repair, demolition or reconstruction of
8 any project that is paid for in whole or in part [f]rom the proceeds of bonds or notes issued
9 pursuant to paragraph (a) of subsection 1 of NRS 271A.120 ["STAR Bonds"]."

10 Upon a plain reading of the statute, the Court finds that the Commissioner has the clear
11 authority to enforce prevailing wage laws on projects financed with STAR Bonds, such as
12 Cabela's.

13 Legislative Intent

14 The Court finds that NRS Chapter 271 is unambiguous in that it provides that contracts
15 for the construction of projects paid for by the proceeds of STAR Bonds are subject to
16 prevailing wages.

17 NRS 271A.130(3), states: "The provisions of NRS 338.010 to 338.090 [the prevailing
18 wage statutes], inclusive, apply to any contract or other agreement for the construction,
19 improvement, repair, demolition or reconstruction of any project that is paid for in whole or
20 in part: (a) From the proceeds of bonds or notes issued pursuant to paragraph (a) of
21 subsection 1 of NRS 271A.120 ["STAR Bonds"]; or (b) Pursuant to an agreement for
22 reimbursement entered into pursuant to paragraph (b) of subsection 1 of NRS 271A.120,
23 *regardless of whether the project is publicly owned.*" Id. (emphasis added).

24 Indeed the Labor Commissioner found that the legislative intent behind NRS Chapter
25 271 was clear. In his Opinion, the Labor Commissioner found the following:

26 [T]he City of Reno has made a good faith effort to try and abide by what they
27 believe was the Legislature's intent; that prevailing wages be paid on the
28 project.... The Financing Agreement requires Cabela's to adhere to the
prevailing wage statutes and even includes the appropriate prevailing wage rate
tables as published by the Labor Commissioner and it does not appear that
anyone is arguing that the workers on the project should not be paid the

1 prevailing wages.... If we assume that, after all is said and done, the workers on
2 the Cabela's project were supposed to be paid prevailing wages for their work, all
3 is not lost. The City and Cabela's agreed to language in the Financing
4 Agreement that, on the surface, indicates that the intent of the parties was, in
5 fact, to ensure that workers were paid prevailing wages. The language indicates
6 that this be done in a manner that, at the very least, paralleled the processes for
7 a more traditional type of prevailing wage project. Opinion, pp. 14-15, ll. 19-9.

8 The Labor Commissioner found, what he termed a "universal perception of the intent of
9 the STAR Bond statutes," that is, that the Cabela's project was one in which workers were
10 to be paid prevailing wages. Opinion, p. 15, l.12.

11 "When the Legislature uses plain ordinary language, which clearly expresses a definite
12 idea, we do not know why the courts should go out of their way to so construe the
13 language used as to convey a different meaning." Eddy v. State Board of Embalmers, 40
14 Nev. 329, 163 P. 245, 246 (1917).

15 And yet, despite the Labor Commissioner's underlying findings that both the Legislature
16 and the parties intended prevailing wages to be paid on projects such as Cabela's, he
17 went on to find that no prevailing wages were required to be paid in this case. The
18 Commissioner's Opinion leads to an absurd result.

19 The Commissioner's Opinion provides that even though both the Legislature and the
20 parties intended for prevailing wages to be paid on projects funded by STAR Bonds,
21 because of a hyper-technical statutory reading of the words "contractor" and "construction
22 contract," the City has no duty to investigate claims that prevailing wages were not paid on
23 the Cabela's project, and the Labor Commissioner has no obligation to enforce violations
24 of prevailing wage laws. This Court declines to adopt such a technical reading of the
25 statutory language.

26 As the Nevada Supreme Court instructs: "We have long adhered to the position that a
27 statute should be interpreted 'in light of the policy and the spirit of the law, and the
28 interpretation should avoid absurd results.' Additionally, we have consistently held that we
will resolve any doubt concerning the legislature's intent in favor of what is reasonable,
versus what is unreasonable." State v. Kopp, 118 Nev. 199, 204, 43 P.3d 340, 343 (2002)
(citing Hunt v. Warden, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995)).

