



March 17, 2022

Chair J. Brin Gibson, Member Philip Katsaros, Member Dr. Brittnie Watkins
Nevada Gaming Control Board
555 East Washington Avenue, Suite 2600
Las Vegas, NV 89101

Re: Investigate Station Casinos

Dear Members of the Nevada Gaming Control Board,

We write to urge the Nevada Gaming Control Board (“the Board”) to investigate Red Rock Resorts, Inc., and its licensed operating subsidiaries indirectly owned through Station Casinos LLC (collectively, “Station Casinos”), for what we believe is their failure to fulfill their continuing duties as holders of privileged Nevada gaming licenses or findings of suitability to adhere to federal labor law. We believe that, after a thorough examination of readily available documentation and evidence, the Board will find that Station Casinos are operating in an unsuitable manner as they have displayed a disregard for federal law and legal process that reflects discredit on the Nevada gaming industry. We ask the Board to move the Nevada Gaming Commission (“the Commission”) to take disciplinary action against Station Casinos, up to and including revoking their privileged gaming licenses or findings of suitability.

On July 20, 2021, U.S. District Court Judge Gloria Navarro issued a “10(j) injunction” against NP Red Rock LLC (“Red Rock”).

The circumstance leading up to a rare federal injunctive order pursuant to Section 10(j) of the National Labor Relations Act against a major Nevada casino operator deserves the Board’s immediate attention. NP Red Rock LLC dba Red Rock Casino, Resort & Spa (“Red Rock”) is licensed to conduct nonrestricted gaming operations by the Nevada Gaming Commission. Red Rock Resorts, Inc. and Station Casinos hold findings of suitability related to their ownership and control of NP Red Rock LLC. This federal injunction was the direct result of Station Casinos’ years-long campaign to prevent unionization of employees at its large casino-hotel properties.

The Local Joint Executive Board (“LJEB” or “the Union”), consisting of the Culinary Workers Union Local 226 and the Bartenders Union Local 165, filed for a representation election at Red Rock. Station Casinos sought to defeat the Union in the Red Rock union election in December 2020 through an offer-of-benefits campaign, a campaign which led to an unfair labor practice complaint against Red Rock by the National Labor Relations Board. Being the

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subject of a ULP charge is nothing new for Station Casinos and its subsidiaries. However, on December 29, 2020, NLRB Regional Director Cornele Overstreet moved the federal court for an interim injunction requiring Red Rock to bargain with the LJEB while the unfair labor practice case is litigated before the NLRB.

On July 20, 2021, U.S. District Court Judge Gloria Navarro issued an injunction against Station Casinos' Red Rock Casino Resort in *Overstreet v. NP Red Rock LLC*.¹ In granting the injunction, Judge Navarro found a strong likelihood that the government attorneys bringing the case would prevail before the National Labor Relations Board. Specifically, she found that Red Rock's offer of benefits was a "hallmark violation" of federal labor law, which the court described as "so outrageous that it undermined the fairness of future elections."² Judge Navarro further wrote:

The Court finds that Petitioner has demonstrated that Red Rock's grant of benefits and subsequent failure to bargain with the Union rises to the level of a § 8(a)(5) violation. 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. The Court concludes that Petitioner has shown that an interim bargaining order is the only appropriate interim remedy.

The court directed that negotiations must commence expeditiously in good faith with the LJEB. Should Red Rock refuse, it risks being held in contempt of court, with possible fines and even jail time for those responsible.

Red Rock subsequently appealed to the Ninth Circuit Court of Appeal, and on November 21, 2021, a Ninth Circuit panel upheld Judge Navarro's ruling.³ The Court ruled that "[h]ere, new employee benefits were announced just days before the union election, and there was extensive evidence that those benefits were designed to discourage union support—or, as described in a document proposing new healthcare benefits, to '[t]ake away union power and major emotional draw to team members.' The district court did not abuse its discretion in determining that Red Rock's grant of benefits was likely an unlawful labor practice rather than a permissible effort to stay 'one step ahead' of union activity."⁴

On March 4, 2021, the NLRB filed petitions in the Ninth Circuit Court of Appeals and the D.C. Circuit Court of Appeals seeking to hold five Station Casinos properties in contempt of court for failure to bargain with the International Union of Operating Engineers, Local 501.

