

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN NEVADA CARPENTERS
AND MILLWRIGHTS
APPRENTICESHIP AND
JOURNEYMAN TRAINING TRUST,

No. 35749

Appellant,

FILED

OCT 08 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richardson*
CHIEF DEPUTY CLERK

vs.

TERRY JOHNSON, NEVADA STATE
LABOR COMMISSIONER; AND
ASSOCIATED BUILDERS &
CONTRACTORS OF SOUTHERN
NEVADA,

Respondents.

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a petition for judicial review of a decision by the State Labor Commissioner.

Appellant contends that it had standing to seek judicial review and therefore the district court erred in granting the motion to dismiss. Specifically, appellant contends that: (1) it had a right to submit comments to the Labor Commissioner pursuant to NAC 610.355; (2) denial of this right to comment violated its due process rights and made it an aggrieved party under NRS 610.180(2); and (3) NRS 610.180(2) codifies its due process right to have its petition for judicial review heard by the district court.

Based on the plain language of the relevant statutes, we disagree.¹ Appellant satisfies neither of the two criteria in NRS 233B.130(1), both of which are required before a party is entitled to judicial review: judicial review of an agency determination may only be sought by a party who is (1) "identified as a party of record" by the

¹See Crowley v. Duffrin, 109 Nev. 597, 603, 855 P.2d 536, 540 (1993) (quoting Union Plaza Hotel v. Jackson, 101 Nev. 733, 736, 709 P.2d 1020, 1022 (1985)) (stating that this court is "not empowered to go beyond the face of a statute to lend it a construction contrary to its clear meaning").

administrative agency and (2) aggrieved by "a final decision in a contested case."

First, appellant was not identified as a party of record by either the Nevada State Apprenticeship Council ("the Council") or the Labor Commissioner. Appellant merely had a right "to comment" to the Council under NAC 610.355, not to participate as a party in the Council's consideration of the proposed apprenticeship program nor to submit comment to the Labor Commissioner.

Second, appellant was not "[a]ggrieved by a final decision in a contested case."² This case was not a contested case, but merely a single entity's application for an apprenticeship program in which the Council heard input from the public and appellant before making a decision on the application. No other parties were named in the proceeding and only the rights and obligations of respondent Associated Builders & Contractors of Southern Nevada (ABC), in regard to its application for an expanded apprenticeship curriculum, were at issue. Appellant was not aggrieved by the Council's decision because the Council voted the way appellant recommended -- to deny ABC's application. Nor was appellant aggrieved by the Labor Commissioner's decision because appellant had no statutory right to submit comment to the Labor Commissioner and the Labor Commissioner did not make a decision affecting appellant's rights.

Further, appellant's reliance on NRS 610.180(2) is misplaced. While the statute gives "[a]ny" party the right to appeal to the Labor Commissioner -- not just a party of record -- it nevertheless restricts that right to "aggrieved" parties. Since the Council denied ABC's application as recommended by appellant, appellant was not aggrieved by the Council's decision and therefore had no right to appeal that decision to the Labor Commissioner under NRS 610.180(2). Therefore, no due process rights were violated in the Labor Commissioner's exclusion of appellant from the appeal.

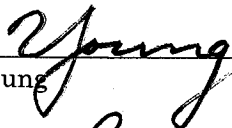
Thus, without status as a party of record before the Council or Labor Commissioner, nor being aggrieved by the final decision of the Council or Labor Commissioner, appellant had no right to judicial review. Accordingly, the district court properly dismissed the petition for judicial

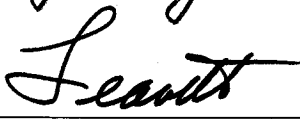
²NRS 233B.13(1).

review. Although the district court did not cite the governing statute, NRS 233B.130(1), in concluding that appellant was not an aggrieved party, we nevertheless affirm because the correct result was achieved.³

Having reviewed all of appellant's arguments and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Leavitt

cc: Hon. Michael L. Douglas, District Judge
Attorney General
Dianna Hegeduis, Deputy Attorney General, Las Vegas
Schreck Morris
Smith & Kotchka
Clark County Clerk

³See Hotel Riviera, Inc. v. Torres, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981) (holding that a correct decision of a district court will not be disturbed on appeal, even if based on the wrong reason).

BECKER, J., dissenting:

I respectfully dissent from the majority's conclusion that NRS 233B.130(1) controls issues of standing in this case. It is a well-settled principle of statutory construction that a specific statute controls over a general statute when both statutes arguably apply to the same subject matter.¹ While it is true that appellant is not a party of record aggrieved by a final decision of an agency under NRS 233B.130(1), it is a "person" entitled to appeal to the labor commissioner and the courts under NRS 610.180(2).

Chapter 610 of the Nevada Revised Statutes deals expressly with the State Apprenticeship Council (Council). NRS 610.180(2) provides that:

Any person aggrieved by any determination or action of the state apprenticeship council may appeal to 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.

NRS 610.180(2) is a specific statute that governs appeals from the Council. Chapter 233B is the Nevada Administrative Procedure Act. The legislature expressly provided that the provisions of the Act were designed to supplement statutes relating to specific agencies and that it does not limit additional requirements imposed upon any agency by such statutes.² NRS 610.180(2) is the controlling statute under Sierra Life Ins. Co. v. Rottman and NRS 233B.020(2).

In this case, respondent Associate Builders & Contractors of Southern Nevada (ABC), applied to the council for permission to expand its apprenticeship program to include carpentry and painting. At the public hearing regarding the application, appellant objected to the expansion and the council denied the application. ABC appealed to the Labor Commissioner, who granted the appeal and approved the expanded program. The expanded program has the potential to impact appellant's apprenticeship program; therefore, appellant is a "person" affected by this decision and entitled to file a petition for judicial review under NRS

¹Sierra Life Ins. Co. v. Rottman, 95 Nev. 654, 656, 601 P.2d 56, 57 (1979).

²NRS 233B.020(2).

610.180(2). Such a holding is consistent with the interpretation of similar statutes governing other administrative proceedings.³ I would therefore reverse the order of the district court and remand the matter for the district court to consider the merits of the petition for judicial review.

Becker, J.
Becker

³See Checker Cab v. State Taxicab Authority, 97 Nev. 5, 8, 621 P.2d 496, 498 (1981); NRS 533.450 (stating persons aggrieved by any order or decision of the state engineer may appeal to the courts.)