

Labor Attorney Jason Guinasso Successfully Challenges the Labor Commissioner's Prevailing Wage Determination for Alarm Installers

To establish a prevailing wage in each county, including Carson City, the Labor Commissioner is required to annually survey contractors who have performed work in the county. If a contractor disagrees with the determination of the Labor Commissioner, a contractor may, within 30 days after the Labor Commissioner issues a determination setting the prevailing wage, submit an objection to the Labor Commissioner with evidence to substantiate that a different prevailing wage should be set. The Labor Commissioner is required by NRS 338.030(3) to hold a hearing and consider the objections raised to the prevailing wage. The Labor Commissioner must provide notice of the hearing in accordance with NRS 338.030(4). At the hearing, any public body, the crafts affiliated with the State Federation of Labor or other recognized national labor organizations, and the contractors of the locality or their representatives must be heard. The Labor Commissioner is required to consider the evidence presented at the hearing and determine the appropriate prevailing wage.

On October 1, 2008, the Labor Commissioner rendered a determination of 2008-2009 prevailing wages for the craft of Alarm Installer. The determination set the prevailing wage for Alarm Installers at \$51.14 per hour. RFI and two other contractors submitted a formal objection and request for hearing to the Labor Commissioner's determination of the prevailing wage for the craft of Alarm Installer in the following counties: Carson City, Churchill, Douglas, Humboldt, Lyon, Mineral, Pershing, Storey, and Washoe (hereinafter referred to collectively as "the challenged counties"). In this regard, RFI submitted information and argument with its formal objection to the Labor Commissioner establishing that he had erroneously doubled the prevailing wage for Alarm Installers in the challenged counties. Specifically, RFI pointed out to the Labor Commissioner that the prevailing wage in the challenged counties during the previous five years from 2003 to 2008 had been as low as \$16.72 and as high as \$28.38. RFI explained in its objection that, during the foregoing period, the prevailing wage for Alarm Installers in the challenged counties had gradually increased or decreased with the market. RFI then submitted that the Labor Commissioner's 2008-2009 prevailing wage determination erroneously deviated from the prevailing market conditions and arbitrarily doubled the prevailing wage for Alarm Installers in the challenged counties to \$51.14.

Nevertheless, the Labor Commissioner failed to fulfill his statutory duty to hold a hearing and give RFI and other similarly situated contractors in the challenged counties an opportunity to be heard. The Labor Commissioner denied RFI due process by summarily dismissing RFI's formal objection without a hearing and opportunity to be heard. Consequently, RFI was aggrieved by the final decision of the Labor Commissioner because the Labor Commissioner's decision was: (a) in violation of NRS Chapter 338, (b) a denial of RFI's Constitutional right to due process; (c) in excess of his statutory authority; (d) affected by a clear error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence bearing on the merits of the matter submitted to him; and (f) arbitrary, capricious and a clear abuse of his discretion.

In response to the Labor Commissioner's erroneous and arbitrary decision, RFI retained Jason Guinasso, Esq., and the Law Office of Jason D. Guinasso, Ltd. Attorney Guinasso went to work immediately. On December 15, 2008, Attorney Guinasso filed a Petition for Judicial Review (PFJR) requesting that the First Judicial District Court of the State of Nevada review and remand the Nevada Labor Commissioner's November 12, 2008, "Order Dismissing Objections" in the case officially designated, "In the Matter of the 2008-2009 Wage Rates for Alarm Installers in Carson City, Churchill, Douglas, Humboldt, Lyon, Mineral, Pershing, Storey and Washoe Counties and provide specific instructions to the Labor Commissioner conduct a hearing and consider testimony and evidence from RFI and other similarly situated contractors within the contested counties to determine the appropriate prevailing wage for Alarm Installers in accordance with NRS 338.030(5).

Thereafter, the Labor Commissioner offered to settle the dispute by giving RFI the hearing Attorney Guinasso demanded in the Petition for Judicial Review. As a part of the settlement, the Labor Commissioner acknowledged that the \$51.14 prevailing wage determination for

Alarm Installers was not accurate and agreed to make evidence, including new surveys, from all interested parties.

The Hearing was held on Monday March 9, 2009, in Reno, Nevada, at 1755 E. Plumb Lane, Suite 216. With the assistance of ABC and Clara Andriola, RFI, Diversified Systems, Int., Tri-Signal, and SimplexGrunnell only RFI, Tri-Signal and SimplexGrunnell submitted surveys with more than 14000 hours of wages to the Labor Commissioner. Mr. Guinasso argued on behalf of RFI that NRS 338.030 mandates that the Labor Commissioner survey contractors who have performed work in each county. NAC 338.010 provides for the method of determination of prevailing rate of wages for recognized class of workmen. The following is the prevailing wage analysis under the Labor Commissioner's regulations: First, Attorney Guinasso argued NAC 338.020(1)(a) provides that the Labor Commissioner will determine the prevailing rate of wages paid to each recognized class of workman, "where the rate of wages is the same for the majority of the total hours worked by a recognized class of workmen who are employed in the locality on construction similar to the proposed construction, that rate will be determined as the prevailing rate." Here, there was NO MAJORITY rate (a rate equaling more than half of a total majority of rates reported). Next, Attorney Guinasso noted that NAC 338.030(1)(b)(1) provides that where there is no such majority wage rate, the prevailing rate for the recognized class of workmen will be determined as, "The rate of wages paid for the greater number of hours worked by the recognized class of workmen if that number constitutes 40 percent or more of the total number of hours worked by the recognized class of workmen." Based on the hours submitted to the Labor Commissioner, there was NO WAGE RATE GREATER THAN 12% OF THE TOTAL NUMBER OF HOURS. Finally, Attorney Guinasso submitted that NAC 338.030(1)(b)(2) provides that if there is no 50+1 majority rate or 40+ rate, the Labor Commissioner will calculate "the average rate of wages paid per hour, based on the number of hours worked per rate, to a recognized class of workmen who are employed. . . ."Applying this formula to the data submitted to the Labor Commissioner, RFI estimated that the prevailing wage for Alarm Installers for 2008-2009 is \$24.01.

On March 23, 2009, the Labor Commissioner rendered a decision and order concluding that the prevailing wage rate for Alarm Installers should be amended to \$25.52. This was a significant victory for contractors.