On March 4, 2021, the National Labor Relations Board filed petitions in the Ninth Circuit Court of Appeals and the D.C. Circuit Court of Appeals seeking to hold five Station Casinos properties in contempt of court for failure to bargain with the International Union of Operating Engineers, Local 501.⁵ The cases were consolidated, and on November 19, 2021, the court approved a stipulated consent order entered into between the casinos and the NLRB to resolve the case. Under the consent order, future failure of the casinos to comply with court orders requiring it to bargain in good faith with Local 501 could subject them to

penalties of \$25,000 per violation and \$3,000 per day the violation is found to continue and expose individual executives to fines.⁶

On October 25, 2021, in response to a motion by the NLRB's General Counsel, NLRB Judge Tracy issued a finding that Station has engaged in contumacious conduct by failing to respond fully to a federal subpoena issued by the NLRB.

Station Casino has not only disregarded the law, it has engaged in conduct that evidences a disregard for legal process. Another result of Station Casinos' years-long campaign to prevent unionization of employees at its large casino-hotel properties was an unfair labor practice complaint filed by the NLRB's General Counsel on April 13, 2021. This complaint alleges, among other violations of federal law, that Red Rock Resorts, Inc., Station Casinos LLC, and 10 of their licensed casino hotels engaged in a scheme to use employee layoffs during the COVID-19 pandemic to undermine LJEB in representing or seeking to represent their employees.⁷ This campaign had culminated in Station Casino's withdrawal of recognition from LJEB at Boulder Station and Palace Station, actions alleged in the complaint to be illegal. The unfair labor practice case is currently pending trial before NLRB Administrative Law Judge Amita B. Tracy.

Again, being the subject of a ULP complaint is nothing new for Station Casinos. However, an extraordinary event occurred in this case. As the case headed to trial last fall, in response to a motion by NLRB's General Counsel, Judge Tracy issued on October 25, 2021 an order finding that Station Casinos has engaged in contumacious conduct by failing to respond fully to a federal subpoena issued by the NLRB.

Judge Tracy wrote:

Now with a little more than one week before the hearing resumes, it does not appear that Respondents have provided all (or even close to all) the documents sought by [Counsel for the General Counsel] for over 3 months ago despite my giving the benefit of the doubt to Respondents' counsel considering the breadth of these subpoena duces tecum requests. Moreover, rather than providing firm commitments to provide the documents by certain dates (and complying with these commitments), Respondents provide more excuses as to why the documents have not been provided. Nowhere in Respondents' opposition is an assertion that a certain portion of the request has been provided, and based on their opposition, Respondents have made clear that they will not be providing all documents when the hearing resumes. No matter if the hearing is one day or 100-days, subpoena documents must be provided to the requesting party when the hearing opens unless otherwise agreed. Despite the hearing opening and my September 3, 2021, order on the petition to revoke, Respondents have not complied. I can reach no further conclusion at this time other than that Respondents have engaged in contumacious conduct and refused to obey my September 3, 2021 order.⁸

Even as of today, more than four months later, Station Casinos and the other subpoenaed parties have still failed to respond fully to the subpoena, causing continued delay in the start of trial. On October 29, 2021, the NLRB's General Counsel initiated subpoena enforcement proceedings on behalf of the NLRB against Station Casinos and its various associated properties who received subpoenas in the United States District Court for the District of Nevada.⁹ On February 28, 2022, the District Court dismissed the action without prejudice and with instructions should the NLRB refile.

The Board has a duty to investigate Station Casinos for reflecting discredit on the Nevada gaming industry and operating in an unsuitable manner

It is the long-standing public policy of the State of Nevada that the gaming industry is of vital importance to the economy of the state and to the welfare of Nevada residents and, therefore, there must be "strict regulation" of all licensed gaming establishments (NRS 463.0129). The State has also made it clear that no one has a right to a Nevada gaming license and a Nevada gaming license is a revocable privilege.

No applicant for a license or other affirmative Commission or Board approval has any right to a license or the granting of the approval sought. Any license issued or other Commission or Board approval granted pursuant to the provisions of this chapter or chapter 464 of NRS is a revocable privilege, and no holder acquires any vested right therein or thereunder (NRS 463.0129.2).

