LEGAL DEPARTMENT

Richard G. McCracken, International Counsel

Bruce Raynor, General President
JOHN W. WILHELM, PRESIDENT/ HOSPITALITY INDUSTRY

UNITEHERE!

June 20, 2006

RECEIVED

JUN 2 0 2006

PGCB
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment

Re: Draft Temporary Regulations Pertaining to Labor Organization Registration and Permitting

Ladies and Gentlemen:

These comments concerning the draft temporary regulations pertaining to labor organization registration and permitting are submitted on behalf of UNITE HERE! International Union ("UNITE HERE"). UNITE HERE and its affiliates have had a great deal of experience with regulations of this sort. Their personnel are registered in many gaming jurisdictions including Nevada, New Jersey, Michigan, Illinois and Indiana, as well as at several tribal casinos in California. UNITE HERE understands the reasons for the registration of Union personnel and is accustomed to complying. Therefore, even though 4 Pa.C.S. Part II does not specifically authorize the registration of labor organization personnel, UNITE HERE does not object to a reasonable system of registration established by regulation. These comments, instead, have to do with specific problems in the draft temporary regulations.

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, however, the States may require individual labor organization personnel to register, in order to keep out undesirable influences.

These principles were established by the United States Supreme Court in *Brown v. Hotel Employees*, 468 U.S. 491 (1984). The case involved New Jersey's labor organization registration requirements. The Court upheld the power of the State to require registration of individual union representatives, but not labor organizations themselves. The Court stated:

> We emphasize that this conclusion does not implicate the employees' express 7 right to select a particular labor union as their collective-bargaining representative, but only their subsidiary right to select the officials of that union organization. While the Court in *Hill v. Florida ex rel. Watson*, apparently assumed that the two rights were undifferentiated and equally protected, our reading of subsequent legislative action indicates that Congress has since distinguished between the two and has accorded less than absolute protection to the employees' right to choose their union officials. In this litigation, the casino industry employees' freedom in the first instance to select Local 54 to represent them in collective bargaining is simply not affected by the qualification criteria of New Jersey's Act.

468 U.S. at 509-510. After the decision in *Brown*, Congress amended the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401 *et. seq.* (LMRDA) to codify the decision in *Brown* and make it clear that state registration power extends only to individual union representatives. LMRDA § 524a, added in 1984, provides:

> Notwithstanding this or any other Act regulating labor-management relations, each State shall have the authority to enact and enforce, as part of a comprehensive statutory system to eliminate the threat of pervasive racketeering activity in an industry that is, or over time has been, affected by such activity, a provision of law that applies equally to employers, employees, and collective bargaining representatives, which provision of law governs service in any position in a local labor organization which acts or seeks to act in that State as a collective bargaining representative pursuant to the National Labor Relations Act (29 U.S.C. 151 *et seq.*), in the industry that is subject to that program.

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.

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 anyone "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.

A similar overbreadth 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 Gaming Control Board's staff.

Although LMRDA § 524a gives the States authority to regulate who may be a union representative in the gaming industry, the authority is not unlimited. Instead, it must be exercised to regulate those who are actually involved in representing gaming industry employees. This was established in *Hotel Employees & Restaurant Employees International Union v. Nevada Gaming Commission*, 984 F.2d 1507 (CA9 1993), involving the Nevada system for registering union representatives. The court stated:

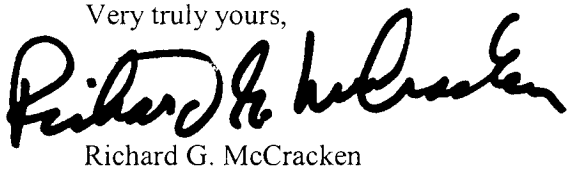
> The application of the regulations, of course, cannot place an unreasonable burden on collective bargaining representatives, or one that is unrelated to the basic objective of eliminating racketeering. Within these bounds, the state agency must have the discretion to determine those persons who perform significant functions in the gaming industry and the type of reporting and disqualification measures that are necessary to eliminate the threat of racketeering activity.

Id. at 1517 (emphasis added). 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.

As noted at the outset, the statute does not require any registration or permitting of either labor organizations or individual union representatives. Thus, the Board is under no compulsion to regulate in ways that create conflict with federal law. The recommendations contained in these comments may be considered without concern that by following them, the Board would violate its statutory mandate.

