IN THE SUPREME COURT OF THE STATE OF NEVADA

JOINT APPRENTICESHIP AND TRAINING COMMITTEE OF THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES DISTRICT COUNSEL NO. 15, LOCAL NO. 159; AND JOINT APPRENTICESHIP AND TRAINING COMMITTEE OF THE OPERATIVE, PLASTERERS & CEMENT MASONS, LOCAL 797,
Appellants,
vs.
SOUTHERN NEVADA CARPENTERS & MILLWRIGHTS APPRENTICESHIP & JOURNEYMAN TRAINING TRUST & COMMITTEE,
Respondent.

No. 47019

FILED

OCT 0 2 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY A. Alvarado
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review of a Labor Commissioner decision. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellants Joint Apprenticeship and Training Committees of the International Union of Painters and Allied Trades ("Painters") and of the Operative, Plasterers & Cement Masons ("Plasterers") (collectively, "P & P") filed a petition for judicial review with the district court after the Labor Commissioner granted several applications for new apprenticeship programs sought by respondent Southern Nevada Carpenters & Millwrights Apprenticeship & Journeyman Training Trust & Committee ("SNC"). The district court determined that P & P lacked standing and accordingly dismissed the petition. This appeal followed.

07-21752

On appeal, P & P argue that the district court erred in dismissing their petition because they had standing to challenge the Commissioner's decision under two alternative statutory provisions. First, P & P contend that they had standing pursuant to NRS 233B.130(1) because they are parties of record and were aggrieved by the Commissioner's decision. Second, P & P assert that they had standing pursuant to NRS 610.180(2) because they were injured by the Commissioner's determination. The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition. For the following reasons, we affirm.

Standard of review

In order to determine whether P & P have standing we must interpret two statutes—NRS 233B.130(1) and NRS 610.180(2). "Statutory construction is a question of law, which this court reviews de novo."[1] "Absent an ambiguity, this court follows a statute's plain meaning."[2]

Standing pursuant to NRS 233B.130(1)

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[1]Kay v. Nunez, 122 Nev. ___, ___, 146 P.3d 801, 804. (2006).

[2]Id. at ___, 146 P.3d at 804-05. Generally, "when this court examines an order disposing of a judicial review petition, this court's function is the same as the district court: to determine, based on the administrative record, whether substantial evidence supports the administrative decision." Id. at ___, 146 P. 3d at 805. However, this appeal does not involve a review of P & P's substantive arguments in favor of their petition. Instead, it concerns the threshold issue of whether P & P have standing under NRS 233B.130.

Under NRS 233B.130(1), a party is entitled to judicial review of an agency decision if the party is (a) "[i]dentified as a party of record by an agency in an administrative proceeding," and (b) "[a]ggrieved by a final decision in a contested case." P & P argue that they satisfy both of these requirements. We disagree.

Parties of record

P & P contend that they qualify as parties of record because NAC 610.355 establishes their right to supply comment to the Council on proposed apprenticeship programs. At the time SNC filed the program applications at issue in this case, NAC 610.355 provided:

> 1. If a program of apprenticeship is proposed by an employer or association of employers for registration with the Council and the Council has previously registered a program with similar objectives for a similar job, the Council will provide a copy of the standards of the proposed program to the sponsor of the registered program
>
> 2. The Council will provide a reasonable time, not less than 30 days or more than 60 days, for the registered sponsor to comment on the proposed program before taking final action on the application for registration.
>
> (emphasis added)

Based on this language, we conclude that P & P only had a right "to comment on the proposed program," not to participate as a party of record in the proceedings before the Council or the Labor Commissioner. In fact, NRS 233B.035 defines a "party" as "each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any contested case." In this case, the Council never admitted or identified P & P as parties under NRS 233B.035 and P & P did not have the right to be admitted as such pursuant to NAC

610.355. Rather, at the time this case was before the Council and the Labor Commissioner, NAC 610.355 only provided P & P with the rather limited right to provide comment to the Council.[3] There is no regulatory-

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[3]Notably, after P & P filed this appeal, the Council promulgated a temporary rule adding two new subsections to NAC 610.355:

> 3. Any registered sponsor who elects to comment may request in its written comments that it be allowed to become a party of record to the application for the proposed program of apprenticeship. If the registered program demonstrates to the Council that it has a direct and substantial interest in the application for the program of apprenticeship, the Council shall make the registered sponsor a party of record to the application and shall provide written notice to the registered sponsor and the applicant of such action. Once the Council has made a registered sponsor a party of record, the registered sponsor shall receive notice of any matter on the application, including any final action taken on the application by the Council.
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> 4. The registered sponsor, as a party of record, may appeal the Council's final action on the application to the Labor Commissioner. If the registered [sponsor] does not appeal the Council's final action to the Labor Commissioner, but the applicant for the proposed program does, the registered sponsor shall be given notice of the appeal and shall have a right to participate, as a party of record in the appeal so taken.

Because this rule was not in effect at the time SNC initiated the application process, however, we conclude that P & P did not have the right to become parties of record in this case. Moreover, even if we were to apply the new subsections, they require P & P to demonstrate to the Council that they have "a direct and substantial interest in the application

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or statutory-based reason for us to interpret P & P's right to receive notice and provide comment to the Council as making them parties of record in SNC's appeal to the Labor Commissioner.[4]

Separately, P & P cite Checker Cab Company v. State, Taxicab Authority[5] in support of their argument that they were parties of record to the administrative proceedings. In Checker Cab, this court permitted a taxi company to file a petition for judicial review despite its exclusion from a previous administrative proceeding because the administrative ruling implicated valuable property rights and injured the cab company by reducing the proportion of total cabs it held.[6] In this case,

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for the program of apprenticeship." P & P never made this showing, and the Council never made such findings. Thus, P & P cannot be parties of record under NAC 610.355 or NRS 233B.035.

