

## GOVERNMENT REGULATION OF LABOR-MANAGEMENT CORRUPTION: THE CASINO INDUSTRY EXPERIENCE IN NEW JERSEY

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This study evaluates the impact of New Jersey's 1977 law controlling the casino industry and its unions. Based on interviews with casino managers, union representatives, state regulatory agency officials, and attorneys, the authors conclude that the Casino Control Commission has kept casino ownership and management free from organized crime, but only by means of stringent, unpopular regulations, such as licensing requirements that can delay the hiring of casino dealers for months. The Commission has been less successful in policing unions, partly, the authors argue, because of federal laws protecting unions. For example, union officials who are removed from office because of alleged associations with crime organizations can be (and have been) rehired by the union as consultants.

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**R**ECENTLY, the federal government and some state governments have made vigorous attempts to reduce the influence of organized crime in a setting that has perennially attracted it—the labor movement. One of the features of labor unions that has appealed to organized crime is, ironically, the extensive legal protections they enjoy. The practical difficulties of fighting organized crime, formidable in any context, are particularly severe in the union setting, because the protections guaranteed to unions complicate the task of finding an effective and legal method for dealing with the problem.<sup>1</sup>

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<sup>1</sup> The National Labor Relations Act created a set of protections for unions that make it difficult for government to intervene when corruption is suspected. For example, the union's role as exclusive representative of all bargaining unit members means that even some individuals who object to the union's tactics are bound by its actions; there is no exemption

The inadequacy of the Landrum Griffin Act (Bellace and Berkowitz 1979) and traditional criminal procedures for fighting organized crime's influence has led law enforcement officials to seek new techniques. The New Jersey experience in regulating the casino industry and its unions offers an excellent basis for examining the issues inherent in any effort to combat crime in an industry. Of particular interest is the fact that the New Jersey law anticipates many of the legal issues and practical problems recently encountered by the federal government in its efforts to control the influence of organized crime in unions through the Racketeer Influenced and Corrupt Organizations Act (RICO).<sup>2</sup>

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in the duty to bargain for employers faced with the prospect of negotiating with a union dominated by organized crime; and government officials cannot order that a union be decertified on the grounds that its leadership is corrupt.

<sup>2</sup> The U.S. Department of Justice has used the civil

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Both New Jersey's Casino Control Act and the federal statute use controversial techniques such as barring individuals from union positions without conviction or even indictment. The New Jersey law has withstood extensive legal challenges in both state and federal courts, which suggests that it might be a model for other jurisdictions. Since the law has been in place for over 10 years and has been used to oust union officers accused of associating with organized crime figures, its practical impact can also be assessed.

The primary data source for this analysis consists of interviews with knowledgeable individuals in the industry, in most of the relevant unions, and in the state regulatory agencies, as well as with attorneys for each of these parties. Respondents were offered confidentiality, although they were told that their names would be listed. Those who agreed to be quoted are identified in the text by last name. Also examined for this study were documents related to this aspect of casino regulation, and court opinions and legal briefs for the litigation involving the ouster of union officials.

### The New Jersey Casino Industry

Legal gambling did not exist in New Jersey until 1977, when, in response to a positive referendum vote, the state legislature passed the Casino Control Act.<sup>3</sup> The Act, designed to avoid even the appear-

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Racketeer Influenced and Corrupt Organizations Act (RICO) to impose a trusteeship on, among others, a local of the International Brotherhood of Teamsters and a local of the Roofers union, both of which had officers who were alleged to have close ties to underworld figures. *United States v. Local 560, International Brotherhood of Teamsters*, 581 F. Supp. 279 (D.N.J. 1984), *aff'd*, 780 F.2d 267 (3d Cir. 1985). *United States v. Roofers Local 30*, 686 F. Supp. 1139 (E.D. Pa. 1988). The Department recently attempted a similar strategy to rid the International Brotherhood of Teamsters of its organized crime relationships (Shenon 1988:E-5). A settlement was reached just before trial that requires internal reforms of the International and provides Court oversight of International activities until new elections are held in 1991 (Glaberson 1989).

<sup>3</sup> N.J.S.A. 5:12-1 et seq.

ance of corruption in the industry, contains strict licensing criteria for casino owners and managers, and for many casino employees as well.

### The Industry's Labor Market

The casino industry's labor market has unique characteristics that both complicate employment relations and exacerbate the negative impact of regulation by the state. Since their inception, casinos have had difficulty attracting and hiring qualified individuals to fill positions both in the casinos and in the related hotels. This situation, when combined with the licensure and registration requirements imposed by the state, makes recruiting and hiring more expensive in this industry than in others, and creates considerable tension between the regulators and the regulated. Furthermore, Casino Control Commission (hereafter "Commission") regulations require the casinos to maintain a work force that is 43 percent female and 20 percent minority, a goal that the industry has met for the overall work force, but not for each level of the job hierarchy (State of New Jersey, Casino Control Commission 1988:1).