Thank you for the opportunity to be heard on the regulations.

Very truly yours,



Richard G. McCracken
International Counsel

RGM:rr

RECEIVED
JUN 21 2006

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE: 06/20/2006

SECTION # OR SUBJECT: Sections 403, 435, 441 and 493

FIRST NAME: John

LAST NAME: Donnelly

ORGANIZATION NAME: HSP Gaming, L.P.

EMAIL ADDRESS:

ADDRESS 1:

ADDRESS 2:

CITY:

STATE:

ZIP CODE:

COUNTY:

TELEPHONE:

COMMENTS: Please see attached comments.

Comments may be submitted to the Board by U.S. Mail at the following address:

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment

LEVINE, STALLER, SKLAR, CHAN, BROWN & DONNELLY, P.A.
a Professional Association

COUNSELLORS AT LAW

ARTHUR M. BROWN‡
PAUL T. CHAN‡****
MARY BETH CLARK
BRIAN J. CULLEN*
JOHN M. DONNELLY****
LEE A. LEVINE‡*****
E. ALLAN MACK‡**
KEVIN J. McCABE
SCOTT J. MITNICK‡**
ARTHUR E. SKLAR*
MICHAEL D. SKLAR*
ALAN C. STALLER‡
BENJAMIN ZELTNER**

‡LL M (Taxation)
*MEMBER NJ & PA BAR
**MEMBER NJ & FL BAR
***MEMBER NJ, NY & FL BAR
****MEMBER NJ & DC BAR

June 20, 2006

Pennsylvania Gaming Control Board
Office of Communications
P.O. Box 69060
Harrisburg, PA 17106-9060

ATTN: Public Comment

Please accept the following comments to the draft regulations that were recently published on June 15, 2006 on behalf of HSP Gaming, LP.

Chapter 435. Employees.

§ 435.1. General Provisions.

We object to the provision prohibiting any individual required to hold a license or permit as a condition of employment to wager at any licensed facility in the Commonwealth. Although this practice was originally instituted in New Jersey in the early years of casino gaming, subsequently it was proven to be unnecessary to fulfill the purposes of the New Jersey Casino Control Act and employees below the level of key employees are now permitted to wager at casinos (Gaming related employees may not wager at their employers casino). At the very least, we believe this regulation should permit wagering at casinos other than those where a person is employed.

Chapter 441. Slot Machine Licensing.

§ 441.20. Wagering by former employees.

It will be impracticable to place the burden on casino licensees to prevent former employees from wagering in their facilities. Those persons will not generally be on any "exclusion list", nor necessarily be persons recognized by surveillance or other floor employees nor persons such as juveniles whose physical characteristics identify them. Former employees could easily enter a casino and wager at a slot machines without detection. If they were detected by gaming enforcement personnel, the casino would face regulatory sanctions for an action by a third party that is outside of its control.

§ 441.22. Notice of employee misconduct and offenses.

We believe that subsection (a) requiring the casinos to notify the Board within 72 hours of "any information surrounding the termination of an employee that could be cause for suspension or revocation of the employee's license" should be deleted. This regulation places a burden on the casino licensee to make a determination as to whether information related to an employment termination is of a nature that should be reported to the Board. It provides both a trap for the employer and also sets up the employer for potential defamation suits as well as wrongful termination suits based on information provided to the Gaming Control Board. Examples: If an employee is routinely late for work, must such information be submitted to Board; if an employee is suspected of theft (the employer is not certain but has sufficient information to not "chance it" and therefore makes an employment decision) must the Board be advised? The later example would subject the licensee to potential lawsuits.

(c) We believe that the driving under the influence of alcohol should be deleted.

Chapter 493. Pleadings.

§ 493.2. Formal Complaints.

We believe it is unfair and may not comport with due process to provide that any person holding a license has a burden of proof by clear and convincing evidence when responding to formal complaints.

Again, following the New Jersey Practices and Procedures the burden on complaints against individuals shifts to the Division of Gaming Enforcement and the test is by preponderance of the evidence requiring clear and convincing evidence and placing the burden on the applicant at all times is unreasonable.

Chapter 403. Board Operations and Organization.

§ 403.6. Emergency Orders.

