

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITIZEN OUTREACH, INC., A FOREIGN
NON-PROFIT CORPORATION D/B/A
NEVADA BUSINESS COALITION; AND
ASSOCIATED BUILDERS &
CONTRACTORS OF SOUTHERN
NEVADA, A DOMESTIC NON-PROFIT
CORPORATION,

Appellants,

vs.

CLARK COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA; AND SOUTHERN NEVADA
BUILDING & CONSTRUCTION TRADES
COUNCIL,
Respondents.

No. 58365

FILED

JUL 01 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING ORDER AND REMANDING

This is an appeal from a district court order denying a preliminary injunction. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Appellants filed in district court a complaint for injunctive relief to prevent respondent Clark County from utilizing a Project Labor Agreement (PLA) for a public works project involving extensive renovations on the Clark County Detention Center North Tower. In their motion for a preliminary injunction, appellants argued that a PLA was permissible only if the County proved that it satisfied all criteria set forth in this court's opinion in Associated Builders v. Southern Nevada Water Authority, 115 Nev. 151, 979 P.2d 224 (1999), the landmark Nevada decision in this area. Respondents countered that Associated Builders did not require a definitive evidentiary showing, but simply that the PLA was not violative of the bidding statutes or the policies underlying them. They further maintained that the County's decision was entitled to deference

and that sufficient evidence demonstrated that the PLA did not violate Nevada's bidding statutes.

Following briefing and oral argument, the district court declined to grant a preliminary injunction.¹ The court noted that in Associated Builders, this court approved a PLA containing similar language as the one at issue here. The court rejected appellants' position that respondents were required to "prove" that the PLA increased competition or reduced costs, concluding that adoption of the PLA was appropriate so long as its terms were consistent with those approved in Associated Builders. This appeal followed.

This court reviews a district court's decision whether to grant or deny injunctive relief for an abuse of discretion, Douglas Disposal, Inc. v. Wee Haul, LLC, 123 Nev. 552, 557, 170 P.3d 508, 512 (2007), although any purely legal issues are reviewed de novo. Associated Builders, 115 Nev. at 156, 979 P.2d at 227. An abuse of discretion is shown when the district court applies an incorrect legal standard. Bergmann v. Boyce, 109 Nev. 670, 677, 856 P.2d 560, 564 (1993).

¹Initially, an order resolving the preliminary injunction motion was prepared by the Clark County District Attorney's Office, was signed by a senior district judge, and was entered. Judge Wiese, who heard the matter and made an oral ruling at the hearing, purportedly "redacted" that order and issued an amended order in its place, which he stated more accurately reflected his reasoning. Because the notice of appeal had been filed from the first order, however, Judge Wiese lacked jurisdiction to enter the amended order. This court therefore entered an order of limited remand, permitting the district court to clarify which form of order it intended to enter. The district court confirmed that the amended order was correct. Accordingly, that is the order this court reviewed in this matter.

Appellants contend that the district court abused its discretion when it simply compared the terms of the PLA in this case to the terms of the PLA at issue in Associated Builders, rather than considering whether the factual circumstances of this project, together with the PLA's terms, were consistent with the policies underlying the public works bidding statutes. We agree.

Our evaluation in Associated Builders included a review of both the PLA's terms and the factual context in which it was adopted. 115 Nev. at 159, 979 P.2d at 229. Specifically, in Associated Builders, we noted the Water Authority's concern with work stoppages that it had experienced and the need to ensure an adequate water supply for the Las Vegas Valley, in determining that the PLA was consistent with the public bidding statutes' purposes: to secure competition, save public funds, and guard against favoritism, improvidence, and corruption. Id. Our holding in Associated Builders does not stand for the proposition that any PLA with similar terms to that described in the opinion is automatically sufficient. Rather, each project must be reviewed on a case-by-case basis to determine whether the specific project, the labor market and economic climate, and the particular PLA at issue meet the statutes' requirements.

Here, the district court considered the PLA's language, but it did not review the factual circumstances of the project, the Clark County labor market, or prevalent economic conditions.² All of these factors


²Notably, the record contains little information and no discussion regarding economic factors that might favor or disfavor a PLA for this project. Also, while the Verrill Dana report ultimately recommended adopting a PLA, it noted shortcomings with the document it reviewed. But we were unable to determine from this record what version of the PLA

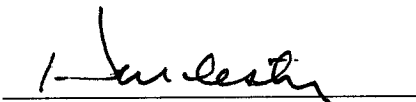
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impinge on whether a PLA for this project at this time and place serves the taxpayers' interest. Nothing in the record before us indicates that the County or the district court made any specific factual findings regarding the conditions in the Las Vegas market, generally, or with regard to this project, in particular, that might counsel in favor of a PLA, and neither entity indicated how, in light of such considerations, the bidding statutes' purposes might be served by the PLA actually adopted by the County. Absent such a record, this court has no basis on which to review whether a PLA is appropriate in this instance.³

Accordingly, we must vacate the district court's order and remand this matter to the district court for reconsideration under the correct legal standard set forth in Associated Builders and for further proceedings consistent with this order.

It is so ORDERED.


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Gibbons


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Hardesty

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Verrill Dana reviewed or whether those shortcomings were remedied before the PLA was approved by the County.

³We note that, consistent with the discussion in Associated Builders, evidence that the PLA is consistent with the purpose of saving public funds need not place a dollar amount on the expected savings. Nevertheless, the County and court must make findings, supported by evidence in the record, that the PLA will promote economic benefit to the taxpayers.

cc: Hon. Lee A. Gates, District Judge
Hon. Jerry A. Wiese, District Judge
Parker, Nelson & Associates
Clark County District Attorney/Civil Division
McCracken, Stemerman & Holsberry
Eighth District Court Clerk

CHERRY, J., dissenting:

I would affirm the order of the district court and hold that the dictates set forth in Associated Builders v. Southern Nevada Water Authority, 115 Nev. 151, 979 P.2d 244 (1999) have been factually and legally satisfied. I do not believe that the district court's decision to deny injunctive relief was an abuse of discretion. For the above reasons, I respectfully dissent from the majority and would let the public works project begin with all deliberate speed.

Cherry
_____, J.
Cherry