Many reasons have been cited for the labor supply problem. Atlantic City has not been viewed as a desirable place to live, and housing within a twenty-mile radius of the city is quite expensive. Many individuals holding bargaining-unit positions in the industry live in communities an hour or more distant. Most of the jobs covered by union contracts, and 85 percent of the casino industry jobs overall, pay \$20,000 or less annually, and the casinos report difficulty in persuading individuals to take such poorly compensated jobs, given the typically long commuting distances that are involved (Frank). Employee turnover is relatively high: during the third quarter of 1988, overall turnover was 16 percent (up from 15 percent for the second quarter), and turnover among service workers, the category most heavily unionized, was 24 percent (State of New Jersey, Casino Control Commission 1988:43).

Hiring of skilled workers (such as

dealers) and casino management personnel is also difficult and expensive. The licensing investigations required by the Commission can cost from several hundred to several thousand dollars for each employee, and the waiting time entailed by such investigations may be four months or more. For nonsupervisory casino positions, the state will not grant temporary licenses, so a new employee cannot work or be paid until the license is approved. Initially, the state required employees to renew their licenses annually; this requirement was changed in 1988 to permit licenses to be issued for a three-year period. Although some casinos either pay the cost of the license or lend the employee the license fee, the waiting period is a disincentive for prospective employees, especially those in semi-skilled service occupations.

#### Structure of Labor Relations

As of September 1988, 40,166 individuals were employed in the Atlantic City casino industry (State of New Jersey, Casino Control Commission 1988:3). Despite many attempts to organize various categories of workers in the casino industry, it is not heavily unionized. Roughly one-third of the workers in the casino/casino hotel industry are represented by unions; most of these individuals, however, work as waitresses or bartenders, and the majority are employed in the hotels rather than in the casinos.

No dealers in the casinos are organized at present; an attempt by the International Brotherhood of Electrical Workers and by Local 331 of the International Brotherhood of Teamsters to organize the dealers at one of the casinos in 1987 failed by roughly a 3:2 margin. Similarly, an attempt by the IBEW to organize slot machine mechanics at the Claridge Hotel Casino in 1987 failed (Soto), as did an earlier attempt to organize the security officers at the Sands Casino Hotel (Rivera-Soto). Furthermore, a strike by dealers against Bally's casino in 1984, part of an attempt to form a union, failed because the casino management was able to keep

the casino open (Gushin) and, in a concerted campaign, discredited the key rank-and-file union activist (Jacobson). No vote was ever taken in this organization attempt (Soto).

When asked why unions have been so unsuccessful in organizing the higher-paid gaming employees such as dealers and slot machine personnel, industry representatives and regulatory personnel ranked the alleged influence of organized crime in some of the unions as relatively unimportant. They contend that the employees are aware of the extensive protections afforded by civil rights laws and other statutes, and do not believe a union is needed to protect them. Second, gaming employees enjoy substantial benefits (such as frequent breaks and free meals) and reasonably good salaries (counting tips, between \$23,000 and \$30,000 in 1987) (Janson 1987), and are skeptical that the union could benefit them economically. And third, at least one casino (Claridge) has developed a "dealers' council" that meets regularly with management to air employee complaints and problems, which they believe reduces the need for a union (Soto).

Union leaders, on the other hand, feel that management has used allegations of organized crime in the unions to turn many workers against unionization. The president of a Teamsters local accused Claridge management of a "smear campaign" that emphasized the union's ties to organized crime (Janson 1987). Similarly, the business manager of the Sports Arena Employees local stated that an important cause of the failure of his union's campaign to organize dealers was a newspaper article asserting his local was influenced by the mob. On threat of a lawsuit, the newspaper retracted the story, but by then, he asserts, the story's damage had been done. This local official feels that the story was planted by management as part of its anti-union campaign (Egging).

Although unions have not been able to organize gaming employees, they have been more successful with the hotel employees and food service workers. Approximately 31 percent of all casino

industry employees, and 85 percent of all unionized employees, are represented by Local 54 of the Hotel Employees and Restaurant Employees International Union. Thirteen thousand of the some 18,000 members of this local are casino industry employees. Some other unions representing much smaller numbers of casino industry employees are the International Association of Theatre and Stage Employees, the Carpenters Union, the Painters Union, the Teamsters, and the Operating Engineers and Warehouse Employees (Frank).

