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Gaming & Hospitality

## GAMING & HOSPITALITY LEGAL NEWS

### MOHEGAN AND MASHANTUCKET PEQUOT TRIBES REACH AGREEMENT WITH GOVERNOR TO BRING MOBILE SPORTS WAGERING AND INTERNET GAMBLING TO CONNECTICUT

by Patrick Sullivan

Two federally recognized Indian tribes are located within the borders of Connecticut: the Mohegan Tribe of Indians of Connecticut and the Mashantucket Pequot Indian Tribe. The Mohegan Tribe, through its economic development arm Mohegan Gaming & Entertainment, operates the Mohegan Sun Casino in Uncasville, Connecticut, and is a developer and operator of casino resorts around the United States. The Mashantucket Pequot operates Foxwoods Resort Casino in Ledyard, Connecticut, less than 20 minutes away from Mohegan Sun, and recently announced it would invest \$12.5 million in a new San Juan, Puerto Rico casino. Both tribal facilities are within two hours of the huge New York City market and offer Class III casino games, pursuant to a Class III gaming compact with the State.

While the two tribes have historically competed for brick-and-mortar casino patrons, they have also come together to plan a \$300 million jointly-owned third casino in East Windsor Connecticut named Tribal Winds at the halfway point between New York City and Boston. Tribal Winds would operate outside of the traditional Indian Gaming framework pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA") and would operate under a special license from the state. However, because both tribes' existing facilities were closed for three months in 2020 and have been operating at limited capacity since then, the tribes issued a joint statement in December 2020 that they would temporarily set aside their plans for the East Windsor project, but promise to revisit the project once markets improve.

In the meantime, the tribes have been working with Connecticut Governor Ned Lamont to expand sports wagering in the state. The tribes' compacts currently provide that the state would not expand gambling, and in return, the tribes compensate the state for this gambling exclusivity with 25% of slot machine revenues. Earlier this month, the Mohegan Tribe and Lamont announced that they had reached an agreement for the tribes and the state to offer sports wagering and internet casino gaming, offending the Mashantucket Pequot Tribe which was also in negotiations with the state. The Governor's office responded that both tribes had been offered the same terms and urged the Mashantucket Pequot tribe to join the deal. On March 18, Governor Lamont and the leaders of both tribes announced they have entered an agreement bringing online casino gaming and sports wagering to Connecticut.

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# GAMING & HOSPITALITY LEGAL NEWS

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Under the deal, the tribes will offer online casino games and mobile sports wagering throughout Connecticut, pay 18% of online gambling revenue, growing to 20% after five years, and pay 13.5% of sports wagering revenues. The State Lottery would offer mobile sports wagering only. All of the mobile games would be geo-fenced to limit play to players within Connecticut. The lottery would also be allowed to open 15 physical retail sportsbooks at pari-mutuel racetracks.

Because the deal would require revisions to the tribes' Class III gaming compacts with the state, the amendments would require approval by the United State Secretary of the Interior. Such amendments would likely be approved.

Sports wagering expanded beyond Nevada in 2018 after the Supreme Court struck down the Professional and Amateur Sports Protection Act, which banned states from enacting new laws allowing sports wagering, as unconstitutional because it allowed the federal government to order certain states to take specific actions to disallow sports gambling, which impermissibly interfered with those states' regulatory powers in violation of the 10th Amendment.

## **4 TIPS FOR SUCCESSFUL COLLECTIVE BARGAINING FOR GAMING AND HOSPITALITY EMPLOYERS**

*by James B. Perry\**

The gaming and hospitality industry has been hard hit by shutdowns resulting from COVID-19. Many employees in these industries have suffered through layoffs and/or reductions in hours. Employees whose livelihood is based heavily on tips have been particularly affected by the reduction in travel and the restrictions on large events. Additionally, when these venues reopen and operations return to pre-COVID-19 occupancy, employees who regularly interact with the public as part of their duties will be more concerned about health and safety issues in their workplaces.

These factors could result in employees that are currently non-union being receptive to union efforts to organize them. Unions may become more aggressive at the bargaining table on issues of compensation and health and safety. By understanding the obligations of the collective bargaining process and focusing on certain key issues, gaming and hospitality industry employers can develop successful collective bargaining strategies, and, with the guidance of experienced legal advisors, reach a satisfactory agreement.

## Introduction

Many gaming and hospitality employers have negotiated initial labor contracts with labor unions. In the United States, unions continue to focus on gaming and hospitality employers, even while unionization in other industries is falling. Wages, benefits, and other elements of labor costs make up a significant portion of the actual costs for gaming and hospitality employers. Therefore, successfully negotiating collective bargaining contracts to allow employers to operate efficiently and profitably, without work interruptions, is critical to the success of these enterprises. We will provide Four Tips for Successful Collective Bargaining Tips for Gaming and Hospitality Employers in this and the next three issues of the Gaming and Hospitality Legal News. We know that most employers have a good understanding of the cost and overhead issues resulting from wage increases, so our only recommendation in that area is to recognize that there will be pressure from many groups to recover money lost during 2020 because of COVID-19.

The Four Tips are:

1. Unionized Employers Must Bargain Over Health and Safety Issues
2. Employers Should Be Wary of Participating in a Multi-Employer Association for Collective Bargaining
3. How to Negotiate Over Retirement Benefits
4. How to Negotiate Over Health Insurance Benefits

## Tip 1 – Unionized Employers Must Bargain Over Health and Safety Issues

The National Labor Relations Act (NLRA) requires employers to bargain in good faith with the unions that represent units of their employees over “wages, hours and working conditions.” Working conditions have been very broadly construed by the National Labor Relations Board (NLRB) and the courts, including the U.S. Supreme Court, over the entire 85-year history of the NLRA.

Due to COVID-19, a newly organized employer negotiating an initial contract may very well be faced with a union's demands for more specific protections than the common one-paragraph contract provision stating that both parties intend to have a safe workplace. Likewise, unions negotiating



# GAMING & HOSPITALITY LEGAL NEWS

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renewal contracts with employers that have been unionized for years may highlight health and safety issues. We would expect many of these incumbent unions to demand joint safety committees, regular inspections, pre-entry screening of employees and customers, extra sanitation and disinfection of the workplace, and other specific measures to be amended into current collective bargaining contracts.

Employers would be wise to anticipate these demands and to account for any additional costs that could result from them in the economic package. Employers should also recognize that having more detailed procedures concerning health and safety in a collective bargaining contract could allow the union to use the contractual Grievance Procedure, including Arbitration, to challenge issues of health and safety. This could be an advantage for an employer with a good relationship with its union and a history of working together to solve problems, as taking up issues with a cooperative union in a Grievance Procedure is often more efficient than a federal or state OSHA investigation. On the other hand, it would also result in providing a union with another forum to process claims against the employer.

In the next issue, we will discuss another Tip for Successful Collective Bargaining for Gaming and Hospitality Employers: *Employers Should Be Wary of Participating in a Multi-Employer Association for Collective Bargaining.*

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