

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Civil Petition for Judicial
Review

COURT MINUTES

November 08, 2011

A-10-622879-J Daniel Baldonado, Plaintiff(s)
vs.
Wynn Las Vegas, LLC, Defendant(s)

November 08, 2011 11:00 AM Decision

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Roshonda Mayfield

RECORDER: Beverly Sigurnik

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- In the present case, Petitioners ("Dealers") are seeking a review of the determination of the Nevada Labor Commissioner as to whether the particular mandatory tip pooling policy instituted by Respondent Wynn Casino Las Vegas (the "Wynn") is prohibited by Nevada Revised Statutes NRS 608.160, NRS 613.120, and NRS 608.100(2). The Court holds that the Labor Commissioner erred in his reading of NRS 608.160. Because the error is one that is dispositive of the entire issue, NRS 608.160 is the only statute that will be considered here.

While the Court agrees with the Labor Commissioner's conclusion that *Moen v. Las Vegas International Hotel*, 402 F.Supp. 157 (D.Nev. 1975) must be given serious consideration in spite of not being controlling authority, the Court finds that the Commissioner's decision goes further than the Nevada Supreme Court's decision in *Alford v. Harold's Club*, 99 Nev. 670, 669 P.2d 721 (1983) anticipated. The Court acknowledges that the holding in *Alford* could be given the broad reading advanced by respondents, and recognizes that the *Alford* Court expressed general approval of the *Moen* Court's interpretation. The Court believes, however, that the *Alford* Court did so based only on the facts before it in that case. Quite simply, the Nevada Supreme Court has never allowed a mandatory tip-pooling policy that extends beyond the dealer-only pool that was before the Court in *Alford*. This Court is unprepared to say that the tip-pool in the instant case, one that allows boxpersons and Casino Service Team Leads ("CSTL") to share in the tip pool with the dealers, is one

that the Supreme Court anticipated in *Alford*. To so hold in the face of the demonstrable evidence of the direct economic benefit to the Wynn would be to eviscerate the meaning of direct benefit to an employer. Therefore, the Wynn is prohibited from including boxmen and CSTLs in the tip pooling agreement.

Furthermore, the Court finds that the Labor Commissioner's determination that class action treatment would not be afforded to the Dealers' complaint cannot be sustained for its lack of meaningful reasons for the decision. See Nevada Labor Commissioner's Order Filed Oct. 27, 2008, Denying Class Action Treatment to Dealer's Complaint. Although NRS 607.160, the statute which gives the Labor Commissioner authority to enforce Nevada labor laws, does not directly provide such a procedural mechanism, it seems to contemplate that the Labor Commissioner has quite broad remedial powers. Section 2 thereof states that, "the Labor Commissioner may take any appropriate action against the person to enforce the labor law or regulation [...]." NRS 607.160(2). The petitioners also cite several persuasive cases in which administrative agencies in those states were allowed to entertain class actions in spite of the fact that those same state statutes neither directly authorized nor prohibited the use of the class action device in administrative proceedings. (See *Brandon v. Arkansas Public Service Commission*, 67 Ark. App. 140, 992 S.W.2d 834 (Arkansas Court of Appeals, 1999); *State Employees Assoc. of New Hampshire*, 127 N.H. 89, 497 A.2d 860 (New Hampshire Supreme Court, 1985); *Bernard Schwartz, Administrative Law* Section 8.21 at 480-81 (2d ed. 1984)). Therefore, absent a clear and meaningful showing as to why class action treatment was denied, this Court finds the Labor Commissioner's Order to be in error.

The matter is remanded to the Labor Commissioner for further proceedings consistent with this Decision and Order.

Petitioner to prepare a formal Decision and Order.

CLERK'S NOTE: A copy of this minute order has been placed in the attorney bin of: Leon Greenberg/Kamer, Zucker & Abbott. (rm 11/9/11)