Labor & Employment Issues
In Focus

Pitta LLP
For Clients and Friends
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LAS VEGAS CASINOS ROLL THE DICE ON HOSPITALITY WORKER UNIONS' PATIENCE

Last week, hospitality workers threatened to go on strike at 18 different Las Vegas resorts owned by MGM Resorts International, Caesars Entertainment Corp., and Wynn Resorts Ltd. if the casino companies failed to reach a deal with the more than 35,000 hospitality workers they employ by November 10, 2023 at 5:00 AM PST. Now, the Culinary Workers Union Local 226 has announced a tentative agreement with Caesars, with hopes of reaching similar agreements with MGM and Wynn Resorts. The agreement covers about 10,000 workers at Caesars properties including its flagship Caesars Palace and Flamingo, Harrah's, Horseshoe, Paris Las Vegas, Planet Hollywood, Cromwell, and Linq. Members of both the Culinary Workers Union Local 226 and the Bartenders Union Local 165 voted in September to authorize a strike by a 95% margin. Although the parties have been negotiating since April, those negotiations had stalled since early October.

The importance of the hospitality industry to Las Vegas cannot be overstated. The unions' members include servers, bartenders, kitchen staff, as well as room attendants. Union members work at some of Las Vegas's most eminent establishments, including Caesars Palace, Mandalay Bay, and the Bellagio. Thus, the strike—which would begin five days before the city hosts its Formula1 Las Vegas Grand Prix, an enterprise worth an estimated $1.2 billion—threatens to bring the city's largest casino resorts to a standstill. Las Vegas is also hosting Super Bowl LVII in February.

As has been seen with other labor organizations throughout the year, the Unions are demanding higher wages and better protections against new technology that has the potential to threaten their jobs, as well as safety measures like panic buttons on casino floors. Housekeepers are also seeking reduced room quotas. While the Unions would always rather negotiate a deal than go on strike, they also were not willing to fold without substantial concessions. The Unions have already displayed their seriousness with large rallies, including one in October that halted rush-hour traffic and resulted in 58 arrests. According to Local 226, Las Vegas has not seen a city-wide strike since 1984, when 17,000 Culinary Workers members and several other unions struck for 67 days.

DON'T MESS WITH *CEMEX*: NLRB GENERAL COUNSEL ISSUES GUIDANCE AFTER HISTORIC DECISION

On November 2, 2023, Jennifer Abruzzo, the General Counsel of the National Labor Relations Board ("NLRB" or "Board") issued a memorandum regarding how the Agency will proceed following the NLRB's decision in *Cemex Construction Materials*

Pacific, LLC, 372 NLRB No. 130 (2023). The *Cemex* decision created a new standard for when an employer faces a demand for union recognition. The employer may: (1) agree to recognize a union that enjoys majority support; (2) promptly file a petition to test the union's majority and/or challenge the bargaining unit; or (3) wait for the processing of the union's petition with the Board.

If the employer does not recognize the union, nor files a petition with the Board within two weeks of the union's recognition demand, the union may file a National Labor Relations Act ("Act") charge against the employer for refusing to bargain. While the employer can challenge the basis of its bargaining obligation, if the Board finds there was majority support, the employer will be found in violation of the Act and ordered to bargain with the union.

Further, if a demand for recognition is made and an election petition is filed by the employer or union, and the employer commits an unfair labor practice during the period between the demand and election, which renders a recent or pending election result less reliable, the petition will be dismissed, and the employer will be ordered to bargain with the union. If the employer's unfair labor practice invalidates the election process as a whole, the Board will rely on nonelection means, such as union authorization cards, to determine the outcome.

Finally, when deciding whether to set aside a union election based on conduct disruptive to the election process, "the Board will consider all relevant factors, including the number of violations, their severity, the extent of dissemination, the size of the unit, the closeness of the election (if one is held), the proximity of the misconduct to the election date, and the number of unit employees affected."

FEDERAL GOVERNMENT OVERPAYS TEAMSTERS PENSION FUND IN BAILOUT MONEY

The Inspector General of the Pension Benefit Guaranty Corporation ("PBGC") has found that the federal government overpaid the Teamsters Central States Pension Fund in the amount of $127 million in money connected to the pandemic bailout program because it failed to detect dead participants.

The review revealed that the Fund failed to cross-check deceased participants it reported in its application for special financial assistance funding. As a result, the plan's $36 billion payout last year accounted for nearly 3,500 participants who are deceased.

The Biden Administration's pension plan bailout was intended to rescue plans on the brink of collapse until at least 2051. The Teamsters plan, representing more than 350,000 workers and retirees, had been in dire straits in the wake of the 2008 financial crisis. The Inspector General's finding comes after the PBGC began auditing death records in July after an earlier report indicated that it could be counting dead participants. Even then, officials only reviewed terminated vested participants, not active and retired workers. The Inspector General's management alert, issued last week, found that PBGC should have compared the Central States audit of deceased participants with the Social Security Administration's Master Death File, which contains a more accurate and reliable database of private-sector pension plans.

It's unclear how much money the agency overpaid other plans as a result of not cross-checking death records before July. The Inspector General has said that the office is conducting a more thorough review of all Funds. The Inspector General's report stated that it was imperative that the Inspector General alert PBGC officials of the Central States overpayment, because not conducting complete audits required "immediate attention and remediation," the report added. The overpayment amounts to less than half of 1% of the total amount of special financial assistance Central States received, but it's more than half as much money as the agency allocates to insolvent multiemployer pension plans in a normal year, not accounting for the Treasury-backed bailout program.

PBGC issues SFA funding to plans, not participants, so neither the 3,500 deceased participants nor their families directly benefited from the overpayment. For now, PBGC won't initiate recovery actions against Central States or any other plans that received overpayments, as the agency was acting in accordance with the rules it had written and standard operating procedures when the money was allocated, according to a PBGC spokesperson.

STARBUCKS ONCE AGAIN CHALLENGING THE NLRB

In yet another move seemingly designed to attract the attention of the National Labor Relations Board ("NLRB"), the coffee giant's newest plan to raise wages and benefits for its workers nationwide leaves out unionized employees.

Predictably, Starbucks Workers United, which represents 9,000 baristas at shops across the country, announced plans to file unfair labor practice charges against Starbucks shortly after the company announcement. The plan to increase benefits for its workers comes weeks after a National Labor Relations Board judge ruled that 2022 nationwide wage increases violated federal labor law by omitting unionized baristas.

This will be just the latest front in nationwide litigation against Starbucks in response to its opposition to union organizing, which has consistently resulted in decisions against the company. This year's benefits package includes a 3% base wage increase with further pay bumps for workers who have been with the company for multiple years, faster vacation time accrual, and access to company-hosted barista competitions.

Workers at nearly 400 unionized cafes will get annual wage increases that are "consistent" with those from previous years, but no more than that, said Starbucks spokesperson Andrew Trull. If a worker previously received a 5% annual pay bump before unionizing, they would receive the same raise this year, he added. Unionized workers will be left out of the new vacation time policy as well as any compensation from going to barista competitions.

HAPPY VETERANS DAY, ESPECIALLY TO ALL THOSE
WHO SERVED OUR COUNTRY

We would like to extend our appreciation for all those who served in our armed forces to guarantee our freedom. "Our debt to the heroic men and valiant women in the service of our country can never be repaid. They have earned our undying gratitude." President Harry Truman.

To Our Clients: If you have any questions regarding any of the matters addressed in this newsletter, or any other labor or employment related issues in general, please contact the Pitta LLP attorney with whom you usually work.

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