

Nevada Supreme Court Scuttles Labor Commissioner's Fine for Developer Not Paying Prevailing Wages and Kills Deference to Administrative Law Interpretation

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Perhaps channeling the recent SCOTUS ruling dealing a death blow to the *Chevron* doctrine (which courts used for years to refuse to review administrative agency decisions no matter how ludicrous), the Nevada Supreme Court has slapped down a Nevada Labor Commissioner's decision to fine a developer for not paying "prevailing wages" for its project. The case involved one of myriad laws imposed by recent Nevada legislatures to make any incentive offered by a governmental agency to a developer of property the trigger to mandate the payment of prevailing wages in subsequent construction.

In a sop to sheer lunacy, NRS 279.500 applies to any redevelopment agency which offers an incentive to developers of rundown properties in the form of a reduction of property acquisition price, small business loans, or other financial incentive in excess of \$100,000, regardless of the public or private use of the subsequent development, and mandates in exchange the developer pay significantly higher wages and mandatory benefits driven by union contracts with sophisticated public contracting companies that apply on public works construction projects under NRS 338.013 to 338.090. These provisions substantially increase the cost of construction for the developer, and also impose significant regulatory obligations on the developers, including but not limited to significant reporting requirements to the Labor Commissioner (NRS 338.013); subjecting the developer to prosecution by the Labor Commissioner and Nevada State Attorney General (NRS 338.015); Subjecting them to civil actions and presumptions of guilt before trial (NRS 338.016), and other regulations normally reserved for public contracting companies. These provisions and obligations provide substantial disincentives to redevelopment, unless of course the developer is well-healed enough to hire union signatory construction companies for the work.

In *The Redevelopment Agency of the City of Sparks v. Nevada Labor Commissioner, etc., et al.*, 140 Nev.Adv.Op. 44 (June 27, 2024), the NSC panel reversed the imposed fine backed by the Laborer's International Union of North America, Local 169 against the redeveloper of a parking garage in the City of Sparks. The property, located downtown, provided much needed parking for the downtown area. A developer sought to acquire the property but being concerned for the lack of available public parking, the City's Redevelopment Agency offered to sell the property at a reduced rate in exchange for a deed restriction obligating the developer to offer free public parking for the ensuing 50 years. While the developer preferred to forego the price reduction, the RDA insisted as compensation for the valuable deed restriction.

Upon completion of the Project using non-union labor and therefore not imposing a mandate to use prevailing wages under NRS 279.500(2)(c), the Union filed a grievance with the Nevada Labor Commissioner. The Commissioner made no finding that the RDA had conveyed the property for less than fair market value, and that the provisions of NRS 279.500(2)(a) did not apply, the Labor Commissioner nevertheless found that because the RDA had received "future

compensation” instead of cash for the property, the developer must have received a “financial incentive” worth more than \$100,000 and based thereon that NRS 279.500(2)(c) did in fact apply. With this finding, the Commissioner fined the developer for its failure to pay “prevailing wages” for the project’s construction.

Upon appeal by the RDA, the NSC panel found that the Labor Commissioner’s interpretation of the law exceeded the statutory language mandate. Because the provisions of NRS 279.500(2) does not reference “future compensation” and even less did not equate it with an RDA providing “financial incentives worth more than \$100,000”. In making its ruling the NSC clarified that while the Commissioner’s factual findings would be reviewed deferentially and only for “clear error or abuse of discretion” considering substantial evidence in support, a regulatory agency’s “administrative construction of statutes” in reviewing a question of law was subject to *de novo* review. This means the Court will review those statutory interpretations entirely and has no obligation to defer its interpretation to that of an administrative agency. In referencing the few cases that hold deference in statutory interpretation should occur when the agency’s findings are reasonably consistent with statutory language, the NSC said those exceptions are “limited and do[] not apply when the agency’s interpretation falls outside the statute’s plain text.” As the Court summarized: “Under our case law, where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction or gap filling by the agency.”

This case is a significant assistance to Nevada contractors. For many years, the Nevada Contractors Board and other state administrative agencies have interpreted the statutory laws in their own fashions. Some, like the federal Securities and Exchange Commission, have their own mini-administrative court systems, Administrative Law Judges, due process issues and render penal judgments for fines and other penalties. The US Supreme Court striking down this practice in *Securities and Exchange Comm’n v. Jarkesy*, and elimination of the *Chevron Deference* principal in *Loper Bright Enterprises v. Raimondo*, provides a respite from the creep of governmental heavy-handed tactics on small businesses. Here, the NSC appears to show its own preference to review the heavy-handed legal interpretations of overzealous regulators and offers hope to developers and contractors facing the power of the State on their activities.