The 1986–89 contract between Local 54 and the casino hotels includes a provision giving the union the right to refer prospective employees for positions covered by the contract. If the union cannot fill the hotel's request with a qualified individual within two hours, the hotel has the right to recruit an individual on the open market. All new employees must join the union within thirty days of hiring. Representatives of management reported that relatively few positions are filled by union referrals, and that they had to do their own recruiting.

The Casino Control Act does not specifically mention union hiring halls, and no explicit attempt is made to regulate them. Any individual referred for employment in the hotel or casino must, however, be approved for registration or licensure by the Commission. Furthermore, if an investigation by the state unearthed evidence of extortion, bribery, or other abuses in the union referral process, the Commission could order the removal from office of the implicated union officials, the revocation of the union local's registration, or both.

### Collective Bargaining

The Casino Control Act does not address subjects of collective bargaining beyond the requirement of registration or licensure for casino industry employees. The provision of the Act with the most important implications for collective bargaining is its requirement that each union local representing casino industry employees be registered with the Commission,

which may trigger an investigation of the local's officers. If it wishes, the Commission may disqualify certain union officials from holding elective or appointive union office (see below). Although there have been occasional strikes during contract negotiations (the most recent industry-wide strike occurred for one day in 1986 during negotiations between Local 54 and the casino hotel association) (Jenkins 1987), the relationship between casino management and the unions has been relatively stable.

Although the state has only once used its power to oust union leaders believed to have ties to organized crime, it has investigated several charges that casino hotel management gave concessions to organized crime in exchange for labor peace. Such charges typically arise during hearings for the relicensure of a casino, which, until 1988, occurred annually.

For example, at the license renewal hearings for Harrah's Marina Hotel and Casino, the Division of Gaming Enforcement (the state's investigatory agency) accused the casino's management of giving organized crime figures control over the Teamsters Local 331 pension fund in exchange for obtaining a favorable contract with the local, and of knowingly permitting individuals with ties to organized crime to negotiate the collective bargaining agreement. The Division was unable to prove these charges to the Commission's satisfaction, and the casino license was renewed (Schwaneberg 1987). The Commission chastised the hotel management, however, for meeting with and buying a meal for union officials alleged to have ties to organized crime.

This degree of scrutiny by the state pressures casino managers to avoid even the appearance of dealing with individuals allegedly associated with organized crime. The threat they face of losing a casino license helps to reduce the ability of organized crime to infiltrate the industry. Thus, it is an indirect constraint on the union as well.

### The Regulatory System

#### Legislative History

The New Jersey Constitution prohibits the state legislature from passing any law permitting gambling without submitting "the specific kind, restrictions and control thereof" to "the people" at a general or special election.<sup>4</sup> Thus, proponents of casino gambling submitted the issue for a public referendum. The first attempt, which would have permitted casino gambling statewide, was defeated in 1974 by a margin of nearly three to one (*Rutgers-Camden Law Journal* 1979). A second referendum, which limited casino gambling to Atlantic City, passed in 1976.

Governor Brendan Byrne then appointed a Staff Policy Group on Casino Gambling, which prepared a report outlining a comprehensive economic redevelopment strategy for Atlantic City as well as a regulatory system that would protect the industry from even the appearance of corruption. Because of New Jersey's highly visible efforts to prosecute alleged organized crime figures, state legislators were especially sensitive to charges by legalized gambling's opponents that the cash-rich industry would inevitably attract organized crime (O'Brien and Flaherty 1985). A report on casino gambling by the state's Commission of Investigation recommended that only "those individuals and entities with the highest character, integrity and competence" be allowed to participate in the casino industry (1977; O'Brien and Flaherty 1985).

#### The Regulatory Structure

The Act created an independent regulatory agency, the Casino Control Commission, that is responsible for oversight of the casino industry, plans the economic redevelopment of Atlantic City, and collects license fees, taxes, and other assessments permitted by the Act. Although the Commission decides who may be licensed to work in the casino industry (and who

may own and operate a casino), another agency, the Division of Gaming Enforcement (which reports to the Attorney General), investigates license applicants and recommends for or against licensure by the Commission. This bifurcated approach provides a system of checks and balances to reduce the potential for corruption to influence the regulatory process (Cohen 1982). Furthermore, both agencies employ investigators who are present in the casinos 24 hours a day.

#### Regulation of Ownership and Management

Owners and managers of the casino hotels are the primary target of state regulation. In several cases, individuals with alleged ties to organized crime figures have been forced to divest themselves of their holdings in Atlantic City casinos on pain of losing their license to operate.<sup>5</sup> In one case, because the attorney for the Hilton Hotel organization was suspected of having ties to organized crime, the corporation was denied a casino license for a structure it had already built.

