

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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PUBLIC HEARING

BEFORE: MARY DIGIACOMO COLINS, CHAIRMAN
Raymond S. Angeli (Via Telephone),
Jeffrey W. Coy, James B. Ginty,
Kenneth T. McCabe, Sanford Rivers,
and Gary A. Sojka, Members
Keith Welks, Ex-officio Designee

HEARING: Wednesday, January 21, 2009
11:20 a.m.

LOCATION: North Office Building
Commonwealth and North Street
Hearing Room One
400 North Street, West
Harrisburg, PA 17105

WITNESSES: Cyrus Pitre, Robert Soper, Nan Davenport,
Alan Kohler

Reporter: Cynthia Piro-Simpson

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CHAIRMAN COLINS:

Okay. Let's do the next matter. Again, it's Downs. This is ---.

ATTORNEY KOHLER:

This is --- the next matter is the Credentials Petition. This matter's a little different because it's based primarily on issues of fact rather than issues of law. My proposal would be ---.

CHAIRMAN COLINS:

What is it --- specifically, what is it you're asking us to do?

ATTORNEY KOHLER:

Up until this fall, the Board's Regulations required that casino employees carry their Board credentials on their person. They didn't have to be displayed. The Board did a proposed rulemaking and moved towards a final rulemaking, most of this taking place in the summer, fall of this year. To change that requirement to require that credentials be displayed.

As part of that rulemaking, the Subsection E, and it's Section 435a.6, for the record.

1 Subsection E specifically says that the Licensee can
2 seek an exception from the general rule for certain
3 positions in the casino for good cause shown.

4 At some point we saw that this Regulation
5 was going to be finalized. We actually filed this
6 Petition under Subsection E before the Reg was
7 finalized, hoping we can, you know, avoid the
8 requirement for certain positions. That didn't
9 happen, and we're now seeking for good cause shown
10 under Subsection E, certain positions be exempt from
11 the requirement.

12 When we filed our Petition we came in
13 with a fairly large number of positions. We
14 negotiated with Office of Enforcement Counsel (OEC).
15 We agreed unilaterally to cut that down after those
16 discussions, and as we sit here today, there are now
17 three categories of positions that are reflected in
18 the stipulation, and also in a letter that was filed
19 yesterday? Today. Those three categories would be
20 positions that OEC does not oppose an exemption,
21 positions that OEC opposes an exemption, and --- oh,
22 positions where we've agreed to withdraw our request.

23 So hopefully --- staff had asked us to
24 make this very clear for your review in the January
25 21st letter. I don't know whether you have that. I

1 certainly can provide a copy. But the relief we seek
2 is for Categories 1 and 2. The Category 1 being the
3 one where OEC doesn't oppose and Category 2 being the
4 ones that OEC does oppose. Category 3, of course,
5 we've withdrawn.

6 CHAIRMAN COLINS:

7 All right. Do you have any further
8 testimony?

9 ATTORNEY KOHLER:

10 With your permission, Madam Chairman, I
11 would have one question for Mr. Soper.

12 CHAIRMAN COLINS:

13 Okay.

14 -----
15 ROBERT SOPER, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED
16 AS FOLLOWS:

17 -----

18 EXAMINATION

19 BY ATTORNEY KOHLER:

20 Q. Mr. Soper, can --- and maybe it's not
21 self-apparent. Can you explain why MSPD moved forward
22 with this Credentials Petition and whether or not it's
23 important to your company.

24 A. Yeah. Well, you know, obviously for those that
25 have seen our facility, we spent a lot of --- a long

1 time in both designing and, you know, providing what
2 we call a first-class experience with the finishes,
3 both in Connecticut and in our Pennsylvania property
4 we're proud of. And we spent the same amount of time,
5 you know, when we have our uniforms designed --- and
6 it all centers around the customer and the experience
7 that they experience when they walk into our facility.
8 And for us, it's simply, you know, a question of how
9 each of these --- our team members look when they have
10 that uniform on.

