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NLRB Counters Casino In Bid To Make It Bargain With Union

By **Tim Ryan**

Law360 (February 1, 2021, 8:54 PM EST) -- A Las Vegas casino downplayed the effects of a new benefits plan allegedly intended to erode workers' union support when arguing against an injunction that would force the company to bargain, the National Labor Relations Board has told a Nevada federal judge.

In a reply brief filed Saturday, the NLRB said NP Red Rock LLC, which operates as Red Rock Casino Resort & Spa, distorted the evidence when urging the court not to issue an order that would force it to bargain with the the joint bargaining agent for Culinary Workers Local 226 and Bartenders Local 165 due to alleged violations of labor law in the run-up to a union election.

Far from ignoring the will of workers who voted against the election as the casino had argued, the board said the order to bargain is necessary because the company's promise of a more generous package irreparably tainted the election.

"Respondent's suggestion that the court should take into consideration the will of Red Rock employees who do not want to be represented by the union shamelessly ignores the fact that respondent's serious and substantial unfair labor practices made the holding of a fair election ... impossible," the board's brief said.

The board filed the brief in defense of a petition that Phoenix office head Cornele Overstreet filed under Section 10(j) of the National Labor Relations Act, a somewhat rare mechanism the board uses to seek court orders to address violations of law it sees as especially serious.

In the Red Rock case, the board alleged that the casino violated the NLRA when its parent company announced just before a 2019 union election that it was moving to a health insurance plan without premiums and deductibles and making more generous contributions to workers' retirement accounts. The board alleged the casino put together the benefits package to thwart building union support among its workers.

In the brief it filed last week, Red Rock insisted its plan to move to the new benefits package was in the works before the union petition and was an effort to be more competitive in the labor market.

But the board responded that the casino ignored key context around the rollout of benefits to reach the "strikingly absurd" conclusion that workers would give credit to the union for the benefits package. The board said the evidence, including the company's conduct at a series of mandatory meetings held in the run-up to the election, show that the casino was emphasizing to employees that they should credit the company, not the union, for the new benefits.

The board further said it is "indisputable" that the new benefits were meant to reduce union support and that the casino's attempt to counter that evidence "horribly fails." The agency pointed in particular to a 2020 corporate human resources strategic plan that said increasing 401(k) contributions for lower paid hourly workers would "help incentivize team members in these positions to not vote for a union," offsetting potential future pension payments.

Responding to the casino's allegation that the board undermined its argument for the injunction by

waiting too long to file the case, the NLRB noted that the casino has been the target of numerous unfair labor practice charges. While it has been 17 months since the first of those charges was filed, the most recent was just filed just four months before the board brought its case, the agency said, a reasonable timeframe for an investigation to play out in full.

The casino declined to comment.

Counsel for Red Rock did not immediately return a request for comment.

The NLRB did not immediately return a request 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 Abbie Sarfo.

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