

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

FOXWOODS RESORT CASINO	:	
	:	CASE NO. 34-RC-2230
and	:	
	:	
INTERNATIONAL UNION, UAW, AFL-CIO	:	
	:	
and	:	
	:	
STATE OF CONNECTICUT	:	JANUARY 11, 2008

**INTERVENOR STATE OF CONNECTICUT'S
OPPOSITION TO REQUEST FOR REVIEW
OF SUPPLEMENTAL DECISION ON OBJECTIONS**

The State of Connecticut hereby opposes the Request For Review of the Regional Director's Supplemental Decision on Objections to the Election, filed by Foxwoods Resort Casino ("Foxwoods"), and urges the Board to Deny the Request and affirm the Regional Director's decision.

The Request for Review does nothing more than restate arguments on the jurisdictional issue previously made to both the Regional Director and the Board, which were resoundingly rejected in the Regional Director's Decision Ordering an Election and the Board's summary denial of Foxwoods' Request for Review of that decision. The only argument embellished for purposes of this subsequent Request for Review in the same representation proceeding, the alleged effect of strikes on Foxwoods and its provision of governmental services, is but a further illustration of the fundamental

weakness of its arguments in their entirety as an indirect, remote, hypothetical and ultimately frivolous claim.

I. THE PRESENT REQUEST FOR REVIEW OF THE JURISDICTIONAL ISSUE SHOULD BE SUMMARILY DENIED AS WAS THE ORIGINAL REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION DIRECTING AN ELECTION.

The bulk of Foxwoods' argument in its present Request for Review simply reiterates arguments relying on the tribe's governmental ownership and regulation of its casino, made in its original Request for Review of the Regional Director's decision ordering an election, which were rejected without discussion in the Board' decision denying that Request for Review. Those arguments have long since been put to rest by the Board's landmark San Manuel precedent, affirmed by the U.S. Court of Appeals for the District of Columbia Circuit, as well as the Board's summary denial of the prior Request for Review in this proceeding, relying on San Manuel.

To illustrate the weakness of Foxwoods' argument on the jurisdictional issue, the only argument of any substantial amplification in its renewed Request for Review, having to do with its claim of the effects strikes would have on its governmental operations, is exposed as so riddled with deficiencies as to support further the rejection of Foxwoods' entire jurisdictional argument out of hand. Initially, the strike claim, purportedly supported by an affidavit of the tribe's financing arrangements for the commercial operation of its casino, suffers from its plain recognition as completely irrelevant legally to the jurisdictional issue. The only exception to jurisdiction recognized by the Board in its San Manuel decision was for traditional and governmental functions

of the tribe. Foxwoods' recent development of a classic commercial enterprise in the form of a casino is obviously a radical departure from any traditional or governmental tribal functions it may perform. This conclusion is strengthened, if not absolutely confirmed, by the utter rejection in San Manuel of the casino's governmental ownership and regulation as somehow altering its essential and overwhelming commercial character.

Furthermore, there is good reason why the bright line rule excepting only governmental functions should apply. If claims of some indirect effect of commercial activity on governmental services could be considered, this would open the floodgates to presentation of evidence and argument in other instances concerning the effects of the NLRA's applicability to standard commercial enterprises on governmental services, somehow affording an exemption from the NLRA. Such a line of argument has never been recognized by this Board and should not be so recognized. For example, in the context of other tribal commercial enterprises, a tribe might argue that, apart from strikes, the collective bargaining process itself, so central to the core purposes of the NLRA, could so affect the tribe's finances as to impair its governmental services. Even a private, nontribal employer, such as the principal employer in a municipality or State, could argue that the devastating effect of strikes on its commercial operations could somehow undermine the provision of governmental services at the local or State level, somehow availing itself of the exemption for governmental employers. The sheer folly and inappropriateness of such arguments as a ground for exemption from Board jurisdiction is manifest.