11 And you know, clearly when you have a nice uniform
12 on, whether it's a dress or something a Slot Attendant
13 wears, or whatever the case may be, we believe that
14 the credential itself, first of all, provides no added
15 value, whether it's for security or other reasons when
16 it's on the --- displayed, obviously they have to
17 carry it. And two, it detracts from the actual
18 appearance of the individual. And you know, that's
19 the essential --- it actually goes to the core values
20 of our organization and what we're all about, and you
21 know, I sort of like to compare it to looking at
22 someone in an airport, or in an --- you know, in an
23 office environment, or you know, whatever it may be,
24 that's not the image we're trying to portray, and I
25 think displayed credentials actually, you know, create

1 that type of image.

2 And there's other reasons as well. You know, when
3 you have to --- especially many of our uniforms don't
4 have pockets on the front because the nature of it,
5 it's very difficult to display the credential without
6 it literally getting in your way. The Slot Attendant,
7 which is on that list is a great example. They're
8 often moving around, they're doing --- interacting
9 with the guests and actually engaging in, you know,
10 physical activities where the badge can get in your
11 way.

12 And you know, Atlantic City recognized that many
13 years ago, that there's really very little value to
14 requiring it. They've had no issues with not
15 requiring display, same with Nevada and others, and
16 Connecticut's no difference in our facility there.
17 And we haven't, frankly, had a problem, and I'm not
18 aware of any other casino that's had a problem. So I
19 just --- I don't believe there's an issue in why it
20 should be required, but it certainly does, in our
21 view, impair sort of the image that we're trying to
22 portray out in the front house. And that's why we
23 have no objections, especially to those backhouse
24 positions, where the customer doesn't interact. This
25 is really an issue for us with those front house

1 positions that interact with the customer.

2 COMMISSIONER GINTY:

3 Would your position --- yeah, would your
4 position be any different in any of these situations
5 if the actual badge requirement wasn't as
6 overwhelming? For example, if it were like New Jersey
7 where it's a much smaller --- a lot of personal
8 information is ---.

9 A. Well, we actually do have a requirement ---
10 they're all required to wear a nametag that has a
11 designated letter on it that's visible from any
12 surveillance camera which shows what kind of access.
13 So there is a requirement that they have a name tag
14 with a designated security letter on it, and that is
15 an indication, along with the uniform itself, of
16 course, that they are an employee of the facility. So
17 there is --- you know, but it's obviously much smaller
18 and classier. It's not this big credential --- I
19 think I actually still have mine in my pocket, that,
20 you know, if you were to wear it, you know, around
21 your neck, you see how it's certainly very conspicuous
22 to the eyes of a patron.

23 BY ATTORNEY KOHLER:

24 Q. Can you address just one position specifically
25 that OEC opposes, and that would be Security Guards?

1 A. Yeah. I mean, Security Officers are a good
2 example. For us, the Security Officer --- you know,
3 one of the primary functions is to provide service to
4 the guest. If the guest has a question, you know,
5 where something's located or needs assistance with
6 something, you know, I often say Security Officer, 90
7 percent of the role is a Customer Service Agent, 10
8 percent of their role, you know, is actually engage in
9 security activities, not to diminish the role of
10 security activities, because that is primary and most
11 important, you know, to ensure the integrity of the
12 operation, but that's, in reality, what they do every
13 day on a day-to-day basis.

14 For us, again, you know, they have their own
15 security uniform, you know, they have to carry their
16 badge, they have to have a name tag with a designated
17 code, and they constantly interact with guests, and
18 you know, it's --- to me, it's a very unsightly thing
19 when you're trying to portray that image to have this
20 credential displayed, you know, on their uniform.

21 CHAIRMAN COLINS:

22 Chief Enforcement Counsel, any questions?

23 ATTORNEY DAVENPORT:

24 Yes, Chairman. Mr. Soper, is one of the
25 responsibilities of the Security Officer to ensure

1 that MSPD employees comply with the Act and the
2 Regulations?