In general, to protect the state's economy and its residents' welfare, the Board and the Commission are vested by state law with broad powers with respect to the granting, denial, limitation, suspension, or revocation of such privileged gaming licenses and findings of suitability.

The Board has full and absolute power and authority to recommend the denial of any application, the limitation, conditioning or restriction of any license, registration, finding of suitability or approval, the suspension or revocation of any license, registration, finding of suitability or approval or the imposition of a fine upon any person licensed, registered, found suitable or approved for any cause deemed reasonable by the Board (NRS 463.1405).

The Commission has full and absolute power and authority to deny any application or limit, condition, restrict, revoke or suspend any license, registration, finding of suitability or approval, or fine any person licensed, registered, found suitable or approved, for any cause deemed reasonable by the Commission (NRS 463.1405).

The Board is charged with the duty of investigating violations of the state's gaming laws and regulations.

1. The Board shall make appropriate investigations:

(a) To determine whether there has been any violation of this chapter or chapter 368A, 462, 464, 465 or 466 of NRS or any regulations adopted thereunder.

(b) To determine any facts, conditions, practices or matters which it may deem necessary or proper to aid in the enforcement of any such law or regulation (NRS 463.310.1).

It is the duty of the Board to conduct investigations into an applicant for a gaming license or finding of suitability *and* to continue to monitor conduct by license holders and holders of suitability findings.

The Board shall investigate the qualifications of each applicant under this chapter before any license is issued or any registration, finding of suitability or approval of acts or transactions for which Commission approval is required or permission is granted, and *shall continue to observe the conduct of all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation or registered holding company* to ensure that licenses are not issued or held by, nor is there any material involvement directly or indirectly with a licensed gaming operation or registered holding company by unqualified, disqualified or unsuitable persons, or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or locations (emphasis added; NRS 463.1405).

Nevada Gaming Commission Regulation 5.040 also encapsulates the principle of revocability of Nevada gaming licenses and the duty of the Board to ensure compliance by licensees.

A gaming license is a revocable privilege, and no holder thereof shall be deemed to have acquired any vested rights therein or thereunder. The burden of proving his or her qualifications to hold any license rests at all times on the licensee. The Board is charged by law with the duty of observing the conduct of all licensees to the end that licenses shall not be held by unqualified or disqualified persons or unsuitable persons or persons whose operations are conducted in an unsuitable manner (NGC Reg. 5.040).

At the same time, the individuals who are successful in applying for a Nevada gaming license or finding of suitability has an obligation to continue to conduct themselves in a way that meets the high standards of licensure of Nevada gaming regulators.

Any person granted a license or found suitable by the Commission shall continue to meet the applicable standards and qualifications set forth in this section and any other qualifications established by the Commission by regulation. The failure to continue to meet such standards and qualifications constitutes grounds for disciplinary action (NRS 463.170.8).

This is a continuous duty on the part of any holder of a Nevada gaming license or finding of suitability to act in accordance to the standards by which they were first approved to hold a privileged gaming license in Nevada.

Responsibility for the employment and maintenance of suitable methods of operation rests with the licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable will constitute grounds for license revocation or other disciplinary action. (NGC Regulation 50.010.2)

Failure to continue to act in a way befitting or suitable for any corporate entities such as Red Rock Resorts and Station Casinos LLC could have serious consequences.

If any corporation, partnership, limited partnership, limited-liability company or other business organization holding a license is owned or controlled by a publicly traded corporation subject to the provisions of this chapter, or that publicly traded corporation, does not comply with the laws of this state and the regulations of the Commission, the Commission may in its discretion do any one, all or a combination of the following:

1. Revoke, limit, condition or suspend the license of the licensee; or
2. Fine the persons involved, the licensee or the publicly traded corporation, in accordance with the laws of this state and the regulations of the Commission (NRS 463.641).

NGC Regulation 5.030 provides as follows:

Violation of any provision of the Nevada Gaming Control Act or of these regulations by a licensee, the licensee's agent or employee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and grounds for suspension or revocation of a license. Acceptance of a state gaming license or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by all of the regulations of the Commission as the same now are or may hereafter be amended or promulgated. It is the responsibility of the licensee to keep informed of the content of all such regulations, and ignorance thereof will not excuse violations (NGC Reg. 5.030).

