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Casino Blasts NLRB's Bid To Force It To Bargain With Union

By **Tim Ryan**

Law360 (January 25, 2021, 10:00 PM EST) -- The National Labor Relations Board missed key context and overstepped its authority by requesting an injunction that would force a Las Vegas casino to recognize a union its workers voted down, the casino argued in opposition to the board's filing.

In a response brief filed Friday, NP Red Rock LLC, which operates as Red Rock Casino, Resort and Spa, urged a Nevada federal judge to reject the NLRB's "unprecedented" petition for an injunction that would force the casino to bargain with the Local Joint Executive Board of Las Vegas due to alleged violations of federal labor law in the runup to a union election.

Red Rock argued the board has not shown the company was trying to tamp down union support when it issued a more generous benefits package to workers ahead of a union election and said ordering the casino to recognize the union would be an affront to the workers who opposed the union.

"Petitioner ... now asks the court to silence the voices of the 627 employees who voted against the union and to install a rejected labor organization to represent them," the filing said. "Disregarding the majority of voters in favor of the minority would be contrary to public interest."

NLRB Phoenix office head Cornele Overstreet filed the petition for an injunction under Section 10(j) of the National Labor Relations Act, a seldom-used provision that allows the board to seek court orders to address certain violations of the law while the board's lengthy process plays out.

Central to the board's petition is a union election that took place at the end of 2019 that resulted in workers defeating a years-long union push from the Joint Executive Board, the joint bargaining agency for Culinary Workers Local 226 and Bartenders Local 165. In particular, the petition alleges Red Rock violated the NLRA by rolling out a more generous benefits package in an effort to discourage workers from voting in favor of the union.

In meetings just over a week before the union election, the company announced that it was moving to a health plan without premiums and deductibles and increasing the contributions it would make to workers' 401(k) accounts. The board argued the company tied the benefits to rejecting the union and that the order was necessary because the effort would poison workers against unionizing for years to come.

The board also alleged the company surveilled union supporters and violated the law by not reinstating certain workers after it reopened following a shutdown caused by COVID-19.

In its filing, Red Rock said the board fell well short of the standard needed to receive an injunction under Section 10(j). That provision is meant to preserve the state of play while litigation goes forward at the board, Red Rock argued, but the board's request would do the opposite by requiring the company to bargain with a union its workers rejected.

Red Rock further said the size of the unit, which would cover more than 1,300 workers, makes the request particularly unwarranted given how many workers voted against unionizing. Unlike other cases seeking similar relief, Red Rock noted the board has not accused it of firing any workers or

threatening to shut down its facility.

Those factors, as well as evidence that the union gained supporters during the company's alleged anti-union activity, suggest board attorneys would not succeed in convincing an agency judge to order Red Rock to bargain, the company said.

Red Rock also said the decision to offer a more generous benefit package to employees was unrelated to the union drive at the casino, but part of an effort from its parent company, Station Casinos, to be on even footing with other businesses in a competitive Las Vegas labor market.

The company also pointed out Station Casinos had decided to offer a more generous benefits package to its workers well before the union filed its petition seeking an election, even if it was announced to Red Rock workers shortly before the election.

In addition to the order requiring the company to bargain, the board also asked Red Rock be forced to post certain disclosures and hold meetings with employees discussing the court's decision.

Red Rock and the NLRB declined to comment.

Culinary Workers Local 226, which is not a party to the case, referred comment to a statement issued shortly after the 2019 election in which Secretary-Treasurer Geoconda Argüello-Kline said Red Rock "seriously interfered with workers' right to a free and fair union election under federal law."

Counsel for Red Rock did not immediately respond to a request for comment.

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

NP Red Rock LLC, which does business as Red Rock Casino, Resort and Spa, is represented by David Dornak and Mark Ricciardi of Fisher & Phillips LLP.

The case is *Overstreet v. NP Red Rock LLC*, case number 2:20-cv-2351, in the U.S. District Court for the District of Nevada.

--Editing by Leah Bennett.