3 A. Well, I would say to --- every employee has an
4 obligation of some extent to ensure there's
5 compliance. I mean, if they're aware of something
6 that's not compliant, they have an obligation to
7 disclose to us that non-compliance. So I mean, yes, I
8 would say every one of our team members has that
9 obligation.

10 ATTORNEY DAVENPORT:

11 And specifically, a Security Guard, if
12 they see somebody out there that is not complying with
13 an Act --- with the Act of the Regs, they would be
14 responsible for going up, addressing that concern and
15 rectifying that?

16 A. Oh, absolutely. You know, if there's an underage
17 individual, someone who may be under the influence,
18 they have certain specific requirements that other
19 team members do not have, that's correct.

20 ATTORNEY DAVENPORT:

21 So in a case where somebody, let's say, a
22 Cage Shift Manager, who you're no longer object --- or
23 requesting they be exempt from the display
24 requirements, so therefore a Cage Shift Manager who
25 would be required to display the credential, if a

1 Security Officer went up and saw that the person was
2 not displaying their Board-issued credential, they
3 would be responsible for saying, wait a second, you
4 need to display it, you're not complying with the Act
5 or the Regs; correct?

6 A. The Security Officer --- I'm not sure at this
7 point we train them to say that if one of our members
8 is not wearing a credential, you have an absolute
9 obligation. They all know that when they're
10 interacting, there are certain individuals, especially
11 in sensitive areas that need credentials, and they
12 should ask for them, but in regards to the display
13 itself, they will likely be responsible for enforcing
14 that. But again, I'm not sure it's just Security
15 Officers, I think there's a number of other
16 individuals as well.

17 ATTORNEY DAVENPORT:

18 Well, the display requirements are a part
19 of the Regulations, ---

20 A. Yes.

21 ATTORNEY DAVENPORT:

22 --- I believe you testified that part of
23 the duties of a Security Officer is to make sure ---

24 A. Sure.

25 ATTORNEY DAVENPORT:

1 --- that the Regulations are complied
2 with, so therefore we have somebody who would be
3 responsible for ensuring compliance with the
4 regulation, not following the display requirement in
5 the regulation itself.

6 A. If, in fact, that the Regulation required them,
7 you know, ultimately to wear that credential, I would
8 say it's no longer part of the Regulation if there is
9 an exemption from it. I think it would be understood
10 by the Cage Shift Manager, or whoever it may be that
11 --- and I guess the real point here is, there's never
12 been an issue, nor do I foresee an issue with the
13 Security Officer not wearing a badge, and the Shift
14 Manager, in your example, not acknowledging that's a
15 Security Officer. They're uniformed, they have the
16 name tag, they're well aware of their position, their
17 authority, so I don't foresee that as an issue just
18 because they don't have the credential displayed.

19 COMMISSIONER GINTY:

20 Nan or Cyrus, I have a question here.
21 Are we going to have to go through this 14 times to
22 determine whether the Sous Chef should wear an ID or
23 whether the Valet should wear this kind of ID? I mean
24 this kind of ad hoc determination, when we have an
25 industry out there, I mean, I would prefer to address

1 it one time, get it over with, make sure the rules of
2 the road are the same for --- have we heard from any
3 of the other casinos?

4 ATTORNEY PITRE:

5 No, that's the position that we're in,
6 again, with the --- I guess, with the Regulation, is
7 that if it's for good cause they can petition. I
8 would prefer also to, rather than see piecemeal
9 standards applied across the industry for different
10 casinos that we have one set of Regulations that apply
11 to every casino in every way. So in that respect, I
12 would think that we could either do one of ---.

13 CHAIRMAN COLINS:

14 I would interrupt and offer that we do
15 have one set of Regulations.

16 ATTORNEY PITRE:

17 And that's what should apply. I mean, I
18 really don't think aesthetics is good cause, but
19 that's for the Board to decide. But we have a
20 Regulation in place, and I think that's what everybody
21 needs to abide by unless that Regulation changes.