The state's regulations cast a broad net as to what may constitute problematic behavior by gaming licensees. NGC Regulation 5.011 provides as follows:

The Board and the Commission deem any activity on the part of a licensee, registrant, or person found suitable by the Commission, or an agent or employee thereof, that is inimical to the public health, safety, morals, good order, or general welfare of the people of the State of Nevada, or that would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry, to be an unsuitable method of operation and shall be grounds for disciplinary action by the Board and the Commission in accordance with the Nevada Gaming Control Act and the regulations of the Commission (NGC Reg. 50.011.1).

NGC Regulation 5.011.1 lists "without limitation" what may be deemed unsuitable methods of operation by the state's regulators. Among them:

(h) Failure to comply with or make provision for compliance with all federal, state, or local laws and regulations and with all conditions and limitations approved by the Commission relating to the operations of a licensed gaming establishment or other gaming business, including, without limitation, those relating to:

- (1) Payment or withholding of license fees, payroll taxes, liquor taxes, or entertainment taxes, as applicable;
- (2) Antitrust and monopoly statutes; and
- (3) Workplace discrimination or harassment of a person based on the person's race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, or national origin, including, without limitation, sexual harassment (NGC Reg. 50.011.1(h)).

In summary, we believe the Board must investigate the conduct of Station Casinos in the cases we present here. When a licensee is the subject of a federal injunctive order and is also subject to a finding of contumacy in relation to a subpoena issued by a federal agency, the Board must investigate. We believe the Board will discover sufficient reasons for determining that Station Casinos have acted in ways that reflect discredit on the state and the state gaming industry and are therefore operating in an unsuitable manner.

Documentation is plentiful in these on-going cases, and we would be glad to share information with the Board. To expedite the investigation, we have enclosed copies of the injunctive order by Judge Navarro and the order finding contumacy by Judge Tracy.

We are confident that, after you have reviewed the ample documentation and evidence available, you will ask the Nevada Gaming Commission to take disciplinary action against Station Casinos in accordance with NRS 463.310(4), up to and including revocation. To ignore the problematic conduct of major licensees like Station Casinos would be inconsistent with and detrimental to the "gold standard" reputation of Nevada's gaming regulatory system.

If you have any questions, please contact Ken Liu at 702-387-7001 or kliu@culinaryunion226.org.

Sincerely,



Ted Pappageorge
Secretary-Treasurer

Cc: Nevada Gaming Commission

Enclosures:

- Order by Judge Gloria M. Navarro, in U.S.D.C Nevada Case No. 2:20-cv-02351, order filed July 20, 2021.

- Order by Judge Amita B. Tracy, in Red Rock Resorts, Inc., et al., Case 28-CA-239376, Order Granting General Counsel's Motion Seeking a Finding of Contumacy and Permission to Initiate Subpoena Enforcement Proceedings (Oct. 15, 2021).

¹ U.S.D.C Nevada Case No. 2:20-cv-02351, order filed July 20, 2021.

² Id. at p. 22, 24.

³ Cornele A. Overstreet v. NP Red Rock, LLC DBA Red Rock Casino Resort & Spa, U.S.C.A. for the Ninth Circuit, Case No. 21-16220, order filed November 26, 2021.

⁴ Id. at p. 2. Red Rock is currently seeking en banc review in the Ninth Circuit.

⁵ See National Labor Relations Board v. Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino, U.S.C.A. Ninth Circuit Case No. 18-171124 et al., NLRB's Motion to Consolidate Cases and Refer to Special Master, Dkt. 106-1 (filed March 4, 2021).

⁶ Id., Consent Order, Dkt. 11, (filed November 19, 2021).

⁷ "Region 28 issues complaint alleging Station Casinos used employee layoffs to undermine unions at 10 Las Vegas casino hotels during COVID-19 pandemic", <https://www.nlr.gov/news-outreach/region-28-phoenix/region-28-issues-complaint-alleging-station-casinos-used-employee>.

⁸ Red Rock Resorts, Inc., et al., Case 28-CA-239376, Order Granting General Counsel's Motion Seeking a Finding of Contumacy and Permission to Initiate Subpoena Enforcement Proceedings (Oct. 15, 2021), pp. 6-7.

⁹ National Labor Relations Board v. Red Rock Resorts, Inc. et. al. U.S.D.C Nevada Case No. 2:21-cv-01986, filed Oct. 29, 2021.