Some of the licensing criteria mandated by the Casino Control Act are specific in nature—for example, the owners' reputation for good character and integrity, their financial stability and responsibility, and their funding sources. But the Act also permits the Commission to deny a license for other more general reasons, including "associations . . . inimical to the policy of [the] act." Over the years, the Commission has developed such flexibility in interpreting the Act's licensing standards that it now asserts that no *a priori* formulation of standards is possible.

Some individuals who have been denied a casino license or driven from the industry by the Commission have challenged the Commission's licensing practices as an unconstitutional delegation of legislative authority to an executive agency,

<sup>4</sup> N.J. Constitution Annot. 4, sec. 2 (1949).

<sup>5</sup> See, for example, *In re: Boardwalk Regency Casino License Application*, 180 N.J. Super. 324 (App. Div. 1981), *aff'd as mod'd*, 90 N.J. 361, *app. diss. sub nom Perlman v. Attorney General*, 459 U.S. 1081 (1982).

as well as a denial of due process because the Commission did not articulate standards prior to applying them. Despite these charges, the Act and the Commission's interpretation of it have been upheld.<sup>6</sup> This affirmation of the permissibility of broad exclusionary criteria was important to the outcome of the subsequent litigation by the Hotel Employees Union, described below.

Labor and industry representatives, as well as state regulators, agree that the regulatory process has kept the industry free of organized crime, both in its ownership and management and among its employees. One casino management representative called the industry "pristine" as a result of state regulation. A labor leader and former member of the Casino Control Commission asserted that the industry was "very clean, particularly when compared with Las Vegas" (Jacobson).

It does not follow, however, that the regulated are satisfied with the regulators. In fact, there is substantial tension between the two. The industry representatives believe that the state's regulatory efforts are "overkill," that the cost—\$52 million in 1987—is excessive (Schwaneberg 1988b), and that the same outcome could be achieved for less money and with fewer restrictions.

The Commission is deeply involved in regulating all aspects of the industry, including allowable games, the mix of games, game rules, minimum wagering, operating hours, alcohol service, advertising, entertainment, junket policy, and staffing. As an example of the pervasiveness of regulation, one management representative described a Commission regulation that prohibits managers from temporarily borrowing a clerical worker from one department to assist in the work of another department without Commission approval.

The state is concerned with potential corruption not only in the casino industry per se, but also in the industries serving it, such as food and liquor distributors,

flower wholesalers, and the construction industry. The Act has, accordingly, always required every vendor or prime contractor selling goods to a casino hotel to be licensed by the Commission. Originally, however, it did not specify such a requirement for subcontractors engaged in building new casinos. The Commission initially could regulate only prime contractors because only they deal directly with the casino licensees. Subcontractors and unions that transact with the prime contractor (rather than the casino) were outside the Commission's jurisdiction.

According to a report of the New Jersey Commission of Investigation (SCI), this restriction of the Commission's jurisdiction resulted in the control of a very substantial part of the casino construction industry by organized crime. The SCI report claims that the Atlantic City construction industry and three of its unions—the roofers, concrete workers, and ironworkers—are dominated by organized crime (State of New Jersey, Commission of Investigation 1987).

A bill to amend the law was passed by the New Jersey legislature in late 1987. It gives the Division of Gaming Enforcement authority to regulate construction subcontractors and related unions (Schwaneberg 1988a). As of early 1989, the Commission was about to hear a case in which the DGE recommended a company that provided reinforced concrete to casino contractors be denied a license because of alleged ties to the Philadelphia-based Scarfo organized crime family (Kokotajlo).

### Regulation of Employees

The law and its accompanying regulations at first required any individual employed by a casino to be licensed by the Commission. An amendment effective in January 1988, however, exempted bartenders, cocktail waitresses, and janitors who do not have access to the gaming area of the casino from the licensure requirement. Those employees instead need only be registered—a process demanding substantially less scrutiny by the Commission than does licensing.

<sup>6</sup> Ibid.

The employment of casino dealers is regulated in two ways by the Commission. First, dealers must be licensed. An extensive investigation, including a fingerprint check by the FBI, is conducted before a gaming license is issued. Furthermore, the gaming schools that train dealers must themselves be licensed, as are the instructors. Although students are not investigated by the Commission, they apply for a license mid-way through their training, and their employability is dependent on their acquisition of a license. Dealers are subject to close monitoring by the Commission; many licenses have been revoked for drug offenses or for gambling in other casinos. Commission staff interviewed for this study could not recall any license revocations for consorting with members of organized crime, which is prohibited by the Act.

