

Case Nos. 13-1464 and 13-1583

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL GOVERNMENT,

Petitioner/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent/Cross-Petitioner

**ON PETITION FOR REVIEW AND CROSS-APPLICATION
FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

**APPENDIX TO BRIEF OF PETITIONER/CROSS-RESPONDENT
LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL GOVERNMENT**

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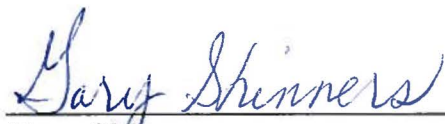
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UNITED STATES COURT OF APPEALS
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INDIANS TRIBAL GOVERNMENT)	
Petitioner)	
)	
v.)	No. 13-1464
)	13-1583
NATIONAL LABOR RELATIONS)	
BOARD)	
Respondent)	

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list below fully describes all documents, transcripts of testimony, exhibits, and other material constituting the record before the Board in Little River Band of Ottawa Indians Tribal Government, Case No. 7-CA-051156.



Gary Shinnars
Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, D.C. 20570
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May 24, 2013

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¹ General Counsel's Exhibits 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), the Stipulation of Facts, List of Joint Exhibits, and Joint Exhibits 1 thru 26 have been detached from the Joint Motion to Transfer Proceeding to the Board on Stipulated Record and placed in the volume of Pleadings.

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- 08.03.11 Parties' Statement of Issues and Statement of Stipulated Facts
- 08.03.11 Acting General Counsel's Statement of Position
- 08.03.11 Parties' Joint Motion to Transfer Proceeding to the Board on Stipulated Record²
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- 12.20.11 Board's Order Approving Stipulation, Granting Motion, and Transferring Proceeding to the Board
- 12.23.11 Board's letter setting the date to file the Department of the Interior's *Amicus Curiae* Brief on January 31, 2012
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- 12.28.11 Board's letter granting motion requesting extension of time to file briefs to February 24, 2012
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- 02.16.12 Parties' Joint Motion to Substitute Exhibit and Stipulations (with attachments)
- 02.24.12 Acting General Counsel's Brief in Opposition to Respondent's Motion to Dismiss or for Summary Judgment, and in Support of Findings that Respondent has violated Section 8(a) (1) of the Act

² General Counsel's Exhibits 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), the Stipulation of Facts, List of Joint Exhibits, and Joint Exhibits 1 thru 26 have been detached from the Joint Motion to Transfer Proceeding to the Board on Stipulated Record and placed in the volume of Pleadings.

- 02.24.12 Respondent's Brief Pursuant to the Board's Order Approving Stipulation, Granting Motion, and Transferring Proceeding to the Board
- 03.01.12 Acting General Counsel's Request that the Deadline for Briefs be extended to March 30, 2012
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- 03.22.12 Respondent's Response to the Motion of the U.S. Department of the Interior for an Extension of Time
- 03.26.12 Board's Letter Granting the U.S. Department of the Interior's Request to File an *Amicus Curiae* Brief on April 30, 2012, and Extending due date to File parties' Answering Briefs to May 15, 2012
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03.18.13	Decision and Order

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Little River Band of Ottawa Indians Tribal Government and Local 406, International Brotherhood of Teamsters. Case 07-CA-051156

March 18, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

At issue in this case is whether the Respondent, Little River Band of Ottawa Indians Tribal Government (the Respondent or the Band), is subject to the Board's jurisdiction and, if so, whether it violated Section 8(a)(1) of the Act by maintaining and publishing certain provisions of its Fair Employment Practices (FEP) Code and related regulations which, by their express terms, apply to employees of the Little River Casino Resort (the Resort) and govern the rights of those employees to organize and bargain collectively.¹ We answer both questions in the affirmative.

As discussed below, this is not a case of first impression. Rather, in almost every respect, it is very much like *San Manuel Indian Bingo & Casino*, 341 NLRB 1055 (2004), *affd.* 475 F.3d 1306 (D.C. Cir. 2007), rehearing *en banc* denied (2007), which we find dispositive of the jurisdictional issue before us. On the merits, the Respondent concedes that, if the Board has jurisdiction over the Resort, its conduct violated the Act as alleged in the complaint.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a federally recognized Indian Tribe, with an office and facilities in Manistee, Michigan, is engaged in the operation of a casino and resort. During 2010, the Respondent, in conducting its business opera-

¹ Upon a charge filed on March 28, 2008, by Local 406, International Brotherhood of Teamsters, the Acting General Counsel of the National Labor Relations Board issued an 8(a)(1) complaint on December 10, 2010, against the Respondent. The Respondent filed a timely answer admitting in part and denying in part the allegations of the complaint and asserting as an affirmative defense that the Board lacks jurisdiction in this matter.

