IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STATE OF WISCONSIN,

Petitioner,

v. Case No. 12-C-505

HO-CHUNK NATION,

Respondent.

MEMORANDUM IN SUPPORT OF MOTION TO CONFIRM ARBITRATION AWARD

This memorandum is submitted on behalf of Petitioner State of Wisconsin ("Petitioner"), by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Christopher Blythe, in support of its motion, pursuant to 9 U.S.C. § 9, to confirm an arbitration award. This motion should be granted and the award confirmed into a judgment because the arbitration was in all respects proper and the award is final and binding.

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

On or about December 8, 2010, Petitioner and Respondent Ho-Chunk Nation ("Respondent") entered into a written implementation agreement ("Implementation Agreement") to arbitrate a dispute regarding the operation of electronic non-banking poker machines at Respondent's DeJope Class II gaming facility, located in the City of Madison, Wisconsin. Pursuant to paragraph 2 of the Implementation Agreement, the parties acknowledge the State of Wisconsin's demand to arbitrate the dispute. Paragraph 3 of the Implementation Agreement

states that the parties agree to use the selected arbitrator pursuant to section XXIII.B.[1] of the second amendment to the gaming compact ("the Compact") between the parties.

An arbitration was conducted and the matter was fully briefed by the parties. On May 1, 2012, the arbitrator, William A. Norris, rendered an award in Petitioner's favor, holding that the operation of the electronic non-banking poker machines is not a Class II game and is therefore expressly prohibited by Wisconsin law.

ARGUMENT

The Federal Arbitration Act, 9 U.S.C. § 9, provides that "within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made." Accordingly this Court has the obligation to confirm Petitioner's arbitration award into a judgment. *See Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681 (1996) (stating the purpose of the Federal Arbitration Act is to ensure that private agreements to arbitrate are enforced); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270 (1995) ("[T]he basic purpose of the Federal Arbitration Act is to overcome courts' refusals to enforce agreements to arbitrate."); *Southland Corp. v. Keating*, 465 U.S. 1, 15-16 (1984) (holding that the Federal Arbitration Act preempts state law and state courts cannot apply state statutes that invalidate arbitration agreements).

[1]In this section the parties also agree that confirmation of an arbitration award shall be in the Western District. In addition, the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2710(d)7.A.ii., provides federal court jurisdiction for actions by states to enjoin gaming activities conducted in violation of a compact.

The standard of review of an arbitrator's decision by the court is very narrow. The scope of review is limited, and the court may not examine the merits of the decision except to the extent that the award exceeds the agreement of the parties. *See Burchell v. Marsh*, 58 U.S. 344, 349 (1854) (stating that the appropriate scope of the judicial review is whether the award is the honest decision of the arbitrator, made within the scope of the arbitrator's power, and that a court will not otherwise set aside an award for error). *See also Local 15, IBEW v. Exelon Corp.*, 495 F.3d 779, 782-83 (7th Cir. 2007):

> "[I]f an arbitrator is even arguably construing or applying the contract and acting within the scope of this authority, the fact that a court is convinced he committed serious error does not suffice to overturn his decision. It is only when the arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice that his decision may be unenforceable." *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509, 121 S.Ct. 1724, 149 L.Ed.2d 740 (2001) (citations and quotations omitted); *see also Wise v. Wachovia Sec., LLC*, 450 F.3d 265, 269 (7th Cir. 2006) ("[T]he issue for the court is not whether the contract interpretation is incorrect or even wacky but whether the arbitrator has failed to interpret the contract at all. . . ."); *Ganton Techs., Inc. v. Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am., U.A.W., Local 627*, 358 F.3d 459, 462 (7th Cir. 2004) ("[O]nly if there is no possible interpretive route to the award, so that a noncontractual basis can be inferred, may the award be set aside.") (internal quotations and alterations omitted).

Here, the arbitrator, having considered the pleadings, briefs, and other evidence presented, determined that the operation of the electronic non-banking poker machines at Respondent's DeJope location is expressly prohibited by Wisconsin law. None of the grounds in 9 U.S.C. §§ 10-11 for vacating, modifying, or correcting an arbitration award are present in this matter.

Respondent has continued to operate the poker machines at its DeJope location, despite the arbitrator's ruling. Respondent's failure to abide by the arbitration award also violates

section XXIII.B. of the Second Amendment to the Compact, which states: "The Parties shall be bound by any award entered by the arbitrator."

CONCLUSION

Petitioner respectfully requests an order confirming the arbitration award into a judgment for Petitioner that the operation of electronic non-banking poker machines at Respondent's DeJope location is expressly prohibited by Wisconsin law and that Respondent must, therefore, immediately cease operation of such machines.

Respectfully submitted this 17th day of July 2012.

J.B. VAN HOLLEN
Attorney General

s/Christopher J. Blythe
CHRISTOPHER J. BLYTHE
Assistant Attorney General
State Bar #1026147

Attorneys for Plaintiff

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-0180