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Casino Must Bargain After Shady Benefits Boost, Judge Says

By **Braden Campbell**

Law360 (July 20, 2021, 8:15 PM EDT) -- A Nevada federal judge issued a rare bargaining order Tuesday against a Las Vegas casino that rolled out generous new benefits days before a union election in what the judge deemed a veiled effort to thwart an organizing drive.

U.S. District Judge Gloria Navarro partially granted the National Labor Relations Board's petition for an injunction rectifying labor law violations NP Red Rock allegedly committed in the lead-up to the December 2019 election, which the Local Joint Executive Board of Las Vegas lost despite securing majority support.

Judge Navarro said the benefits rollout was a "hallmark violation" justifying a bargaining order under the U.S. Supreme Court's ruling in *NLRB v. Gissel Packing Co.*, which set the legal test for leveling the board's stiffest remedy.

"Red Rock's grant of benefits likely thwarted the union's majority status and was so outrageous that it undermined the fairness of future elections," Judge Navarro said.

Tuesday's ruling is the latest development in an ongoing battle between the LJEB, a coalition comprising labor unions in Las Vegas, and Station Casinos, which operates 10 Sin City resorts, including NP Red Rock.

Red Rock resolved to fight union organizing in mid-2019 after LJEB affiliate Unite Here unionized workers at several Station Casinos, around the time the union's campaign at Red Rock picked up, according to a portion of Tuesday's ruling discussing case background. Among other things, Red Rock played "sound bites" about unions on televisions in employee areas; offered morale boosters, including pizza parties; and implemented worker focus groups, but the push continued to gain steam, according to the ruling.

The arrival of a new vice president of human resources at Station Casinos in late August 2019 presaged another shift in the company's anti-union efforts, according to the ruling. New vice president Phil Fortino began training supervisors to counter pro-union messages and gauge union support, the ruling said. Meanwhile, Fortino developed a new benefits package meant in part to "[take] away union power," according to an email excerpted in the ruling.

Fortino presented the plan to Station leadership that November, according to the ruling. Just three days later, the union petitioned the NLRB to hold an election, prompting Fortino to note the company should "announce ASAP new programs," according to a text message excerpt. The company did so about 10 days before the mid-December vote, detailing the plans in presentations that included slides asking why workers would "take a chance with union promises" after getting their new benefits, according to the ruling. Days later, the union lost the election 534 to 627.

The union filed numerous charges with the NLRB challenging Red Rock's conduct as illegal, and board prosecutors brought a complaint in the agency's administrative courts in April 2020. In December, board prosecutors asked the District of Nevada to impose a bargaining order under National Labor Relations Act Section 10(j), which allows district courts to issue injunctions rectifying labor law violations that stifle workers' rights while the board's often-lengthy legal process plays out.

Ninth Circuit precedent deems Gissel bargaining orders to be "extraordinary and disfavored"

remedies, appropriate only when an employer has committed such egregious violations that "a fair and reliable election can't be held," and the involved union attained majority support, Judge Navarro observed Tuesday. This case justifies such an order, she said.

The judge noted the NLRB produced cards attesting to union support from 723 workers out of about 1,350 in the proposed Red Rock unit and contends close to 90 others signed, which shows majority backing. She also said the benefits rollout precluded a fair vote, noting its timing and that workers would not miss the implied threat of loss if they voted in the union.

The circumstances bear this out, she said.

"When the union filed its petition for election, 811 employees in the bargaining unit of about 1,336 had signed authorization cards, 747 employees authorized the union to use their images in pro-union materials, and 752 employees wore pro-union buttons," she said. But only 534 would vote for the union, with workers admitting that they feared losing benefits, she said.

Station Casinos and its resorts, including Red Rock, are also facing **a sprawling suit** in the NLRB's administrative courts alleging they exploited the coronavirus pandemic to target union supporters in layoffs, among other things.

An NLRB representative declined to comment. A representative for the LJEB and attorneys for Station Casinos did not immediately respond Tuesday to requests for comment.

The NLRB is represented in-house by Kyler Scheid, Carmen Leon and Sara Demirok.

NP Red Rock LLC is represented by David Dornak and Mark Ricciardi of Fisher Phillips.

The case is Overstreet v. NP Red Rock LLC, case number 2:20-cv-02351, in the U.S. District Court for the District of Nevada.

--Editing by Leah Bennett.