For the remaining casino employees, the type of license required depends on the responsibilities of the position and, particularly, the extent of discretionary authority attached to it. For example, the licensing requirements for floorpersons and slot machine personnel are somewhat less demanding than the requirements for "casino key employees" (such as supervisors, managers, and pit bosses), who must undergo a lengthy investigation by the Division of Gaming Enforcement (DGE).

The law contains a lengthy list of causes for which a license may be denied. These include convictions for enumerated felonies and misdemeanors, other offenses "inimical to the policy of this act and to casino operations," and identification as or association with "a career offender or career offender cartel" (the Act's euphemism for organized crime). The law does, however, permit the Commission to grant registration or a license to individuals with prior criminal convictions if it determines that they have been "rehabilitated" (typically, if the conviction occurred many years ago and was for a minor offense). The waiting time for the review process may be three months or longer for a casino employee license, and six months or longer for a casino key employee license.

Whereas applicants for a license must

undergo an investigation prior to its issuance, requirements for registration are much less stringent. Casino hotel workers and casino waitresses, bartenders, and waiters with no access to restricted areas of the casino floor need only file with the Commission to be registered. Furthermore, if the Commission decides to revoke an individual's registration, it has the burden of demonstrating by a preponderance of the evidence that the employee does not meet the registration criteria. This requirement differs from the treatment of license denials, for the Act places an affirmative duty on the license applicant to demonstrate that he or she has met the licensing criteria (Ehrlich). Commission decisions to deny a license or to revoke a registration may be appealed to the state courts.

#### Regulation of Unions

The Act requires any labor organization that represents or seeks to represent employees of casinos or casino hotels to register with the Commission and to disclose information concerning its officers, its pension and welfare systems, and other matters as required by the Commission. A union disqualified from registration by the Commission may not receive dues transmitted by the casinos on behalf of the union's members; this sanction has not yet been applied by the Commission, however, and its legality has yet to be tested in the courts.

The Commission's power to revoke a casino license ensures that the casino management will not transmit dues collected through a dues checkoff if the Commission orders the casino to withhold them. The Division of Gaming Enforcement may investigate the officers of a union seeking registration with the Commission. If a union officer meets one of the exclusionary criteria listed in the statute (the same criteria applied to "casino key employees") the Commission may order the officer to resign as a condition of the union's continued registration. Some of the Act's specific exclusionary criteria (Section 86c) are similar to those

found in the Landrum Griffin Act, such as conviction for specified crimes. As noted earlier, however, the Casino Control Act also contains some exclusionary criteria much broader than any in the Landrum Griffin Act, such as association with reputed organized crime figures even if no criminal act has occurred (Section 86f).

The Act's requirements regarding union registration and the removal of union officers were challenged in a series of lawsuits brought by Local 54 of the Hotel Employees and Restaurant Employees International Union. The lawsuits were in response to the Commission's disqualification of three officers of the local in 1982, following a lengthy investigation by the Division of Gaming Enforcement. The Commission claimed that the three officers were associates of Nicodemo Scarfo, a reputed member of the Bruno organized crime family operating in Philadelphia and Atlantic City. The DGE had accused Frank Gerace, the Local 54 president, and Frank Materio, a trustee of the local, of permitting Scarfo to influence the appointment or nomination of union officers and of giving union business to organizations controlled by Scarfo.<sup>7</sup>

Before the Commission's ruling could take effect, the union challenged the Casino Control Act on two grounds. First, the union charged in federal court that the Act attempted to regulate labor relations and thus was preempted by the National Labor Relations Act. Although the U.S. Court of Appeals for the Third Circuit ruled in the union's favor, the U.S. Supreme Court reversed, stating that the

Casino Control Act was not preempted. The Supreme Court noted that Congress had left some labor-management relations matters open to regulation by the states through use of their police power, and argued that when "public evils" such as racketeering and corruption were at issue, states could regulate the qualifications of union officials without offending federalism.<sup>8</sup>

Shortly after the Supreme Court opinion was announced, the Commission issued a Supplemental Order mandating that the officers resign. An appeal of the Order in state court was unsuccessful, and Gerace and Materio resigned their offices in late 1984.