[4]P & P contend that the Council made them parties of record when it requested that they meet with SNC in order to discuss their differences. However, the Council never stated that it was making P & P parties of record, and we do not infer such intent on the part of the Council.

Similarly, P & P argue that their appearance and presentation of evidence at the public hearing on SNC's program applications demonstrate that they were parties of record. NAC 610.355 specifically granted P & P the opportunity to provide comment to the council. On the other hand, NAC 610.355 did not mention a right to become a party of record (at the time of the proceedings before the Council). Thus, we conclude that P & P's participation in the public hearing did not make them parties of record.

[5]97 Nev. 5, 621 P.2d 496 (1981).

[6]Id. at 8, 621 P.2d at 498.

however, the administrative decision did not affect the legal rights, duties or privileges of P & P and there is no evidence suggesting that the decision changed the terms of their programs or reduced the proportion of their enrollees.

Moreover, the Checker Cab court noted that the administrative agency had effectively "admitted" the taxi company by accepting an appearance from it at the beginning of the hearing.[7] By contrast, here, P & P made appearances as a part of their right to comment pursuant to NAC 610.355. As explained above, this right to comment did not make them parties of record under NRS 233B.130(1)(a).[8]

Aggrieved by a final decision

P & P contend that because they are affected by the Labor Commissioner's determination, they are "aggrieved by a final decision in a contested case" for purposes of standing under NRS 233B.130(1). "A party is 'aggrieved' . . . 'when either a personal right or right of property is adversely and substantially affected' by a . . . ruling."[9]

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[7]Id. at 10, 621 P.2d at 498.

[8]P & P also cite Edwards v. State, Dep't of Human Resources, 96 Nev. 689, 692, 615 P.2d 951, 953 (1980), in support of their position. In that case, respondent satisfied the "party of record" element because the administrative agency's decision required respondent to take certain actions. Here, the Labor Commissioner did not order P & P to take any actions; thus, we conclude that the administrative decision did not make P & P a party of record under the reasoning of Edwards.

[9]Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (quoting Estate of Hughes v. First Nat'l Bank, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980)); see Kay, 122 Nev. at ___, 146 P.3d at 805 (noting that an aggrieved party for general appellate purposes is

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According to P & P, SNC's programs encompass work that has fallen within the scope of P & P's programs for more than 40 years. P & P fear that SNC's programs will flood the market with apprentices, resulting in lower wages and fewer work opportunities for their apprentices. In addition, P & P complain that their apprentices may be forced to join two unions, and thus, run the risk of losing health and pension benefits because they will have to split their hours. In P & P's view, the Labor Commissioner's decision is likely to create a multitude of jurisdictional disputes and provoke labor unrest. We disagree.

The injuries about which P & P complain are entirely speculative, unlike the taxi company's injury in Checker Cab.[10] Moreover, the Labor Commissioner's decision did not affect P & P's rights; the decision merely granted SNC's applications to establish new apprenticeship programs. In granting these applications, the Labor Commissioner did not restrict or revise P & P's enrollment standards, nor did he order P & P to take any action with respect to the new programs. Thus, we conclude that P & P were not aggrieved by the Labor Commissioner's decision.

Standing pursuant to NRS 610.180(2)

Under NRS 610.180(2), "[a]ny person aggrieved by any determination or action of the State Apprenticeship Council may appeal to

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one whose personal or property right has been adversely and substantially affected).

[10]97 Nev. at 8, 621 P.2d at 498.

the Labor Commissioner, whose decision, when supported by evidence, is conclusive if notice of appeal therefrom to the courts is not filed within 30 days after the date of the decision of the Labor Commissioner." Because the Council's decision in this case went in P & P's favor, the real issue is whether NRS 610.180(2) extends beyond administrative appeals to the Labor Commissioner and governs petitions for judicial review. We adhere to the plain meaning of the statute and conclude that it does not govern such petitions. NRS 610.180(2) only applies to administrative appeals to the Labor Commissioner; the statute does not contemplate petitions for judicial review filed by persons who were not aggrieved by the Council but who were aggrieved by the Labor Commissioner.[11]

Moreover, even if we were to interpret NRS 610.180(2) as governing petitions for judicial review, P & P must still demonstrate that they were "aggrieved" by the Labor Commissioner's decision. For the reasons explained above with respect to NRS 233B.130(1), however, we conclude that P & P were not legally injured by the Commissioner's grant of SNC's apprenticeship programs.

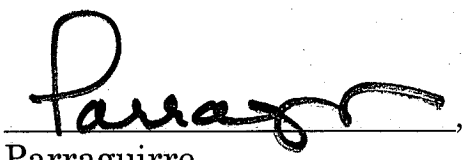
Conclusion

We conclude that P & P lacked standing to challenge the Labor Commissioner's decision. Accordingly, we affirm the district court's

[11]We note that the amended version of NAC 610.355 may change this analysis. That section, however, does not apply to this case.

order dismissing their petition for judicial review.

It is so ORDERED.



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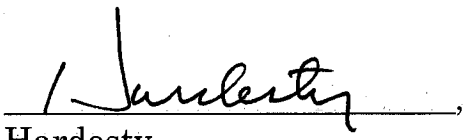

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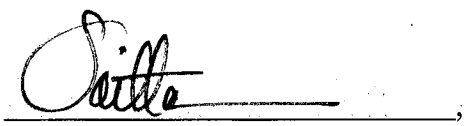

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cc: Hon. Jessie Elizabeth Walsh, District Judge
Kathleen M. Paustian, Settlement Judge
Laquer, Urban, Clifford & Hodge LLP
Daniel M. Shanley
Eighth District Court Clerk