CULINARY WORKERS UNION, LOCAL 226

Affiliated with UNITE HERE INTERNATIONAL UNION

Via e-mail at (regcomments@gcb.nv.gov)

April 10, 2018

Ms. Becky Harris, Chairwoman
Nevada Gaming Control Board
1919 College Parkway
P.O. Box 8083
Carson City, NV 89702

Re: Culinary Workers Union Local 226's Response to the Verification of Policies, Procedures and Training Related to Sexual Harassment in the Workplace

Dear Chairwoman Harris:

The Culinary Workers Union Local 226's applauds the Gaming Control Board's interest in strengthening the minimum standards for anti-sexual harassment policies and procedures in the state's gaming industry. Workplace sexual harassment is a serious and on-going issue for many of the Culinary Union's 57,000 members in Nevada.

Stories about sexual harassment are widespread in Nevada's casinos and club venues: from stories of managers making lewd comments to stories of customers groping cocktail waitresses, guest room attendants and more. In a February 12, 2018, article entitled "Steve Wynn is Out But Las Vegas is Still a Tough Town for Women," Bloomberg reported that Nevada "leads the nation in sexual harassment complaints per capita, according to data from the Equal Employment Opportunity Commission and the Bureau of Labor Statistics." Christie Smythe & Christopher Palmeri, *Steve Wynn is Out But Las Vegas is Still a Tough Town for Women*, BLOOMBERG (Feb. 11, 2018), https://www.bloomberg.com/news/articles/2018-02-11/steve-wynn-may-be-out-but-vegas-is-still-a-tough-town-for-women. For many workers in the licensees' industries, sexual harassment is an everyday indignity. To combat these transgressions, public governance boards like the Board will have to take active and affirmative steps.

Because this is an important issue for workers and because the Union has spent time researching these issues, the Culinary Union provides the following comments for the Board's consideration.

1. **Areas of Possible Regulation.**

In Notice # 2018-11, the Board asked for suggestions regarding possible areas of regulation. In addition to the policies and procedures addressed in the Notice and Checklist, the Union asks the Board to address issues in three areas: vendors and third-party operators, customer harassment, and non-disclosures agreements.

a. Vendors and third-party operators

The nature and corporate structure of many licensees' venues are more complicated than in prior years. *See* Glenn Light et al., *Keeping Compliance in Check*, CASINO ENTER. MGMT. 12 (Nov. 2009), http://www.lrrlaw.com/files/Uploads/Documents/LightRutSing_1109.pdf. Third-party entities often operate licensees' club venues, bars, and restaurants. These business relationships raise a host of questions for regulators.

For example, if a third-party host regularly harasses a club venue's employees, what responsibility does the club venue have? As the licensee, the club venue should have the responsibility to accept and investigate complaints occurring on its premises. Furthermore, the licensee should take measures within its control to redress violations. Otherwise, licensees could skirt their responsibilities to enforce sexual harassment rules by pinning the blame on third-party vendors or operators. Consistent with other Board regulations, licensees should be held accountable for all conduct on their premises. *See* Nev. Rev. Stat. § 463.0129; NGC Regulations 5.010(1)-(2), 5.011.

b. Customer harassment

Another area of serious concern for many workers in the licensees' industries is customer harassment. The Board has already taken steps to redress customers' illegal behavior with respect to purchasing illicit drugs and unlawful prostitution services. If the Board is serious about the good order and general welfare of workers in these industries, then it should ensure that licensees respond to reports of customer sexual harassment.

In the service and hospitality industry, the classic motto is that the customer is always right. This saying is problematic when the customers feel uninhibited enough to harass, grope, or assault workers in the industry. This is a reoccurring issue in the service industry. In 2016, UNITE HERE Local 1 conducted a survey of 500 women in greater Chicago's hotels and casinos. According to the survey results, 77% of casino workers reported being sexually harassed by customers. *See* UNITE HERE Local 1, *Hands Off Pants On: Sexual Harassment in Chicago's Hospitality Industry* (July 2016), *available at* https://www.handsoffpantson.org/wp-content/uploads/HandsOffReportWeb.pdf. That is a whopping number to confront. Chicago responded by enacting an ordinance that requires hotel licensees to adopt policies that expressly prohibit customer harassment, implement clearer procedures, and enforce tougher anti-retaliation measures. *See* Chicago Municipal Code § 4-6-180.

Here in Las Vegas, we are in the process of collecting data from our members about their experiences with sexual harassment in the workplace. We specifically want to understand their

experiences with customers and how the casino employers handle complaints and sexual harassment training. We expect this research will be very helpful in strengthening protections for Nevada's gaming workers.

There is a steep power imbalance between a guest who can afford to spend $450 on a bottle of vodka or thousands on a hotel suite and the server or guestroom attendant assigned to attend to his needs. Many workers are afraid to report inappropriate encounters because they feel that their managers, implicitly or explicitly, support or encourage the patrons over the employees. When female workers are trained to endure this treatment from customers, they are also more likely to keep quiet about managers' or coworkers' harassment. Thus, the problem continues unabated.