This is further illuminated by the argument actually made by Foxwoods as to strikes. The argument is that Foxwoods' financing arrangements for its casino somehow undermines its ability to withstand strikes. Contrary to Foxwoods' claim in its Request for Review, the Board did consider the strike argument and its supporting affidavit in its Supplemental Decision on Objections to the Election. In footnote 5 of its decision, the Board specifically rejected Foxwoods' reliance on the affidavit as not providing any evidence of Foxwoods' capital reserves, its annual net revenue or its annual cost of essential public services. The mere setting forth of its financial arrangements dependent on its gaming revenues does not alone establish its inability to withstand a strike for purposes of providing government services. In fact, the affidavit itself acknowledges a special provision in the tribe's financing arrangements for funding to allow the continuation of governmental services notwithstanding the temporary interruption of gaming revenues. This could presumably be expanded or modified in recognition of the strike potential following this Board's jurisdiction. More fundamentally, the weaknesses in Foxwoods' evidence and argument expose the inappropriateness of the Board's considering such evidentiary and indirect claims.

Perhaps of equal relevance are many other deficiencies in Foxwoods' strike claim following from the above rebuttal. Initially, it is unclear how much effect strikes would have on provision of governmental services to its small membership of some 900 tribal members. While Foxwoods refers to provision of governmental services extending to casino employees and patrons, this is greatly mitigated, if not entirely offset, by the recognition of cessation of casino operations during the strike. Moreover,

the very nature of a strike is not only hypothetical but temporary in duration, further supporting the likely sufficiency of interim financial arrangements allowing government services to continue through the course of the strike. Furthermore, the NLRA specifically authorizes employers to hire permanent replacements during a strike, which may particularly apply to many of the less skilled and unskilled jobs of casino employees. The short term nature of strikes is further supported by the lack of financial resources of the employees themselves, especially in contrast to the wealthy employer here, Foxwoods Resort Casino, claiming to be the largest casino in the world.

It is further noteworthy that strikes may not be as all encompassing, for purposes of cessation of the casino's operations, as Foxwoods contends. The bargaining unit of dealers here consists of only some 3,000 of as many as 11,000 employees at the casino. In the case of a partial strike of employees, it is entirely unclear to what extent that would result in a curtailing of casino operations and whether such partial effect would impair the provision of governmental services by the tribe. While, in theory, other employees could honor a picket line of strikers, such action by other employees is entirely uncertain, especially given the unprecedented nature of a strike at the tribal casino, and may depend, in part, on the demand of employees and patrons alike for continuation of casino operations. Foxwoods' reliance on a parallel to public employers having a prohibition on strikes is undermined by such strikes' direct interference with government services. In fact, tribal governmental functions are also an exception to the NLRA's jurisdiction. The indirect effect of strikes against the commercial activity of a casino on government services is plainly distinguishable from the prohibition of strikes

against public employers, especially given so many questions and uncertainties as to how much actual effect a strike at the casino would have on Foxwoods' provision of governmental services.

What is, of course, missing from Foxwoods' argument is the persuasive, undeniable and undisputed affirmative ground for permitting strikes by casino employees under the NLRA. The core purposes of the NLRA support its application as labor policy to all commercial enterprises engaged in interstate commerce, and this is obviously applicable to tribal casinos such as Foxwoods as well having huge numbers of nontribal employees and customers and operating so extensively in interstate commerce. Moreover, there is also not only a competitive aspect to Foxwoods being subject to the same federal labor laws as private casinos and other commercial enterprises generally but also, from the employees' standpoint, their access to comparable wages and working conditions to employees of nontribal casinos and the similar larger workforce generally.

In short, Foxwoods' strike argument is so riddled with defects as to exemplify the utter hollowness of its jurisdictional argument as a whole, undermining its very credibility.

CONCLUSION

For the foregoing reasons, the Board should deny the tribe's request for review and affirm the Regional Director's supplemental decision on objections to the election. Foxwoods' arguments are nothing more than a reiteration of prior arguments summarily

dismissed, as exemplified by its particularly lacking argument seeking to deny employees their basic right to strike under the NLRA.

STATE OF CONNECTICUT

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CERTIFICATION

I hereby certify that the foregoing was served, by facsimile transmission, on
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