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## NLRB Won't Undo Union's Pre-Layoff Election Win At Casino

By **Danielle Nichole Smith**

Law360 (February 16, 2021, 5:43 PM EST) -- The National Labor Relations Board has declined to set aside a union's election win at a Nevada casino that later laid off all of its workers, saying the case was different from one in the fall where the board found a vote to be inappropriate at another shuttered casino.

In its Feb. 12 decision, the three-member panel rejected a request from NP Lake Mead LLC, which operates as Fiesta Henderson Casino Hotel, to review a regional director's refusal to dismiss a representation petition from the Local Joint Executive Board of Las Vegas.

The case was distinguishable from the board's recent decision canceling an election at Texas Station Gambling Hall and Hotel because there weren't any eligible voters after the casino laid off its workers because of the COVID-19 pandemic, the panel said in a footnote.

"Here, in contrast, the petitioner prevailed in an election before the employer laid off its entire complement of employees, and the regional director has since overruled the employer's objections, so no new election will be held at this point," the panel said.

"Accordingly, we decline to extend the board's pre-election cessation-of-operations precedent to a post-election situation," the board added.

Servicios Correccionales de Puerto Rico, a 2002 board decision cited by the casino, was also "readily distinguishable," the panel found. Unlike that case, where the employer said that it had ceased operations, NP Lake Mead asserted that it "has no evidence that the closure of Fiesta Henderson is permanent or definite, and it has never suggested otherwise, either to the public or to its former employees," according to the panel.

"Under the circumstances, we think it appropriate to deny review and give effect to certification of the union," the unpublished decision said.

A spokesperson for the Culinary Workers Union Local 226, which is affiliated with UNITE HERE, told Law360 in a statement Tuesday that the union is "pleased with the NLRB's order denying Station Casinos' Fiesta Henderson's objections and exceptions to the union election" and will continue to "organize and negotiate for workers to have a union contract at Fiesta Henderson."

The Local Joint Executive Board of Las Vegas is the joint bargaining agency for the Culinary Workers Local 226 and Bartenders Local 165.

Counsel for the casino declined to comment Tuesday.

Members Lauren McFerran, Marvin Kaplan and John Ring sat on the panel for the NLRB.

The union is represented by Kimberley C. Weber of McCracken Stemerman & Holsberry LLP.

The casino is represented by Mark J. Ricciardi, Reyburn W. Lominack III and Allison Kheel of Fisher Phillips.

The case is NP Lake Mead LLC d/b/a Fiesta Henderson Casino Hotel and Local Joint Executive Board of Las Vegas a/w UNITE HERE International, case number 28-RC-245493, before the National Labor Relations Board.

--Editing by Vincent Sherry.

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