On August 3, 2011, the Respondent, the Union, and the Acting General Counsel filed with the Board a stipulation of facts. The parties agreed that the charge, the complaint, the answer, the stipulation, and the exhibits attached to the stipulation shall constitute the entire record in this proceeding and they waived a hearing before and decision by an administrative law judge. On December 20, 2011, the Board approved the stipulation and transferred the proceeding to the Board for issuance of a decision and order. The Acting General Counsel and the Respondent filed briefs.

tions, derived gross revenues in excess of \$20 million, and purchased and received at its Manistee facilities supplies and services valued in excess of \$50,000 directly from points outside the State of Michigan for use in connection with the casino and resort.

For the reasons discussed below, we find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The parties stipulated, and we find, that the Union, Local 406, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Little River Band of Ottawa Indians Tribe has approximately 4000 enrolled members. The Tribe has the use of over 1200 acres of land in and near Manistee and Mason Counties, Michigan (tribal lands). Three hundred and eighty members live in or near tribal lands.

The Tribe has a constitution and three branches of government: (1) an executive branch known as the office of the Tribal Ogema; (2) a legislative branch known as the Tribal Council; and (3) a judicial branch known as the Tribal Court.

The Tribe has no significant base within its jurisdiction upon which to levy taxes. In order to raise revenue, the Tribal Council established the Resort under the authority of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701, *et seq.* The Resort is owned and controlled by the Respondent and is located on tribal land. Its facilities include 1500 slot machines, gaming tables, a high limits gaming area, bingo facilities, a 292-room hotel, a 95-space RV park, 3 restaurants, a lounge, and a 1700-seat event center.

The Resort has 905 employees, including 107 tribal members and 27 members of other Native American tribes. The majority of Resort employees (771) are neither enrolled members of the Band nor Native Americans.² The majority of the Resort's customers are also non-Indians who come from Michigan outside of tribal lands, other States, and Canada. The Resort competes with other Indian and non-Indian casinos in Michigan, other States, and Canada.

The gross revenues of the Resort exceed \$20 million annually. Pursuant to the IGRA, net revenues generated by the Resort may be used only for governmental services, the general welfare of the Tribe and its members,

² The Tribal government employs 1150 employees overall (including 905 at the Resort). Qualified enrolled members of the Tribe are given preference over non-Indians for employment positions within governmental departments and subordinate organizations, including the Resort.

tribal economic development, or to support local governmental or charitable organizations.³ The Resort provides over half of the Tribe's total budget, and substantially funds the Tribe's Department of Natural Resources, Department of Public Safety, mental health and substance abuse services, Department of Family Services, Housing Department, Tribal prosecutor's office, and Tribal Court.

The Tribal Council has delegated authority to a Gaming Enterprise Board of Directors to manage the Resort. However, the Tribal Ogema and the Tribal Council maintain strict oversight of Resort operations.

Through the Tribal Council, the Respondent enacted the FEP Code and regulations to govern a variety of employment and labor matters. The FEP Code by its express terms applies to the Resort, Resort employees, and the unions that seek to represent those employees. Articles XVI and XVII of the FEP Code govern labor organizations and collective bargaining. The parties have stipulated that Article XVI, among other things, grants to the Respondent the authority to determine the terms and conditions under which collective bargaining may or may not occur; prohibits strikes by the Respondent's employees and labor organizations; requires labor organizations doing business within the jurisdiction of the Band to apply for and obtain a license; and excepts from the duty to bargain in good faith any matter that would conflict with the laws of the Band, the duration of a collective-bargaining agreement (which must be 3 years), drug and alcohol testing, and decisions to hire, layoff, recall, or reorganize the work duties of employees.

B. Contentions of the Parties

The Respondent contends that the Board lacks jurisdiction in this matter. The Respondent contends that, as a federally-recognized Indian tribe, it exercises inherent sovereign authority over labor relations within its reservation pursuant to established principles of Federal Indian law. The Respondent further contends that application of the Act would impermissibly interfere with its tribal sovereignty and internal self-governance. The Respondent's defense rests entirely on its jurisdictional challenge.

The Acting General Counsel contends that the Board's exercise of jurisdiction over the Respondent is appropriate under the principles set forth in *San Manuel Indian Bingo & Casino*, 341 NLRB 1055 (2004), *aff'd*, 475 F.3d 1306 (D.C. Cir. 2007), rehearing *en banc* denied (2007), in which the Board asserted jurisdiction over a casino that was owned and controlled by an Indian tribe and located entirely on reservation land. The Acting General

Counsel asserts that the activity at issue, the operation of a casino that employs significant numbers of non-Indians and caters to a non-Indian clientele, is commercial in nature—not governmental. In these circumstances, the Acting General Counsel contends that the Board's assertion of jurisdiction over the Respondent and the application of the Act to the Resort will not impinge upon the Respondent's traditional sovereign authority and right to self-govern.