Clarifying that these regulations encompass customer harassment and ensuring strong anti-retaliation is an important step towards reducing rampant sexual harassment in the industry.

c. Non-disclosure agreements

Non-disclosure agreements have garnered much attention in the #MeToo era, and rightly so. These agreements hinder the public's ability to explore and understand workplace abuses. Several states are considering bills that would ban non-disclosure agreements from harassment settlements, including Arizona, California, New Jersey, New York, Pennsylvania, and Washington.

Given many licensees' failure to police themselves, the Board has found it necessary to oversee enforcement. Short of banning non-disclosure agreements, the Board should require annual notice of settlements or judgments so that it may monitor harassment allegations. This requirement would give the Board the ability to identify and ameliorate pattern of violations.

2. Minimum Internal Controls

The Board's checklist of criteria contains several elements which are necessary for maintaining minimum standards of civility in the workplace. Unfortunately, many victims do not report harassment because of shame, fear, or hopelessness. Appropriate internal controls can ensure that victims have the ability to step forward and report harassment.

a. Minimizing victims' shame through education

One of the primary reasons that victims do not report harassment is the shame attached to such incidents. Lessening the stigma of harassment and empowering victims to report harassment is one of the hardest but most crucial tasks in the battle against harassment. Changing the workplace culture is paramount.

The current criteria properly require a strong and clear anti-harassment policy. That is an important first step. In addition to the written policy, the criteria appropriately require on-going training and refresher courses. Finally, the criteria's inclusion of annual effectiveness reviews

surveys is of paramount importance. Once the policy is in place and the training is done, the work is not over.

The Board should ensure that the trainings and retrainings are useful. First, the Board should require that training programs be offered in languages that employees can understand. Education sessions mean little if the employees cannot understand. Second, the Board should define "regular" retraining, as used in item 11 of the criteria.

Furthermore, to send a clear message, the Union suggests that any sexual harassment policy clearly state that "sexual harassment will not be tolerated at any level of the organization." The policy should be clear that no one—not managers, executives, nor third-party operators—are exempt from the policy.

b. Assuaging fears of retaliation

Many workers fear that they will be seen as weak or combative if they report incidents of harassment. Some workers state that after coworkers reported harassment, managers treated the workers adversely or gave them fewer opportunities. The Board's strong anti-retaliation measures are key to combatting this fear.

c. Combatting the perception that reporting harassment is futile.

The harmful pairing of hopelessness and helplessness often discourages victims from reporting. When workers believe that nothing will change, they are less likely to report harassment. Prompt and impartial investigations as well as "proportionate corrective action" are necessary for staving off workers' sense of helplessness.

To ensure that reporting harassment is not futile, licensees must ensure that their own supervisors and managers follow the appropriate protocol after they have learned about a potential complaint. Accordingly, the Union recommends that any effective anti-harassment policy will require discipline for managers who do not follow the appropriate protocol.

3. Revisions to the Reporting Form.

Finally, the Union reviewed the Board's Sample Reporting Form. Because workers speak a variety of languages, this form should be offered in those languages. At a minimum, the form should be offered in Spanish. Additionally, in the interest of encouraging workers report harassment, the Union makes the following proposals for the Reporting Form:

a. Harasser's name

The form requires the complainant to list the harasser's name, but complainants might not know the harasser's name and may be discouraged from filing because of this request. If victims do not file complaints, the Board will not be able to identify patterns of problems. The Union recommends, "Name, if known" for Section 3.

b. Harasser's title

The form requires the complainant to name the harasser's title. Again, this could discourage complainants. "Title, if known, or description" would be more helpful in Section 3.

c. *Relationship*

The form lists three forms of "relationships" to the complainant: "supervisor, co-worker, direct report." As discussed above, there are other potential forms of harassment. The Union recommends additional examples, such as "owner, executive, manager, supervisor, co-worker, direct report, vendor, customer."

d. Suggesting that a response is required

The form asks, "Did the Complainant inform the alleged offender(s) their behavior was unacceptable or unwanted?" This question is legally unnecessary and intimidating. Many victims are so taken aback or ashamed in the moment that they do not advocate for their rights. The Union's first recommendation would be to strike this question at this stage of the complaint procedure. The Union's secondary recommendation would be to replace the instruction with: "Did the Complainant inform, verbally or non-verbally, the alleged offender(s) their behavior was unacceptable or unwanted?"

We thank the Board for the opportunity to provide comment. The Union will be interested to learn from the Board how it intends to process these reports, whether this form will be shared with other entities, and what types of correspondence complainants can expect to receive. The proposed workshop would be good opportunity to address some of these concerns.

In the meantime, if the Board is interested in reviewing additional studies or surveys about sexual harassment in the workplace, the Union would be happy to share resources. We look forward to the workshop and the opportunity to explore this critical issue.

Sincerely,

Geoconda Argüello Kline

Geoconda Argüello-Kline
Secretary-Treasurer