Having lost its suit in federal court, the union shifted its ground, and argued in state court that disqualifying an individual on the basis of his or her being "an associate of a career offender or career offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of this act and to gaming operations" (Section 86f) violated both the First Amendment and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.<sup>9</sup> The officers re-

<sup>7</sup> The Commission voted 4-1 to oust Gerace and Materio. Joel Jacobson, a Commissioner with strong ties to the labor movement, voted against the ouster on the theory that these officers had not been convicted of any wrongdoing. (*Opinion of the New Jersey Casino Control Commission in the Matter of Hotel and Restaurant Employees [sic] and Bartenders International Union Local 54*, Docket No. 81-LO-1, September 28, 1982; Jacobson 1989). A third union officer, Karlos LaSane, was disqualified on the basis of a prior felony conviction. Jacobson also opposed LaSane's ouster, stating that LaSane had been "rehabilitated." LaSane joined the litigation in federal court but did not pursue the subsequent state court litigation.

<sup>8</sup> *Brown v. Hotel and Restaurant Employees and Bartenders International Union*, 468 U.S. 491 (1984). The Court relied on an opinion in an earlier case, *DeVeau v. Braisted*, 363 U.S. 144 (1960). *DeVeau* upheld the New York-New Jersey Waterfront Compact, which also regulated labor-management relations; one reason the Court cited *DeVeau* was that Congress had ratified the compact. *DeVeau* was not really applicable, because the Waterfront Compact required conviction for a crime before a union official could be ousted. The holding in *Brown* was later incorporated into federal law, however, in the Comprehensive Crime Control Act of 1984. The relevant provision reads:

Notwithstanding this or any other Act regulating labor-management relations, each State shall have the authority to enact and enforce, as part of a comprehensive statutory system to eliminate the threat of pervasive racketeering activity in an industry that is, or over time has been, affected by such activity, a provision of law that applies equally to employers, employees, and collective bargaining representatives, which provision of law governs service in any position in a local labor organization which acts or seeks to act in that State as a collective bargaining representative pursuant to the National Labor Relations Act, in the industry that is subject to that program. (29 U.S.C. § 524(a)).

<sup>9</sup> The following discussion is taken from the briefs



minded the court that the Commission had found no evidence of illegal activity on their part, but had forced them out of office merely because of their long-time friendship with Scarfo, a type of association that is protected by the First Amendment. They argued that guilt by association is contrary to democratic principles (Katz).

The state, however, argued that this association was "not innocent" and deserved no constitutional protection. Such an association, the court held, could not be tolerated by casino regulators, who had to avoid even the appearance of corruption. The state court judges upheld the constitutionality of the law, noting that "the operative question is not whether the associations between Gerace, Materio and Scarfo are lawful or ethical, but rather what impact such associations have on the policies intended to be served by casino gaming regulation."<sup>10</sup>

The court did not address squarely the issue of whether innocent association with organized crime figures is protected by the First Amendment; the judge noted that whatever protections the officers might have, they were outweighed by the state's interest in maintaining the appearance of integrity in the casino industry.<sup>11</sup> The New Jersey Supreme Court and the U.S. Supreme Court both refused to hear the officers' appeals of this ruling.

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of both the Division of Gaming Enforcement and the union officers, as well as several of the eight published opinions. *Hotel and Restaurant Employees and Bartenders International Union Local 54 v. Danzinger* [sic], 536 F. Supp. 317 (D.N.J. 1982), *rev'd*, 709 F.2d 815 (3d Cir. 1983), *vacated and remanded sub nom Brown v. Hotel and Restaurant Employees and Bartenders Union Local 54*, 468 U.S. 491 (1984), *Hotel and Restaurant Employees and Bartenders International Union v. Read*, 597 F. Supp. 1431 (D.N.J. 1984), *aff'd mem.* 772 F. 2d 895 (3d Cir. 1985), 641 F. Supp. 757 (D.N.J. 1986), *aff'd* 832 F.2d 263 (3d Cir. 1987); *In re: Local 54*, 203 N.J. Super. 297 (App. Div. 1985), *certif. denied*, 102 N.J. 352 (1985), *cert. denied sub nom Gerace v. New Jersey Casino Control Commission*, 475 U.S. 1085 (1986).

<sup>10</sup> *In re: Hotel and Restaurant Employees*, 1985, p. 328.

<sup>11</sup> An analysis of the freedom of association interests at stake in this litigation is contained in Lee and Chelius (1988).

The union then returned to federal court to claim a First Amendment right for its members to select officers of their own choosing, without state interference, and to associate with them freely. The state countered that union members had no legally recognized right to be represented by any particular individual, and that ousting Gerace and Materio did not prohibit union members from associating with the two men—it merely prevented Gerace and Materio from serving as union officers. Again the federal court agreed with the state. The court also rejected a claim that the union as a union had a First Amendment right to be served by officers chosen by the members, stating that the local could conduct its business without the services of Gerace and Materio, and that whatever rights members might assert in this regard were outweighed by the state's interest in avoiding even the appearance of corruption in the gaming industry.<sup>12</sup>

The Court of Appeals for the Third Circuit affirmed this ruling in 1987, and the union did not appeal to the U.S. Supreme Court. Thus, litigation that involved several trips through the state and federal court systems, several petitions for review by both the U.S. and the New Jersey Supreme Courts, and eight published opinions, ended with total defeat for the union.

