

Battle lines in tip war shift to Carson City

Audience members at a March 5 hearing convened by Labor Commissioner Michael Tanchek quickly grew ornery when they learned that the subject of tip redistribution at Wynn Las Vegas had been taken off the agenda. „This is really an outrage,“ fumed one attendee at the Grant Sawyer Building, where a video feed connected attendees to the main hearing site, in Carson City.

That's where Assemblyman Bob Beers, R-Henderson, has introduced a bill to stop appropriation of tip money by casino management. „Because statutes supersede regulation,“ Tanchek spokeswoman Amanda Penn explained, the commissioner had decided to postpone consideration of amended tip-sharing regulations.

Wynn dealers are pinning much of their hope on the freshman assemblyman. Beers wants to put an end to Steve Wynn's practice, initiated last fall, of using dealers' tips in order to augment the salaries of pit bosses. While current Nevada law doesn't codify specific employee classes who are or aren't subject to tip pooling, Beers says his bill is carefully crafted. „No unintended consequences could possibly come from it if it's put together the way I want it to be,“ said Beers, who reports bipartisan support for his bill in both houses of the Legislature.

Dealers at the hearing-that-wasn't openly scoffed at Tanchek spokeswoman Amanda Penn's assertion that the labor commissioner was neutral. „I know you guys are very suspect and I respect that,“ Penn said after some laughed at her statement that Tanchek had no contact with Steve Wynn whatsoever. „Steve Wynn did not tell Tanchek anything,“

No Angels or Devils

Both Tanchek and his deputy Gail Maxwell have been under fire for a perceived insensitivity to dealers' concerns, along with a persistent (and persistently denied) allegation that Tanchek met in camera with Wynn and his attorneys.

„These poor dealers, they're between a rock and a hard place, and we sympathize with that," Penn said. „That's just not the case," she added of the perception that Tanchek is in cahoots with Wynn. „We really are neutral."

Beers tries to pour oil on the waters, reporting that the Labor Commissioner is looking forward to his bill „because he deals with enough controversy as it is. The dealers probably won't (agree) with that estimation," he added. „There was some stuff going around that Mr. Tanchek was in Steve Wynn's pocket. Mr. Tanchek does not have horns and a red tail. I don't have wings and a halo.

„There are people that are involved in the Wynn management that are not happy with me," Beers added. „Here, in the Legislature, they are not (hostile). I think they are glad I am foolhardy or brave enough to tackle" the tip-redistribution controversy.

The abortive March 5 hearing ended in raised voices, with Penn fending off hostile queries while surrounded by a ring of 30-plus dealers. It had been initially slated to consider temporary regulations on tip pooling. The tabled, three-item amendment included such language as, „Only employees who provide service directly to customers may be included in a tip-pooling arrangement." According to Penn, the verbiage was culled from a variety of court rulings on the issue of tip pooling.

The Labor Commissioner's language appears to owe a particular debt to the 1983 *Alford v. Harold's Club* ruling which, in part, focused on whether an employer derived a direct benefit

or an indirect one from tip-pooling. The question of whether Wynn has directly benefited from reallocating tips to pit bosses has been a major source of conflict between Tanchek's office and dealers. „We hear that Steve Wynn is saving \$ 8 million to \$ 10 million a year,“ reported Nevada Casino Dealers Association President Tony Badillo.

The Missing Letter

Another sore point is the disappearance of Maxwell's ruling in a 1999 dispute involving the former Resort at Summerlin. In that case, dealer activists Badillo and Jack Lipsman accused Seven Circle Resorts, the parent company, of keeping floormen's salaries low by cutting them in on tokes. Seven Circle's stance, according to a contemporaneous Las Vegas Sun article, was that it hired casino hosts who, when they „gain experience at a particular game are asked to supervise table games during some shifts, and deal during others.“

Both Maxwell and then-Nevada Gaming Control Board Chairman Steve DuCharme ultimately decided not to challenge the arrangement, saying it was in compliance with Nevada law. „From my investigation and legal research, it appears that an employer of at-will employees may require and establish tip-pooling,“ Maxwell wrote to Lipsman.

Today, the Labor Commissioner argues that, because the Resort at Summerlin hadn't opened at the time (late July 1999) and Wynn Las Vegas was already in operation when it began sharing out tokes, it's apples and oranges. (Actually, the Resort at Summerlin had made a „soft“ – and ultimately disastrous – opening on July 15, 1999.)

What's more, Maxwell's formal ruling on the incident has gone missing. „It was nine years ago and the letter is gone,“ she sighed. „The statute of limitations to hold this stuff is, I believe, two years.“ Penn wouldn't comment on the record but, in a January interview, said her department was only obligated

to keep records for four years.

Trading Fire

Also at issue is a Jan. 26 meeting at the Labor Commissioner's office between Maxwell and a group of Wynn dealers that included Thomas Golly and Daniel Baldonado. A dealer in attendance wrote the next day that Maxwell „seemed intelligent and sympathetic to our cause, but at the same time she didn't listen.“

Maxwell is alleged to have said that Tanchek „has been holding meetings with Wynn's lawyers [ours not invited] to amend the interpretation of the law,“ to which Maxwell laughed, „No, I never said that.“

As for a contention that Maxwell said Wynn had „drafted his tip sharing plan with the aid of (Gov. Kenny Guinn) and (Attorney General George Chanos) before presenting it to the dealers,“ then partially retracted the claim, the deputy commissioner exclaimed, „I never said it! How would I even know it?

„They twist a lot of things,“ Maxwell said of her accusers. „They're very upset. I understand that.“

Concerning a message conveyed to her by Wynn's attorneys that Wynn Las Vegas dealers had agreed to the new tip policy by not quitting, Maxwell opined, „I thought (dealers) should have a vote ... I didn't press it because I felt like I didn't want to get anybody's job in danger.“

According to one Wynn dealer, Maxwell's restraint may be for naught. Characterizing the atmosphere at Wynn as „Machiavellian fear and intimidation,“ the dealer accused management of „trying to get a paper trail on everyone, one way or another. Most of us that work at Wynn know how it is, but we know how easy it is to be set up.

But for now, dealers' anger and frustration appears aimed mainly at the state. Said one, „We're kind of in a Catch-22. We keep getting the runaround.“ Added another, „They're just trying to wear us down.“