We believe this regulation should be modified to make it clear that the burden of proof in initially seeking an emergency order is on the Office of Enforcement counsel. We also believe that this regulation should require a standard of proof and showing of irreparable harm on the Office similar to that the Board must find to sustain the Orders.

Thank you for the opportunity to reply to these regulations.

Very truly yours,

John M. Donnelly

JMD/lat

RECEIVED
JUN 21 2006

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE 06/20/2006

SECTION # OR SUBJECT Sections 403, 435, 441 and 493

FIRST NAME John

LAST NAME Donnelly

ORGANIZATION NAME

EMAIL ADDRESS

ADDRESS 1

ADDRESS 2

CITY

STATE

ZIP CODE

COUNTY

TELEPHONE

COMMENTS

Please see attached comments.

Comments may be submitted to the Board by U.S. Mail at the following address:

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment

LEVINE, STALLER, SKLAR, CHAN, BROWN & DONNELLY, P.A.
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COUNSELLORS AT LAW

ARTHUR M. BROWN‡
PAUL T. CHAN‡***
MARY BETH CLARK
BRIAN J. CULLEN*
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LEE A. LEVINE‡*****
E. ALLAN MACK‡*
KEVIN J. McCABE
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ARTHUR E. SKLAR*
MICHAEL D. SKLAR*
ALAN C. STALLER‡
BENJAMIN ZELTNER**

‡LL.M. (Taxation)
*MEMBER NJ & PA BAR
**MEMBER NJ & FL BAR
***MEMBER NJ, NY & FL BAR
****MEMBER NJ & DC BAR

June 20, 2006

Pennsylvania Gaming Control Board
Office of Communications
P.O. Box 69060
Harrisburg, PA 17106-9060

ATTN: Public Comment

Please accept the following comments to the draft regulations that were recently published on June 15, 2006 on behalf of Mount Airy #1, L.L.C..

Chapter 435. Employees.

§ 435.1. General Provisions.

We object to the provision prohibiting any individual required to hold a license or permit as a condition of employment to wager at any licensed facility in the Commonwealth. Although this practice was originally instituted in New Jersey in the early years of casino gaming, subsequently it was proven to be unnecessary to fulfill the purposes of the New Jersey Casino Control Act and employees below the level of key employees are now permitted to wager at casinos (Gaming related employees may not wager at their employers casino). At the very least, we believe this regulation should permit wagering at casinos other than those where a person is employed.

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Thank you for the opportunity to reply to these regulations.

Very truly yours,

John M. Donnelly

JMD/lat

RECEIVED

JUN 22 2006

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	06/20/2006	ADDRESS 1	
SECTION # OR SUBJECT	Sections 403.5, 403.6, and 438	ADDRESS 2	
FIRST NAME	Romulo L.	CITY	
LAST NAME	Diaz, Jr.	STATE	
ORGANIZATION NAME	City of Philadelphia	ZIP CODE	
EMAIL ADDRESS		COUNTY	
		TELEPHONE	

COMMENTS

See Attached

Comments of the City of Philadelphia

To the Pennsylvania Gaming Control Board

Emergency Board Orders, Omnibus Regulation Changes and Labor Organizations

By and through undersigned counsel, the City of Philadelphia respectfully submits these comments to proposed sections 403.5, 403.6 and 438 pursuant to the Pennsylvania Gaming Control Board's order of June 15, 2006.

Sections 403.5 and 403.6

The City raises two concerns with the proposals in these sections.

First, Section 1201(F) of the Pennsylvania Race Horse Development and Gaming Act (hereafter, the "Gaming Act") is explicit about the majority (qualified or regular) that must make certain decisions under the Gaming Act. While delegation to staff or individual members may be desirable for administrative efficiency, we are concerned that any staff action taken pursuant to the proposed delegation and emergency order regulations could be challenged as contravening the legislature's explicit will in Section 1201(F). In light of the explicit language of Section 1201(F), we believe that authority for the Board to allow this delegation must be enacted by the General Assembly. To the extent that Board authority may be properly delegated, the City believes that the Board should adopt clear standards for exercise of the delegated authority under proposed Sections 403.5 and 403.6.