### Impact of Regulation on Labor Relations

The previous sections sketch a comprehensive and complex regulatory system that industry, union, and regulatory representatives agree has been very successful at preventing organized crime from influencing casino ownership, management, and employees. The impact of the system on labor relations in the casino industry, and on the integrity of the unions representing casino employees, however, is less clear.

Respondents agreed that the law had

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<sup>12</sup> *Hotel and Restaurant Employees v. Read*, 1986.

little impact on the subjects of collective bargaining, but did control, to a degree, whom unions could select as negotiators. Management representatives, however, noted a potential dilemma: it is conceivable that they could agree to contract language concerning an issue that, during the life of the contract, becomes a new regulatory matter for the Commission and conflicts with management's contractual responsibilities. Casino industry labor contracts include arbitration clauses, and arbitrators are generally limited to interpreting the language of the contract. An arbitrator could not ordinarily consider state law in determining whether an alleged contract violation is justified (Elkouri and Elkouri 1973). Although it is likely that a casino would be able to challenge an unfavorable arbitration award in court should such an event occur, it would be a costly process and could jeopardize the relationship between labor and management. To date, this situation has not arisen.

Although the discipline and discharge procedures for bargaining unit members are governed by the various collective bargaining agreements, Commission rules and regulations occasionally intervene. For example, a cocktail server at one of the casinos was arrested by the Division of Gaming Enforcement for picking up a \$500 gambling chip from the floor and not turning it in. The DGE asserted that it had obtained a confession from her (for stealing the chip, a violation of Commission regulations), and insisted that the casino discharge her. When the casino did so, her union filed a grievance challenging the discharge, as the grievant denied having confessed.

The DGE is prohibited by law from sharing information obtained during prelicensing investigations, and although no law bars it from sharing information gathered in its investigations of employee misconduct, it chooses not to do so. Since the DGE would not release whatever evidence it may have had that the grievant had confessed, the arbitrator reinstated the grievant and ordered back pay. The DGE decided not to institute license

revocation proceedings against the reinstated employee, so the casino was required to comply with the arbitration award. Had license revocation proceedings been instituted by the DGE, no arbitration would have been necessary.

Although there is widespread agreement among the individuals interviewed that the Casino Control Act has been successful in keeping the industry's management free from corruption, many believe that the law has been less successful at keeping individuals affiliated with "career offender cartels" out of local union affairs.

The Hotel Employees and Restaurant Employees Union and Local 54 have a long history of involvement with organized crime (President's Commission on Organized Crime 1986:71-73; O'Brien and Flaherty 1985). The 1984 ejection of local president Frank Gerace and local trustee Frank Materio because of their alleged relationship with members of a Philadelphia crime organization has apparently done little to change their *de facto* influence in the local. Although Gerace is barred from union office and from representing the local in casino industry contract negotiations and grievances, he is employed by the local as a consultant, reputedly at the same salary he earned as president, and serves as an observer for organization elections. Even since his ouster, he has served as an expert witness at casino employee grievance hearings. He has a desk at the local's regional office and conducts routine business for non-casino employees. Gerace's activities related to such employees are beyond the reach of the Casino Control Act. Mr. Materio, now retired, served as a business agent for non-casino employees after his ouster by the Commission.

Thus, although the Commission was successful in barring these two men from union office, it cannot extinguish any informal influence over the local's affairs that they might wish to wield. To insist that local officials exclude Gerace or other ousted leaders from informal discussions of casino employee matters is impractical.

The Act is silent on the Commission's

power to regulate other union activities, such as the administration of benefit funds, a function that has from time to time been vulnerable to the influence of organized crime (President's Commission on Organized Crime 1986:10). The Commission, to date, has not chosen to take on this issue.

### Conclusion

It is probably owing to the strict regulation of Atlantic City's casino industry from its inception, as well as the comparative simplicity of the industry's structure (which involves only a few key organizations), that companies operating casinos in the city are free of direct influence from organized crime. Furthermore, the regulators' determination that even the appearance of corruption or association with corrupt individuals will be harshly penalized makes it unlikely that organized crime will infiltrate casino ownership and management.