On the merits, the Acting General Counsel contends that the challenged provisions of the FEP Code and related regulations explicitly interfere with the Section 7 rights of Resort employees by, among other things, prohibiting lawful strikes and other protected concerted activities, subjecting employees and unions to severe penalties for engaging in such activities, requiring unions seeking to organize Resort employees to obtain licenses, narrowly circumscribing the Respondent's duty to bargain with recognized unions, and otherwise preempting, restricting, and limiting the rights and remedies provided in the Act. The Respondent does not argue that the challenged provisions of the FEP Code are lawful if the Board has jurisdiction and the Act applies.

III. ANALYSIS

The parties have stipulated that the issues to be decided are (1) whether the Board has jurisdiction over the Respondent and, if so (2) whether the Respondent has violated Section 8(a)(1) of the Act by applying certain provisions of the FEP Code and related regulations which, by their express terms, apply to Resort employees and labor organizations that may represent them. We conclude that the Board has jurisdiction and that the Respondent has violated the Act as alleged.

A. Jurisdiction

1.

The jurisdictional defense raised by the Respondent presents the same issue that was decided in *San Manuel*, *supra*. In *San Manuel*, the Board held that the jurisdiction of the Act generally extends to Indian tribes and tribal enterprises.⁴ In determining whether Federal Indian policy nevertheless requires the Board to decline jurisdiction in a specific case, the Board adopted the *Tuscarora* doctrine, which establishes that Federal statutes of general application apply to Indians absent an explicit exclusion. See *Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99, 116 (1960). The Federal

³ 25 U.S.C. § 2710(b)(2)(B).

⁴ In so holding, the Board overruled prior Board decisions to the extent they held that Indian tribes and their enterprises were implicitly exempt as governmental entities within the meaning of Sec. 2(2) of the Act. See, e.g., *Fort Apache Timber Co.*, 226 NLRB 503 (1976), and *Southern Indian Health Council*, 290 NLRB 436 (1988).

courts have recognized several exceptions to the *Tuscarora* doctrine to limit jurisdiction over Indian tribes. The exceptions were enumerated by the Ninth Circuit in *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1985), where the court held that general statutes do not apply to Indian tribes if: (1) the law “touches exclusive rights of self-government in purely intramural matters”; (2) application of the law would abrogate treaty rights; or (3) there is “proof” in the statutory language or legislative history that Congress did not intend the law to apply to Indian tribes. “In any of these three situations, Congress must *expressly* apply a statute to Indians before . . . it reaches them.” *Id.* (emphasis in original).

In *San Manuel*, the Board stated that it would apply the three exceptions articulated in *Coeur d'Alene* in assessing whether Federal Indian law and policy precludes the Board’s assertion of jurisdiction over Indian tribes and their commercial enterprises. The Board also adopted a discretionary jurisdictional standard. The Board explained that the discretionary jurisdictional standard is intended to balance the Board’s interest in effectuating the policies of the Act with the need to accommodate the unique status of Indians in our society and legal culture. Thus, “when the Indian tribes are acting with regard to this particularized sphere of traditional tribal or governmental functions, the Board should take cognizance of its lessened interest in regulation and the tribe’s increased interest in its autonomy” and decline to assert its discretionary jurisdiction. 341 NLRB at 1063. Conversely, the Board observed that “[w]hen Indian tribes participate in the national economy in commercial enterprises, when they employ substantial numbers of non-Indians, and when their businesses cater to non-Indian clients and customers, the tribes affect interstate commerce in a significant way” such that the Board should assert jurisdiction. *Id.* at 1062.

2.

We apply the Board’s holding in *San Manuel* and find it to be dispositive in the present case. Consistent with *San Manuel*, the first step in our analysis is to assess whether the Board’s assertion of jurisdiction is foreclosed under one of the three exceptions identified in *Coeur d'Alene*. As to the first exception, we find that application of the NLRA to the Resort would not interfere with the Respondent’s “exclusive rights of self-government in purely intramural matters,” *San Manuel*, 341 NLRB at 1059 (quoting *Coeur d'Alene*, 751 F.2d at 1116), such as “tribal membership, inheritance rules, and domestic relations.” *Id.* at 1061 fn. 19 (quoting *Coeur d'Alene*, 751 F.2d at 1116). Like the casino at issue in *San Manuel*, the Resort is a typical commercial enter-

prise operating in, and substantially affecting, interstate commerce, and the majority of the Resort’s employees and patrons are non-Indians. See *San Manuel*, 341 NLRB at 1061 (“[T]he operation of a casino—which employs significant numbers of non-Indians and that caters to a non-Indian clientele—can hardly be described as ‘vital’ to the tribes’ ability to govern themselves or as an ‘essential attribute’ of their sovereignty.”)⁵

The second and third *Coeur d'Alene* exceptions are also inapplicable. The Respondent does not allege the existence of any treaties covering the tribe. Application of the NLRA would therefore not abrogate treaty rights. Further, as the Board found in *San Manuel*, nothing in the statutory language or legislative history of the Act suggests that Congress intended to foreclose the Board from asserting jurisdiction over Indian tribes.⁶ *San Manuel*, supra, 341 NLRB at 1058–1059.