22 COMMISSIONER GINTY:

23 I don't want to beat around. I'm very
24 sympathetic to you, but I mean, I just --- I don't
25 even know what a Breakers Entertainer is. And if

1 you're asking me to make a decision on 15, 39, 43
2 positions, I mean, at one casino when we obviously
3 have a regulation that we adopted some time ago to be
4 protective of clients and this data, you know, we
5 would be here all day trying to figure it out. So I
6 mean, I --- Alan, I've said it before, I'm going to
7 say it again, you know, this is an industry issue, and
8 it's about time we got the industry together to sit
9 down with our folks and work something out so we ---
10 that we don't have to go through this, you know, 14
11 times.

12 ATTORNEY KOHLER:

13 We support that. I mean, we, in some
14 respects, feel as if we're a little bit of victim of
15 circumstance on this issue. We did raise the
16 credential issue with the Board in the rulemaking
17 process. We raised it with the ERC, and I don't know
18 that the Board ever discussed it in their documents,
19 but when --- what the ERC basically said to us, we're
20 going to let the Reg go through because it has
21 Subsection E, which lets you go in and get exemptions.
22 So they told us to get --- you know, to make our case
23 to the Board to get exemptions.

24 So I guess my point, Commissioner, is I
25 think a lot of the times --- I don't want to assert

1 motive, but you know, there's a strategic advantage of
2 putting a waiver provision in a Reg, because it helps
3 you get through the ERC, but if you don't want
4 waivers, then you shouldn't include those provisions,
5 and so we turned where the Regulation told us to turn.

6 CHAIRMAN COLINS:

7 Well, ---

8 COMMISSIONER GINTY:

9 You got my attention.

10 CHAIRMAN COLINS:

11 --- my analysis of this would be that we
12 have a Regulation that places the burden on the
13 Petitioner to demonstrate good cause, and the question
14 before --- this Regulation applies across the board to
15 all Licensees. The question is whether or not you've
16 met your burden in this instance, whether or not
17 there's good cause. But are there any other
18 questions?

19 ATTORNEY DAVENPORT:

20 Commissioner, I have a comment that might
21 be helpful, too. With respect to the most recent
22 rulemaking and the preamble, the Board disagreed with
23 MSPD's comments and noted that although the employee's
24 name is listed on the front of the credential, other
25 personal information is on the back. And furthermore,

1 the Board noted that --- while the credential may
2 detract somewhat from the employee's uniform, this is
3 outweighed by the approved ability to ensure that all
4 employees have the credentials. So, that was in the
5 preamble to the regs.

6 CHAIRMAN COLINS:

7 All right. Anything else?

8 A. I would also like to emphasize, because there are
9 three categories, and some which they agreed to.
10 There are a number of positions where clearly there's
11 a safety hazard with having it. If you're a Sous
12 Chef, and we have Chefs cooking, you don't want a
13 credential hanging down, and that --- and the reason
14 why they were piecemealed, because there are some that
15 are patently obvious that become a danger to the
16 individual, you know, especially in certain positions,
17 the Breakers you mentioned, those happen to be
18 bartenders that dance. Having a credential flailing
19 around while they're dancing would, obviously, be a
20 distraction and an impediment to what they can
21 actually do. So it's not all about aesthetics ---
22 it's not all about aesthetics. I just want to make
23 that point as well.

24 CHAIRMAN COLINS:

25 All right. Thank you. Yes, sir.

1 ATTORNEY KOHLER:

2 Your staff had asked that we move the
3 January 21st letter, which I think you now have a copy
4 of, ---

5 CHAIRMAN COLINS:

6 Yes.

7 ATTORNEY KOHLER:

8 --- which is signed by Mr. Doherty and
9 Ms. Davenport into the evidentiary record, we're
10 willing to do that. I assume you have ---.

11 ATTORNEY DAVENPORT:

12 No objections.

13 CHAIRMAN COLINS:

14 All right. Very good. This, too, will
15 be held under advisement and scheduled for a vote on
16 February 3rd.

17 CHAIRMAN COLINS:

18 Thank you very much.

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