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Wynn Las Vegas, L.L.C. v. Baldonado, 129 Nev. Adv. Op. 78 (Oct. 31, 2013)¹

LABOR LAW: EMPLOYMENT POLICY

Summary

The Court determined one issue: whether Nevada law (NRS Chapter 608) allows employers to require employees to pool their tips with other employees of a different rank.

Disposition

Under Nevada law, employers may require employees to pool and share tips with employees of a different rank, such as management.

Factual and Procedural History

The Wynn Las Vegas restructured its table-games department by eliminating several positions and created a new tip-pooling policy. All tips are gathered and divided among the dealers, boxpersons, and casino service team leads. Respondents Daniel Baldonado, Joesph Cesarz, and Quynhoc Tang (“the dealers”) filed a class-action complaint with the Labor Commissioner claiming that the Wynn's restructured tip-pooling policy violated several Nevada statutes.² The Labor Commissioner rejected the respondents’ class action status, dismissed all unnamed complainants from the action, but accepted all named complainants. The Labor Commissioner decided Wynn’s tip-pooling policy was consistent with Nevada law.

The district court granted the dealers’ petition to review and set aside the Labor Commissioner’s decision. The court found the new tip-pooling policy violated NRS 608.160. The district court also held the Labor Commissioner had the power to hear a class action and erred by dismissing the unnamed complainants.

Discussion

The Wynn's tip-pooling policy was lawful under NRS 608.160

NRS 608.160 prohibits employers from taking and keeping employees' tips, but the statute does not prohibit a tip policy that splits the tips among the employees. The Court rejected a perceived direct benefit test in *Moen v. Las Vegas International Hotel, Inc.*³ Here, Wynn’s policy of distributing the tips among its employees and keeping none for the company complies with NRS 608.160 and *Moen*. The district court erred in reversing the Labor Commissioner’s decision.

¹ By Laura Guidry

² NEV. REV. STAT. §§ 608.160, 608.100, 613.120 (2013).

³ 402 F. Supp. 157 (D. Nev. 1975).

The Dealers' claims under NRS 608.100 and NRS 613.120 require judicial review

The district court held the tip policy violated Nevada law, and therefore declined to review the Labor Commissioner's decisions under NRS 608.100 and NRS 613.120. That “decision aggrieved the Dealers; thus, the dealers were entitled to judicial review of all of the Commissioner’s decisions.”⁴ The Court therefore remanded the matter to the district court “to review the Labor Commissioner's decisions regarding NRS 608.100 and NRS 613.120.”

The district court should have deferred to the Labor Commissioner's decision declining to grant the Dealers’ class-action status

Citing *Dutchess Bus. Servs. v. State, Bd. Of Pharm.*,⁵ the Court noted that it “defers to an agency interpretation of its governing statutes or regulations if the interpretation is within the statute[] or regulation’s language.” Here, “the Labor Commissioner’s conclusion that NAC 607.200 does not permit class actions was within the regulation's language.” Under Nevada law, the Labor Commissioner is not required to grant class certification under any circumstances. Thus, the district court erred by not deferring to the Labor Commissioner's decision.

Conclusion

The District Court erred in deciding Wynn’s tip-pooling violated NRS 608.160 and by holding the Labor Commissioner should have granted the Dealers’ class certification. The Court remanded the matter to the district court.

⁴ See NEV. REV. STAT. § 233B.130 (2013).

⁵ 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008).