

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADDISON, INC., A NEVADA  
CORPORATION,  
Appellant,  
vs.  
THE STATE OF NEVADA EX REL.  
STATE PUBLIC WORKS BOARD,  
Respondent.

No. 39619

FILED

MAY 27 2004

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a motion to compel arbitration. Appellant Addison, Inc. is a general contractor that entered into a public works contract with respondent State Public Works Board to construct the Southern Nevada Veterans' Home. The contract provided that any claims or disputes arising out of or relating to the contract "may be decided by arbitration upon the written consent of both parties." A dispute arose, and Addison filed a demand for arbitration with the American Arbitration Association. The State refused to arbitrate the matter, citing the parties' contract. Thereafter, Addison filed the underlying breach of contract action against the State in June 2001. Addison filed a motion to compel arbitration, but the district court denied the motion. Addison appeals.

At the time the parties entered into the construction contract, NRS 338.150 provided:

1. Any agency of this state and any political subdivision, municipal corporation or district and any public officer or person charged with the drafting of specifications for the construction, alteration or repair of public works, shall include in the specifications a clause permitting arbitration of a dispute arising between the

agency and a contractor if the dispute cannot otherwise be settled.<sup>1</sup>

Addison contends that NRS 338.150(1) requires the State to consent to arbitration. The State, on the other hand, asserts that NRS 338.150(1) requires state agencies to include an arbitration clause in their public works contracts, but does not require the state agencies to consent to arbitration.

In a similar case, Harris Associates v. Clark County School District,<sup>2</sup> we recently analyzed the meaning of NRS 338.150(1) and held that the statute mandates binding arbitration. We concluded that while the plain meaning of NRS 338.150(1) was ambiguous because it was subject to two reasonable interpretations, similar to those posited here, the wording of the statute as a whole, as well as the legislative history, demonstrated that the legislature intended NRS 338.150(1) to mandate binding arbitration. The same result applies here, and the State must consent to arbitration.

The State additionally contends that Addison waived any right to arbitrate the dispute because Addison filed three pretrial pleadings seeking relief on its claims before moving to compel arbitration. The State further contends that it was prejudiced by the delay, as it had already filed related compulsory counterclaims and third-party claims by the time Addison filed its arbitration motion.

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<sup>1</sup>The Legislature amended NRS 338.150 in 2003, but the amendment did not alter the substantive provisions at issue. 2003 Nev. Stat., ch. 401, § 30, at 2438; Harris Assocs. v. Clark County Sch. Dist., 119 Nev. \_\_\_, 81 P.3d 532 (2003).


<sup>2</sup>119 Nev. \_\_\_, 81 P.3d 532 (2003).

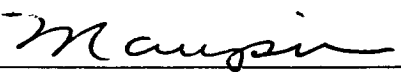
We have previously considered and rejected the view that any participation in litigation is inconsistent with arbitration and constitutes a waiver.<sup>3</sup> Additionally, “[t]he central issue in determining waiver of the right to arbitrate is not whether the moving party’s actions have been consistent with arbitration, but rather, whether prejudice would occur to the party opposing arbitration.”<sup>4</sup>


Here, the trial court record reveals that Addison made a demand for arbitration in April 2001, and the State failed to consent. Addison filed the complaint on June 29, 2001, and filed the motion to compel arbitration about five months later on December 5, 2001. We conclude that the State was not prejudiced by the delay and that Addison did not waive its right to arbitration. Thus, Addison’s motion to compel arbitration should have been granted.

Accordingly, we reverse the district court’s order denying Addison’s motion to compel arbitration and remand for further proceedings consistent with this order.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

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<sup>3</sup>County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 491, 653 P.2d 1217, 1219 (1982).

<sup>4</sup>Id. at 491, 653 P.2d at 1220.

cc: Hon. Jackie Glass, District Judge  
E. Leslie Combs, Jr., Settlement Judge  
Kummer Kaempfer Bonner & Renshaw  
Santoro, Driggs, Walch, Kearney, Johnson & Thompson  
Clark County Clerk