1 Accordingly, this Court cannot affirm the Labor Commissioner's conclusion that "it is
2 reasonable to conclude that the City of Reno does not have any statutorily required duties
3 under the provisions of NRS 338.010 through 338.090 on the instant Cabela's project even
4 though it was financed, at least in part, under the provisions of the STAR Bond statutes in
5 NRS Chapter 271A." Opinion, p. 15, ll.20-24. Upon review, the Court finds that the
6 Commissioner's legal conclusion is erroneous in view of the evidence on the whole record,
7 and therefore must be vacated.

8 Furthermore, the Court cannot affirm the Labor Commissioner's legal conclusion that
9 Carson-Tahoe Hospital controls the Labor Commissioner's Opinion in this case. Carson-
10 Tahoe Hospital v. Building & Construction Trades Council of Northern Nevada, 122 Nev.
11 218, 128 P.3d 1065 (2006). In Carson-Tahoe Hospital, the Nevada Supreme Court found
12 that if a project does not fit the definition of a public work, does not involve a public body,
13 and is not financed by the use of public money, then the plain language of NRS
14 244A.763(5) does not require prevailing wages. Id. at 221, 1067.

15 Here, as noted above, the Court finds that the plain language of NRS Chapter 271
16 provides that prevailing wages be paid on projects funded by STAR Bonds. Specifically,
17 NRS 271A.130(3) provides that NRS 338.010 to 338.090, the prevailing wage statutes,
18 apply "regardless of whether the project is publicly or privately owned." This distinction
19 between the statutory language in Carson-Tahoe Hospital, and the statutory language
20 here, is one that must make a difference. Accordingly, the Court finds that Carson-Tahoe
21 Hospital is not controlling in this case, and the Labor Commissioner's legal conclusion is
22 therefore erroneous and must be vacated.

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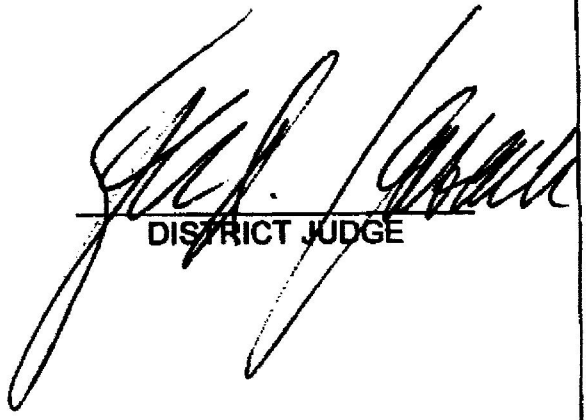
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In conclusion, the Court does hereby SET ASIDE the Commissioner's Opinion, and the case is REMANDED for further proceedings not inconsistent with this decision.

IT IS SO ORDERED.

Dated this 18 day of August, 2009.



DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

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3 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
4 Judicial District Court of the State of Nevada, County of Washoe; that on this 18
5 day of August, 2009, I electronically filed the following with the Clerk of the Court by
6 using the ECF system which will send a notice of electronic filing to the following:

7 Michael Langton, Esq. for Petitioners;

8 Jonathan Shipman, Esq. for City of Reno;

9 Jason Woodbury, Esq. and Severin Carlson, Esq. for Cabela's Wholesale, Inc.

10 John Moore, Esq. for Tedesco Construction, et al.

11 I deposited in the Washoe County mailing system for postage and mailing with
12 the United States Postal Service in Reno, Nevada, a true copy of the attached
13 document addressed to:

14 Dianna Hegeduis, Esq.
15 Senior Deputy Attorney General
16 555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

17 Layton Construction
18 c/o Steven L. Morris, Esq.
701 N. Green Valley Parkway, Suite 110
Henderson, NV 89074

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21 Judicial Assistant
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