Second, the City is concerned that municipal enforcement actions by City departments, including Police, Fire, Licenses and Inspections and Public Health, may be subject to challenge by the proposed regulation 403.6(c), which would permit a temporary emergency order, *inter alia*, "to preserve the public health, welfare, or safety." We believe it is important for the Board to clarify that such actions should not be misinterpreted as an attempt to preempt through administrative fiat important core municipal functions. Any such preemption would be a misinterpretation of both the Board's authority and existing law, and contrary to public policy.

Section 438

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.

These comments are respectfully submitted this 20th day of June, 2006.

Romulo L. Diaz, Jr.
City Solicitor
City of Philadelphia

RECEIVED
JUN 22 2006

DRAFT REGULATION COMMENT FORM

Please complete all of the fields below before printing:

DATE	06/20/06	ADDRESS 1	
SECTION # OR SUBJECT	Proposed Chapters 403, 435, 441 and 493	ADDRESS 2	
FIRST NAME	Dino	CITY	
LAST NAME	Ross	STATE	
ORGANIZATION NAME	Wolf, Block, Schorr and Solis-Cohen LLP	ZIP CODE	
EMAIL ADDRESS		COUNTY	
		TELEPHONE	

COMMENTS

See attached comments submitted on behalf of Downs Racing, L.P. and its parent company, the Mohegan Tribal Gaming Authority.

Comments may be submitted to the Board by U.S. Mail at the following address:

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment

Wolf Block

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JUN 22 2006

Dino A. Ross

June 20, 2006

Attn: Public Comment
Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060

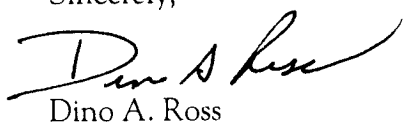
Re: Comments to Draft Regulations Under Title 58 of the PA Code, Chapters 403, 435, 441 and 493

Dear Sir/Madam:

On behalf Downs Racing, L.P. and its parent company, the Mohegan Tribal Gaming Authority, we are filing the enclosed comments to temporary regulations under title 58 of the Pa. Code, Chapters 403, 435, 441 and 493.

Please direct any questions or comments to me.

Sincerely,



Dino A. Ross
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DAR/dsc
Enclosures

BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD

In re: Promulgation of Temporary Regulations Under Title 58 of the Pennsylvania Code, Chapters 403, 435, 441 and 493	:

COMMENTS TO DRAFT TEMPORARY
REGULATIONS OF DOWNS RACING AND MTGA

Downs Racing, L.P. ("Downs Racing") and its parent company, the Mohegan Tribal Gaming Authority ("MTGA"),[1] respectfully submit these comments to the Pennsylvania Gaming Control Board ("Board") in regard to its publication of the draft Chapters 403, 435, 441 and 493 regulations on June 15, 2006. These regulations are intended to implement the provisions of the Pennsylvania Race Horse Development and Gaming Act (the "Act"), 4 Pa. C.S. §1101 et seq., and address Board operations and organization (Chapter 403), general provisions regarding employees (Chapter 435), slot machine licensing (Chapter 441) and pleadings (Chapter 493).

I. Introduction

Downs Racing appreciates the opportunity to submit these comments to the Board and participate in the process of creating rules and regulations under which Pennsylvania's future licensed gaming entities will operate. Chapter 403 of the proposed regulations governs Board operations and organization and specifically establishes a procedure for the issuance, prosecution and adjudication of emergency orders. Chapter 435 provides, inter alia, certain prohibitions regarding employee conduct. Chapter 441 provides, inter alia, certain guidelines and rules for a

[1] MTGA also owns and operates the Mohegan Sun Casino in

licensed gaming entity. Chapter 493 provides certain rules regarding pleadings in the Hearings and Appeals process.

MTGA, through its gaming entities in other jurisdictions, possesses a wealth of experience with the regulation of employee conduct, the licensing hearings and appeals process and the operation of a casino. MTGA and Downs Racing's comments to the proposed regulations stem from and reflect that experience and are offered in the hope that the Board will consider the modifications detailed herein with the understanding that they reflect the extensive experience of MTGA in the gaming industry.

II. Specific Comments

1. Section 403.6

Section 403.6 deals with the procedure involved in the issuance of temporary orders by the Executive Director, followed by a hearing on the substance of the order, if one is requested.

The procedure specified in Section 403.6 is that the Office of Enforcement Counsel may initiate the temporary order process through a request to the Executive Director. Additionally, the Executive Director issues any temporary orders, and also is responsible for holding a hearing on the status of said order within 72 hours of such request.