The Respondent urges that the *Tuscarora-Coeur d'Alene* line of cases is inapposite here, where the validity of tribal law is questioned. The Respondent relies on *NLRB v. Pueblo of San Juan*, 276 F.3d 1186 (10th Cir. 2002), in which the Tenth Circuit upheld a tribal “right-to-work” law, rejecting the Board’s contention that Section 14(b) of the Act implicitly allows only States and territories, not Indian tribes, to enact such legislation.⁷ Accordingly, the Respondent reasons, the Acting General Counsel’s challenge to the FEP Code and regulations must be dismissed.

⁵ Contrary to the Respondent’s argument on brief, the fact that the tribe derives revenue from the Resort which it uses to address the tribe’s intramural needs does not render the operation of the Resort a traditional governmental function or an exercise in self-governance in purely intramural matters. As the Board noted in *San Manuel*, under this definition of intramural, the first *Coeur d'Alene* exception would swallow the *Tuscarora* rule. 341 NLRB at 1063.

⁶ Although the Respondent argues that Indian tribes have sovereign immunity against actions by private parties to enforce contractual rights under Sec. 301 of the LMRA, evincing a Congressional intent to exempt tribes and their enterprises from the Act, it cites no authority for that proposition. In any event, we find it unnecessary to decide the issue. Indian tribes have no sovereign immunity against the United States. See *id.* at 1061, citing *Florida Paralegic Assn. v. Miccosukee Tribe of Indians of Florida*, 166 F.3d 1126, 1135 (11th Cir. 1999) (immunity doctrines do not apply to the Federal Government); *Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174, 182 (2d Cir. 1996) (“tribal sovereignty does not extend to prevent the federal government from exercising its superior sovereign power”). Thus, even assuming that the Respondent can raise a sovereign immunity claim against a private party in a Sec. 301 suit, this would not affect the Board’s authority to effectuate the public policies of the Act.

⁷ Although Sec. 8(a)(3) permits employers and unions to enter into contractual union-security arrangements requiring union membership as a condition of employment, Sec. 14(b) allows States and territories to enact laws, commonly called “right-to-work” laws, prohibiting such arrangements.

We find this argument unpersuasive. The court's reasoning in *Pueblo of San Juan* was limited to the unique facts and issues in that case. The court explicitly noted that—unlike in this case—“the general applicability of federal labor law is not at issue. . . . Furthermore, the Pueblo does not challenge the supremacy of federal labor law. The ordinance . . . does not attempt to nullify the NLRA or any other provision of federal law.” *Id.* at 1191. Rather, the question was only “whether the Pueblo continues to exercise the same authority to enact right-to-work laws as do states and territories[.]” *Id.* The court answered in the affirmative. It reasoned that although Section 8(a)(3) of the Act otherwise permits union-security arrangements, the exception for State and territorial “right-to-work” laws in Section 14(b) clearly indicates that Congress did not intend that Federal law in this regard should be paramount. *Id.* at 1200. (Indeed, the court found that, because of the 14(b) exception, 8(a)(3) is not a “generally applicable” statute insofar as it permits union security, and therefore that *Tuscarora* did not apply. *Id.* at 1199.) In those circumstances, the court was unwilling to find that Congress implicitly intended to divest the tribe of its sovereign authority to enact the “right-to-work” ordinance. Because the court's reasoning in *Pueblo of San Juan* addressed only the narrow issue presented in that case, it is inapposite here.⁸

In any event, we find no merit in the Respondent's central contention—that Federal scrutiny of its FEP Code improperly impairs the exercise of the Tribe's sovereign right of self-government. As stated above, the provisions of the Code at issue here are not directed toward tribal intramural matters over which the Respondent retains exclusive rights of self-government, such as tribal membership, inheritance rules, or domestic relations. Nor are they addressed exclusively to employment relationships between the Tribe and its governmental employees, such as employees of the Tribal Court system or Tribal police personnel. Cf. *Reich v. Great Lakes Indian Fish & Wildlife Comm'n*, 4 F.3d 490, 495 (7th Cir. 1993) (exempting law enforcement employees of Indian agencies from the Fair Labor Standards Act). They are, instead, as we discuss below, a set of rules purporting to limit or deny the rights given under Federal law to (mostly non-Indian) employees of a tribal commercial enterprise operating in interstate commerce. Because *Tuscarora* requires Indian tribes to submit to Federal regulation of such enterprises (with the exceptions already discussed), it would make