Unfortunately, the same cannot be said about some of the labor unions in this industry. Several factors have hampered efforts to keep unions free of the influence of organized crime: links between some unions and organized crime that predate the casino industry, protections afforded unions under federal law, the membership of non-casino employees in locals representing casino employees, and the continued activity in union business of ousted officials. The *de facto* role of organized crime in at least the largest union associated with the industry has changed little since the industry began.

To be effective, any effort to fight organized crime's influence in a union must also involve some regulatory authority over the companies with which the union has a relationship, since no government policing action can be so intrusive as to gain perfect information about all potentially corrupt activities of a labor organization. The strong regulatory authority given to the Casino Control Commission creates an incentive for management to report and avoid any organized crime activities influencing labor relations. In this environment, it is unlikely that unions will be able to negotiate sweet-

heart contracts, blackmail management by threatening labor unrest, or require casino patronage of crime-dominated service industries. Thus, part of the motivation for organized crime's involvement with unions is eliminated.

On the other hand, although the Commission has been upheld in its removal of union officials with alleged links to organized crime, the real impact of this effort is questionable. The potential for continued informal control by the ousted officials is strong. Unions that are so inclined can usually find some way to resurrect the role of the tainted officials.<sup>13</sup>

Government's ability to control criminal influence is further limited if a union covers more than the regulated industry. It is impossible for regulators to monitor the activities of ousted union officials when those officials have a legal right to act for the union in matters affecting union members in unregulated industries; and it would be unrealistic to expect ousted officials who have been rehired by the union in a consultancy or other position to confine their illegal activities (if any) to the unregulated industries covered by the union, leaving the regulated industry untouched.

In summary, the mixed success of New Jersey's attempt to prevent organized crime from gaining influence in its casino industry does not, on balance, inspire emulation. Using very strong (and costly) regulatory tactics, including troublesome legal procedures that would not be tolerated in many industries, the Casino Control Commission has apparently succeeded in deterring criminal activities among the casino management. Whatever role organized crime may have had in the targeted unions, however, it appears to be little changed.

<sup>13</sup> A similar situation has occurred in Teamsters Local 560, which is under a civil RICO trusteeship. Leaders with alleged organized crime connections were removed from office, and after two years a court-supervised election was held. One of the newly elected president's first official actions was to hire his ousted predecessor (who is also his brother) as a business agent. The judge supervising the trusteeship reviewed and then approved this action (Warsaw 1989).

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## Individuals Interviewed (summer 1987-early 1989)

- James Brennan, Business Agent, Painters Union Local 277; President, Atlantic/Cape May County Central Labor Union, AFL-CIO.
- James Butler, Associate General Counsel, Harrah's Marina, Atlantic City.
- William Egging, Business Manager and Secretary-Treasurer, Sports Arena Employees Union Local 137, AFL-CIO.
- Gary Ehrlich, Deputy Attorney General, Division of Gaming Enforcement.
- Thomas Flynn, Public Information Officer, Casino Control Commission.
- Lawrence Fowler, Vice President of Human Resources, Harrah's Marina, Atlantic City.
- Claire Frank, Division of Affirmative Action and Planning, Casino Control Commission.
- Thomas Giblin, President, Operating Engineers Local 58.
- Fred Gushin, Assistant Attorney General, Division of Gaming Enforcement.
- John R. Hagerty, Public Information Officer, Division of Gaming Enforcement.
- George H. Henningsen, Assistant Attorney General and Deputy Director, Operations, Division of Gaming Enforcement.
- Joel Jacobson, former member, Casino Control Commission; former President, New Jersey State CIO Council; former Executive Vice President, New Jersey AFL-CIO; former President, New

- Jersey Industrial Union Council; former Political Action Director, New Jersey United Automobile Workers.
- Michael Katz, Attorney, Local 54, Hotel Employees and Restaurant Employees International Union.
- Carol Kokotajlo, Public Information Officer, Casino Control Commission.
- Michael Lutz, Former Manager of Labor Relations, Harrah's Casino Hotel, Atlantic City.
- Roberto Rivera-Soto, Corporate Counsel, Sands Casino Hotel, Atlantic City.
- Eugene M. Schwartz, Assistant Attorney General and Deputy Director, Legal, Division of Gaming Enforcement.
- Peter Sheridan, General Counsel, Casino Association, Atlantic City.
- Roy Silbert, President and Business Agent, Local 54, Hotel Employees and Restaurant Employees and Bartenders International Union.
- Gloria Soto, General Counsel, Claridge Hotel Casino, Atlantic City.
- Christopher Whitney, Corporate Counsel, Harrah's Casino Hotel, Atlantic City.