

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHAPTER 438]

Response to Public Comment

Subpart B. LICENSING, REGISTERING, CERTIFYING AND PERMITTING

CHAPTER 438. LABOR ORGANIZATIONS

§ 438.1. Definitions

Comment:

The draft regulations also sweep too broadly in terms of which individuals must register. The first part of the definition of "labor organization agent" properly confines the definition to those who are authorized to represent the organization in "any employment matter relating to employees who are employed by a licensed gaming entity." The second part of the definition, however, is not so confined. It would extend the registration requirement to any "who undertakes on behalf of the labor organization to promote, facilitate or otherwise influence the relations between the labor organization and a licensed gaming entity." This is broad enough to include casino employees who act as part of a union's in-plant organizing committee or as shop stewards under a collective bargaining agreement. It also would extend to a union's community

supporters, including religious and community leaders. For instance, a government official who "facilitated" relations between a union and a casino would have to register. A national religious figure who made an appearance in order to encourage employees to consider unionization would thereby "promote" relations between a union and a casino and would thereby become obligated to register.

Response:

The Board declines to accept this comment. This definition only applies to individuals who are "authorized to represent" or are acting "on behalf of" a labor organization representing employees at a licensed facility. This regulation does not apply to organizing activities.

Comment:

A similar over breadth problem exists with respect to the definition of "labor organization officer." The definition includes officers who may have nothing to do with the representation of gaming employees. For instance, UNITE HERE International Union has a very large General Executive Board with over 70 individuals from the United States and Canada sitting on the Board. Registration of all of these would be an unreasonable burden - both on the labor organization and on the PGCB staff. The draft regulations should therefore be revised to confine registration only to those union officers, employees

and agents who perform significant functions in the gaming industry.

Response:

The Board has modified this definition to limit its applicability to members of an executive board or similar governing body to those who may exercise any authority, discretion or influence with regard to any matter relating to employees who are employed in a licensed gaming facility.

§ 438.2. Labor organization registration

Comment:

The temporary regulations provide for the registration and permitting of both individual labor organization personnel and of labor organizations themselves. The permitting of labor organizations runs afoul of the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.* Section 7 of the NLRA, 29 U.S.C. § 157, gives employees the federally-protected right to select the labor organization of their choosing to represent them. The States may not infringe this right. They may not impose a permit condition on the ability of a labor organization to serve as the collective bargaining representative for private-sector employees covered by the NLRA. In sensitive industries like gaming, the States may require individual labor organization personnel to register, in order to keep out undesirable influences. Therefore, the part of the draft regulations that

would require labor organizations, as entities, to register and obtain permits is preempted by the National Labor Relations Act and should be deleted.

Response:

While we do not agree that the Board lacks the authority to register labor organizations, it was not the Board's intent to establish a complex registration process. Accordingly, this section has been revised to clarify the Board's intent that labor organizations that represent employees at licensed facilities simply have to notify the Board and provide minimal identifying information. Additionally, the fee requirement has been dropped and subsequent filings are only required when information has changed.

Comment:

As drafted, these regulations appear to interfere with rights protected under the National Labor Relations Act and related federal laws. Those laws provide for the exclusive and comprehensive regulation of significant aspects of labor-management relations, and do so in a manner that neither anticipates nor permits the addition of a state administrative regulatory body.

Response:

See the response to the preceding comment.

Comment:

AFSCME has a concern that the PGCB does not have the authority to promulgate regulations regarding labor organizations. Indeed, the grant of authority cited is the generic provision that the Board shall have "such other powers and authority necessary to carry out its duties and the objectives of this part." 4 P.C.S. § 1202(a). Notwithstanding the very specific grants of power to the Board to "investigate," "register," "license," and "permit" potential employees of gaming establishments and purveyors of slot machines, there is no reference in the Gaming Act to the regulation of labor organizations. In fact, one of only mentions of labor unions or collective bargaining agreement in the Gaming Act is the provision at section 1510(b) which requires licensed employers to give preference in hiring to current employees and those who are covered by a collective bargaining agreement. In contrast, the legislation creating the Casino Control Act, in New Jersey, specifically authorizes the Casino Control Commission to regulate labor organizations that seek to represent employees who are employed in gaming facilities. That specific grant of power, along with an extensive legislative history regarding how best to prevent infiltration by organized crime in the casino industry, were relied upon by the United States Supreme Court in upholding New Jersey's regulation of labor organizations. The

PGCB has neither a specific grant of power to the Board to regulate labor organizations, nor does it have any legislative history to support the Board's attempts to regulate labor unions. Therefore, the proposed regulation is ultra vires as it is beyond the scope of the Board's authority. For many of the same reasons, the proposed regulation is likely to be struck down as preempted by National Labor Relations Act.

Additionally, assuming the Board persists with these regulations; AFSCME has concerns regarding which organizations are subject to the regulations. The definition of labor organization, which appears to borrow selectively from the National Labor Relations Act, is far from clear. If the intent is to regulate those unions which represent or seek to represent the employees of a "licensed gaming facility" then the regulations should say that. As drafted, it is unclear to whom the regulations apply. There is no justification for requiring all entities of a labor organization to be subject to regulation by the Board. For example, if a local union is the bargaining agent for employees at a licensed facility and that local registers, why should the Council, Joint Board and the International Union, with which the local union is affiliated, be required to register as well? To require this is unduly burdensome and unjustified.

To require every labor organization, agent and principal employee to be "permitted" is not authorized by the statute. As noted above, the Gaming Act authorizes licensing and permitting of licensed gaming entities, suppliers, manufacturers, and gaming employees. Its scope does not extend to labor organizations which represent or seek to represent employees of licensed gaming establishments. There is no justification to support a regulation requiring officers and employees of labor unions to obtain "permits" and as such the proposed regulations should be rejected.

Response:

The Board declines to accept this comment.