⁸ Consistent with its nonacquiescence policy, the Board respectfully continues to disagree with the court of appeals decision in *Pueblo of San Juan*. See, e.g., *Arvin Industries*, 285 NLRB 753, 756–757 (1987). For purposes of this case, however, it is sufficient that the court's decision is inapposite to the issues presented here.

little sense to hold that a tribe could avoid that responsibility merely by enacting statutes or ordinances that were inconsistent with Federal law.⁹

Finally, we find that policy considerations weigh in favor of the Board asserting its discretionary jurisdiction. See *San Manuel*, supra, 341 NLRB at 1063. The Respondent provides no basis to distinguish the policy considerations at issue in *San Manuel*.

B. The Unfair Labor Practice Issues

As stated previously, the Respondent concedes that, if it is found to be subject to the Act, the provisions of the tribal FEP Code at issue are unlawful as alleged, because they either explicitly restrict Section 7 activity or employees would reasonably construe them to restrict such activity.¹⁰ Because we have found that the Respondent is

⁹ The Tribe is, of course, free to enact employment regulations that do not conflict with Federal law. See *Reich v. Mashantucket Sand & Gravel*, supra, 95 F.3d at 181.

The Tenth Circuit has held that Indian tribes are exempt from certain other Federal workplace statutes. *Donovan v. Navajo Forest Products Industries*, 692 F.2d 709 (1982) (OSHA); *EEOC v. Cherokee Nation*, 871 F.2d 937 (10th Cir. 1989) (ADEA). In those cases, however, the court relied extensively on statements in Supreme Court decisions to the effect that ambiguities in statutes and treaties should be resolved in favor of tribal self-government. E.g., “All doubtful expressions contained in Indian treaties should be resolved in the Indians' favor.” *Donovan*, supra, 692 F.2d at 712, citing *Choctaw Nation v. Oklahoma*, 397 U.S. 620 (1970); “[I]f there [is] ambiguity . . . the doubt would benefit the tribe, for ‘ambiguities in federal law have been construed generously in order to comport with . . . traditional notions of sovereignty and with the federal policy of encouraging tribal independence.’” *Cherokee Nation*, supra, 871 F.2d at 939, quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 152 (1982). With all due respect, we think that those decisions are not conclusive authority for the results reached by the Tenth Circuit. In the first place, many of the cited decisions addressed conflicts between tribal sovereignty and State law. Unlike the United States, however, States are not superior sovereigns to Indian tribes. Thus, it is not surprising that the Supreme Court was reluctant to conclude that tribal sovereignty (itself encouraged by established Federal policy) should be trumped by State law or policy. That similar considerations should apply to conflicts between tribal sovereignty and Federal law seems to us a less than self-evident proposition. And in the few decisions that even arguably addressed conflicts between general Federal law and the rights of Indian tribes, the Court upheld the former. See *U.S. v. Dion*, 476 U.S. 734 (1986) (although Indians possessed general treaty rights to hunt and fish, Federal statutes divested them of the right to kill eagles); *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978) (tribal courts lack criminal jurisdiction over non-Indians); *U.S. v. Wheeler*, 435 U.S. 393 (1978) (no double jeopardy for U.S. to prosecute defendant under Federal law after tribal court ruled under tribal law); cf. *U.S. v. Mazurie*, 419 U.S. 544 (1975) (U.S. had authority to regulate introduction of alcohol into Indian country, and validly delegated that authority to tribal council).

¹⁰ *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Thus: Secs. 16.02, 16.03, 16.06(b) and (c), 16.15(b)(5), and 16.24(a) of the FEP Code prohibit strikes and other protected concerted activities. Secs. 16.06(a) and 16.15(b)(1), which prohibit activity that has the effect of “interfer[ing] with, threaten[ing] or undermin[ing] the Governmental Operations of the Band,” would reasonably be interpreted as

subject to the Act, we find that the Respondent has violated the Act, as alleged in the complaint.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has interfered with, restrained, and coerced employees of the Little River Casino Resort in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, by publishing and maintaining provisions of the FEP Code and related regulations that are expressly applicable to the

prohibiting protected concerted activity, such as striking or engaging in communications critical of the Respondent or its agents.

Secs. 16.08(a) and 16.24(c) and related regulations require labor unions to obtain a license before seeking to organize employees working for the Respondent, including employees of the Resort, and create an enforcement system, which includes reporting requirements and penalties. In order to obtain a license, a union seeking to represent casino employees must agree to abide by the unlawful provisions of the FEP Code and to forgo rights and remedies guaranteed under the Act. Failure to obtain the license exposes the union to court injunctions and substantial civil fines.