Section 405.3(c) provides that the Director of the Office of Enforcement Counsel shall report to the Executive Director of the Board on administrative and operational matters. As such, the Executive Director oversees the function and duties of the Office of Enforcement Counsel and is presumably aware of the activities and actions of the Office of Enforcement Counsel with respect to the request for an issuance of a temporary order.

Such oversight raises issues addressed by the Pennsylvania Supreme Court's decision in *Lyness v. State Board of Medicine*, 605 A.2d 1204 (Pa. 1992). In *Lyness*, the Court

stated that the adjudicative and prosecutorial functions within an administrative board should not be commingled, but rather that there should be a "wall of division" between adjudicative and prosecutorial functions.

It is respectfully requested that the Board amend § 403.6 by adding provisions to clarify that the Executive Director of the Board shall not have any supervisory authority over the decisions of the Office of Enforcement Counsel as to whether to institute prosecutions or seek temporary orders. Additionally, the Board should amend § 403.6 to create "walls of division" between the Executive Director and the Office of Enforcement Counsel which eliminate the appearance of bias. Alternatively, it is suggested that a member of the Board be designated to sit as the presiding officer over such emergency order matters in order to avoid the possible commingling of adjudicative and prosecutorial functions.

2. Section 403.6(i)

Section 403.6(i) provides that the Executive Director or their designee may sign subpoenas to secure the attendance of witnesses and the production of documents regarding the informal hearing contemplated by Section 403.6. It is unclear from the language of this section whether parties which are the subject of an emergency order may obtain subpoenas from the Director. Accordingly, this section should be clarified to provide that parties who are the subject of an emergency order and an informal hearing related to that order have the ability to obtain subpoenas issued by the Executive Director in furtherance of the presentation of their case at the informal hearing. This clarification ensures that fundamental fairness will be applied to the proceedings on behalf of persons subject to the emergency orders and provides that such a party will have the opportunity to fully and fairly present a defense to the allegations leveled against the party.

3. Section 435.1(o)

This section prohibits any person who is required to hold a license or permit as a condition of employment or qualification from wagering at any licensed facility in the Commonwealth. This section is too restrictive in that it does not allow individuals required to hold a license or permit as a condition of their employment to wager at a licensed facility in the Commonwealth in which they are not employed. This restriction will cause several serious practical problems for the licensee. First, given that licensees are generally not familiar with employees of other licensees, this requirement would be difficult for licensees to enforce and consequently such licensees may unwittingly allow gaming by prohibited persons. Second, in a competitive gaming environment, it is typical within the industry for certain employees of licensees to visit facilities of other licensees to evaluate their operations, promotional offers, overall entertainment environment, etc. These activities allow for licensees to maintain a competitive gaming environment through increased awareness of the services and promotions offered by competitors. Moreover, these activities ultimately result in increased revenue for the licensee which, in turn, increases the amount of revenue distributed to the Commonwealth. To prohibit such activities, which are typically used in the gaming industry, would frustrate productive competition between licensees. Third, the section as written will likely inhibit potential employees from applying for casino jobs because of their desire to enjoy the gaming experience as a patron. Lastly, there appears to be no good reason for such a prohibition and no apparent risk being protected.

It is respectfully requested that rather than such a broad prohibition, this section should be redrafted to provide that individuals required to hold a license or permit as a condition of their employment may not wager at the licensed facility in which they are employed.

4. Section 435.1(q)

This section provides that any licensed, permitted or registered employee must wait at least 30 days following the date in which they either leave or are terminated from employment before they may wager at the licensed facility in which they were formerly employed. There does not seem to be any basis for the prohibition set forth in this section. Unless there are performance related reasons to ban an employee from the premises, which is a step that can be taken by licensees without the benefit of the prohibition of this section, there seems to be little or no reason to ban former employees from frequenting their previous place of employment to engage in gaming activity.

Given that problem employees can be prohibited from entering the premises by means which already exist, the prohibition contained in this section seems unnecessary and should therefore be eliminated.