Several provisions of the FEP Code expressly exclude from the required scope of good-faith bargaining mandatory bargaining subjects including "management decisions to hire, to layoff, to recall or to reorganize duties" (Sec. 16.12(a)(1)(B)); the duration of a collective-bargaining agreement (Sec. 16.18); drug and alcohol testing policies (Sec. 16.20(b)); and any other matter that would conflict with tribal law (Sec. 16.12(b)). Moreover, Sec. 16.01 states, contrary to Sec. 8(d) of the Act, that the Respondent has "inherent authority" to determine "the terms and conditions under which collective bargaining may or may not occur within its territory."

Secs. 16 and 17 establish that the tribal code is the primary authority in establishing and adjudicating the collective-bargaining rights of all employees of the Respondent. When read in conjunction, Secs. 16.01, 16.03, 16.06, 16.12(b), 16.24(d), and 17.1(c) convey the message that the laws of the Respondent and not the NLRA govern the collective-bargaining rights of Resort employees. By suggesting that labor disputes must be brought before the Tribal Court, from which there can be no appeal to the Board, these provisions interfere with the access of unions and employees to the Board.

Sec. 16.16 contains a mandatory arbitration procedure for resolving unfair labor practice allegations, contrary to the settled principle that arbitration is a matter of consent, not compulsion. Under that provision, the arbitrator's decision is final and binding, except for limited review by the Tribal Court, in violation of employees' right to have unfair labor practice charges decided by the Board.

Sec. 16.17 contains an impasse resolution procedure, which includes mandatory interest arbitration at the request of either party, again contrary to Federal law.

Sec. 16.13(e) requires that an employee petition for an election to rescind a "fair share" union-security provision in a collective-bargaining agreement be filed within 90 days after execution of the agreement, contrary to Sec. 9(e) of the Act, which allows employees to file a deauthorization petition with the Board any time during the term of a collective-bargaining agreement.

Resort, the Resort employees, and labor organizations that may represent those employees, and:

(a) Grant the Respondent exclusive authority to regulate the terms and conditions under which collective bargaining may or may not occur, thereby preempting application of the Act and interfering with access to the Board's processes.

(b) Prohibit strikes and other protected concerted activity and subject employees and labor organizations to fines, injunctions, and civil penalties for strike activity.

(c) Require labor organizations to obtain a license to organize employees or conduct other business and subject them to fines, penalties, and injunctions if they fail to obtain a license.

(d) Place restrictions on the duty to bargain over mandatory subjects, including "management decisions to hire, to layoff, to recall or to reorganize duties"; the duration of a collective-bargaining agreement; drug and alcohol testing policies; and any subjects in conflict with tribal laws.

(e) Limit or restrict access to the Board's processes by requiring labor organizations to notify the Respondent of any alleged unfair labor practices and attempt to resolve such disputes through grievance and arbitration, and precluding review of arbitration decisions and awards by the Board or courts; permitting contractual interest arbitration, but precluding review of any allegedly unlawful award by the Board or the courts; providing that decisions by the Tribal Court over disputes involving the duty to bargain in good faith or alleged conflicts between a collective-bargaining agreement and tribal laws shall be final and not subject to appeal; and discouraging labor organizations and employees from invoking procedures or remedies outside of the Fair Employment Practices Code.

(f) Limit the period of time that employees may file a deauthorization petition to the first 3 months of a collective-bargaining agreement, thereby interfering with employees' right under Section 9(e) of the Act to file such a petition during the entire term of a collective-bargaining agreement.

4. The unfair labor practices set out in paragraph 3 affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has maintained in its Fair Employment Practices (FEP) Code and regulations certain provisions that violate Section 8(a)(1) of the Act, we

shall order the Respondent to refrain from applying the unlawful provisions of its FEP Code and regulations to the Little River Casino Resort (the Resort), employees of the Resort, or any labor organization that may represent those employees. We shall also require the Respondent to notify all current and future employees of the Resort that the unlawful provisions of the FEP Code and regulations do not apply to the Resort, its employees, or any labor organization that may represent those employees. We shall leave the manner in which the Respondent complies with these notice requirements to the Respondent's reasonable discretion, subject to approval in compliance proceedings. The Respondent may, if it chooses, effect the required notice to employees by leaving the attached notice marked "Appendix" posted in conspicuous places, including all places where notices to Resort employees are customarily posted, and, if applicable, in electronic form, after the required 60-day posting period has expired. Alternatively, the Respondent may obviate the need for such continuing notice by taking such legislative and regulatory action as is necessary to rescind the application of the unlawful provisions of the FEP Code and regulations to the Resort.

ORDER

The National Labor Relations Board orders that the Respondent, Little River Band of Ottawa Indians Tribal Government, Manistee, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Applying to the Little River Casino Resort, employees of the Resort, or any labor organization that may represent those employees, provisions of its Fair Employment Practices Code and regulations that: (i) grant the Respondent exclusive authority to regulate the terms and conditions under which collective bargaining may or may not occur; (ii) prohibit employees from engaging in strikes or other protected concerted activity and subject employees and labor organizations to fines, injunctions, and civil penalties for striking; (iii) require labor organizations seeking to represent employees of the Resort to obtain a license and subject labor organizations to fines, injunctions, and civil penalties for failing to obtain a license; (iv) place restrictions on the Respondent's duty to bargain over mandatory subjects; (v) interfere with, restrict, or discourage employees from filing charges with the National Labor Relations Board; (vi) discourage labor organizations and employees from invoking procedures or remedies outside of the Fair Employment Practices Code; or (vii) limit the period of time during which employees may file a deauthorization petition.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify all current and future employees of the Resort that it will not apply to the Resort, the employees of the Resort, or any labor organization that may represent those employees, provisions of its Fair Employment Practices Code and regulations that: (i) grant the Respondent exclusive authority to regulate the terms and conditions under which collective bargaining may or may not occur; (ii) prohibit employees from engaging in strikes or other protected concerted activity and subject employees and labor organizations to fines, injunctions, and civil penalties for striking; (iii) require labor organizations seeking to represent employees of the Resort to obtain a license and subject labor organizations to fines, injunctions, and civil penalties for failing to obtain a license; (iv) place restrictions on the Respondent's duty to bargain over mandatory subjects; (v) interfere with, restrict, or discourage employees from filing charges with the National Labor Relations Board; (vi) discourage labor organizations and employees from invoking procedures or remedies outside of the Fair Employment Practices Code; or (vii) limit the period of time during which employees may file a deauthorization petition. Alternatively, the Respondent may rescind the application of the unlawful provisions of the Fair Employment Practices Code and regulations to the Resort.

(b) Within 14 days after service by the Region, post at its Manistee, Michigan, facility, copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees of the Little River Casino Resort are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted and Mailed by Order of the National Labor Relations Board" shall read "Posted and Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 28, 2008.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 18, 2013

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on
your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT apply to the Little River Casino Resort, employees of the Resort, or any labor organization that may represent those employees, provisions of our Fair Employment Practices Code and regulations that: (i) grant us the exclusive authority to regulate the terms and conditions under which collective bargaining may or may not occur; (ii) prohibit employees and labor organizations from engaging in strikes or other protected concerted activity and subject employees and labor organizations to fines, injunctions, and civil penalties for striking; (iii) require labor organizations seeking to represent employees of the Resort to obtain a license and subject them to fines, injunctions, and civil penalties for failing to obtain a license; (iv) place restrictions on our duty to bargain in good faith over terms and conditions of employment; (v) interfere with, restrict, or discourage employees from filing charges with the National Labor Relations Board; (vi) discourage labor organizations and employees from invoking procedures or remedies outside of the Fair Employment Practices Code; or (vii) limit the period of time during which employees may file a deauthorization petition.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL notify all current and future employees of the Little River Casino Resort that the unlawful provisions of our Fair Employment Practices Code and regulations set forth above do not apply to them or any labor organization that seeks to represent them *or* WE WILL rescind the application of the unlawful provisions of the Fair Employment Practices Code and regulations to the Little River Casino Resort.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL GOVERNMENT

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Little River Band of Ottawa
Indians Tribal Government,

Petitioner

v.

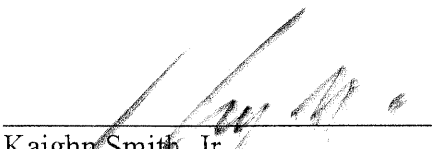
National Labor Relations Board,

Respondent

PETITION FOR REVIEW

The Little River Band of Ottawa Indians Tribal Government hereby petitions the Court for review of the Decision and Order of the National Labor Relations Board entered on the 18th day of March, 2013 in the matter of *Little River Band of Ottawa Indians Tribal Government and Local 406, International Brotherhood of Teamsters*, Case 07-CA-051156, a copy of which is attached hereto.