5. Section 441.22

This section provides that the licensee is under a continuing obligation to notify the Board within 72 hours of the termination of any employee and of the information surrounding the termination that could be cause for suspension or revocation of the employee's license, permit or registration. The 72 hour time frame in which terminations must be reported may, in some circumstances, be an insufficient amount of time to provide full and complete disclosure of the termination and the circumstances surrounding it. For example, certain key personnel which are crucial to the termination decision could be absent from the worksite at or near the timeframe of the termination in question. This would make it difficult to fully and

adequately inform the Board of the full circumstances of the termination. It is therefore respectfully suggested that a longer notification time frame be adopted, specifically, 14 days.

6. Section 493.2

This section provides that a person who holds a license, certification, permit or registration shall at all times have the burden of proof in complaint proceedings and shall have the affirmative responsibility to establish the facts of their case by clear and convincing evidence. The standards enumerated in this section are unfair and conflict with fundamental due process concerns owing to persons in any proceeding of this nature. As a general rule in civil and criminal cases, Plaintiffs carry the burden of proof in proving their claims. Significantly, there does not seem to be a basis for a departure from this rule under the circumstances provided for in this section. Thus, the party seeking a remedy should be able to justify its request and bear the burden of proof regarding the elements within the claims presented. This is especially true when sanctions, fines and other penalties are sought. It is submitted that the burden of proof in any such proceeding should be held by the Board, as the agency attempting to take action against a person. This change would allow proceedings to be conducted in a manner which appropriately protects the rights of individuals subject to such proceedings.

III. Conclusion

MTGA and Downs Racing commends the Board on all of its work in establishing gaming in Pennsylvania, and its effort to benefit from and incorporate the experience of other jurisdictions. MTGA and Downs Racing appreciates the opportunity to share the perspective of a gaming operator and its experience in casino operations.

Wherefore, MTGA and Downs Racing respectfully request that the Pennsylvania Gaming Control Board consider the comments discussed above in its final Chapters 403, 435, 441 and 493 regulations.

Respectfully submitted:

Alan C. Kohler, Esquire
Dino A. Ross, Esquire
Wolf, Block, Schorr and Solis-Cohen LLP

Michael J. Ciacco, Esquire
Mohegan Tribal Gaming Authority

Counsel for Downs Racing, L.P. and The Mohegan Tribal Gaming Authority

Date: June 20, 2006

RECEIVED
JUN 26 2006

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	06/20/2006	ADDRESS 1	
SECTION # OR SUBJECT	Chapter 438 - Labor Organization	ADDRESS 2	
FIRST NAME	Alaine	CITY	
LAST NAME	Williams	STATE	
ORGANIZATION NAME	Council 13 AFSCME	ZIP CODE	1
EMAIL ADDRESS	om	COUNTY	
		TELEPHONE	

COMMENTS

LAW OFFICES

WILLIG, WILLIAMS & DAVIDSON

June 20, 2006

008013-726

PGCB
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment

Re: Proposed Regulations – Chapter 438 Labor Organizations

Dear Chairman Decker and Board Members:

This firm represents Council 13, American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME"). Council 13 AFSCME is the certified bargaining agent for certain employees of the State Horse Racing Commission and the State Harness Racing Commission. Additionally, AFSCME may have an interest in representing permittee's under the Pennsylvania Race Horse Development and Gaming Act ("The Gaming Act"). Act of July 5, 2004 (P.L. 572, No. 71) 4 Pa. C.S. § 1101 et seq. As Counsel to AFSCME, I have reviewed the proposed draft regulations concerning labor organizations (Chapter 438) and submit these comments for consideration by the Pennsylvania Gaming Control Board ("Board").

AFSCME has a concern that the Gaming Control Board 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, N.J.S.A. 5:12-1 et seq., specifically authorizes the Casino Control Commission to regulate labor organizations that seek to represent employees who are employed in gaming facilities. N.J.S.A. 5:12-93. 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. Brown v. HERE, Local 54, 468 U.S. 491 (1984). The Pennsylvania Gaming Act 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 stuck down as preempted by National Labor Relations Act. Building Trades Council (San Diego) v. Garmon, 353 U.S. 26 (1957).

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. Additionally, 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.

Additionally, 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. It's 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.

WILLIG, WILLIAMS & DAVIDSON

Council 13 AFSCME would be interested in meeting with the Board or staff representatives to further explain its concerns regarding the proposed regulations.

Very truly yours,

ALAINE S. WILLIAMS

ASW/jw

cc: David Fillman, Executive Director
Barry Bogarde, Director Political Dept.
AFSCME Council 13