Dated: April 15, 2013



Kaighn Smith, Jr.
Attorney for Petitioner
Little River Band of Ottawa Indians
Tribal Government

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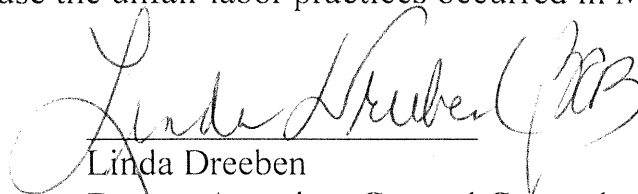
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LITTLE RIVER BAND OF OTTAWA)
INDIANS TRIBAL GOVERNMENT)
 Petitioner)
)
 v.) No. 13-1464
)
NATIONAL LABOR RELATIONS)
BOARD)
 Respondent)

CROSS-APPLICATION FOR ENFORCEMENT
OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board hereby cross-applies to the Court for enforcement of its Order issued against Little River Band of Ottawa Indians Tribal Government on March 18, 2013, in Board Case No. 7-CA-51156, reported at 359 NLRB No. 84. On April 15, 2013, the Respondent, Little River Band of Ottawa Indians Tribal Government, filed a petition with this Court to review the same Board Order. The Board seeks enforcement of its Order in full.

The Court has jurisdiction over this cross-application pursuant to Section 10(e) and (f) of the National Labor Relations Act, as amended (29 U.S.C. § 160(e) and (f)), because the Respondent is aggrieved by the Board's Order. Venue is proper in this Circuit because the unfair labor practices occurred in Manistee, Michigan.



Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, D.C. 20570
(202) 273-2960

Dated at Washington, D.C.
this 30th day of April 2013

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Little River Band of Ottawa)	
Indians Tribal Government,)	
)	
Petitioner/Cross-Respondent)	Case No. 13-1583
)	(Case No. 13-1464)
v.)	
)	
National Labor Relations Board,)	
)	
Respondent/Cross-Petitioner)	

**ANSWER OF THE LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL GOVERNMENT TO CROSS-APPLICATION FOR
ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

The Little River Band of Ottawa Indians Tribal Government (the “Band” or the “Tribe”) hereby answers the Cross-Application of the National Labor Relations Board (the “NLRB” or the “Board”) pursuant to FED. R. APP. P. 15(b)(2) as follows.

By its Order, issued against the Band on March 18, 2013 in Case No. 7-CA-51156 (the “Order”), the NLRB seeks to compel the Band to rescind, or render inoperable, the Band’s carefully crafted laws governing labor relations and collective bargaining (Articles XVI and XVII of the Fair Employment Practices Code of the Little River Band of Ottawa Indians) because they vary from the National Labor Relations Act. These laws have been enacted and implemented

pursuant to the Band's inherent sovereign authority to govern under its own laws, established by the Band's Constitution, Congress's Act of 1994 reaffirming the government-to-government relationship between the United States and the Band, 25 U.S.C. §§ 1300k-1300k-7, the Indian Reorganization Act, 25 U.S.C. §§ 461 *et seq.*, and the federal Indian common law decisions of the United States Supreme Court. The laws at issue have been fully operational for over four years, with collective bargaining agreements consummated under them and unfair labor practices resolved pursuant to them, consistent with the values, traditions, and public policy priorities of the Band.

The Board is without power or authority to order the Band to rescind these laws or otherwise render them inoperable.

The Band therefore respectfully asks this Court to reject the Board's Cross-Application for Enforcement and hold that the Order is null, void, unenforceable, and without effect.

Dated: May 9, 2013

/s/Kaighn Smith, Jr.
Kaighn Smith, Jr.
Attorney for Petitioner/Cross-
Respondent,
Little River Band of Ottawa Indians
Tribal Government

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case

GR-7-CA-51156

Date Filed

March 28, 2008

INSTRUCTIONS:

File an original together with four copies and a copy for each additional charged party named in Item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer Little River Band of Ottawa Indians Tribal Government		b. Number of workers employed 500
c. Address (Street, city, state, and ZIP code) 375 River Street Manistee, MI 49660	d. Employer Representative Don Koons, Speaker	e. Telephone No. 231-398-6845 Fax No. 231-398-0675
f. Type of Establishment (factory, mine, wholesaler, etc.) Entertainment	g. Identify principal product or service Casino	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (1st subsections) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since on or about January 1, 2008, and prior thereto the respondent the Little River Band of Ottawa Indians Tribal Government has promulgated the Constitution of the Little River Band of Ottawa Indians which on its face preempts the National Labor Relations Act jurisdiction. Said Constitution of the Little River Band of Ottawa Indians among it articles reserves authority to govern labor relations including but not limited to regulating terms and conditions under which collective bargaining agreements may or may not occur. The Constitution of the Little River Band of Ottawa Indians among other illegal articles denies employees the right to strike. By this and other conduct the respondent has intimidated employees and utilized the Constitution of the Little River Band of Ottawa Indians as a means to deny employees the right to organize as protected by Section 7 of the Act.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) General Teamsters Local No. 406		
4a. Address (Street and number, city, state, and ZIP code) 877 Robinwood Court Traverse City, Michigan 49666		4b. Telephone No. 231-947-0461 Fax No. 231-947-6319
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Teamsters		
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By <u>Local 406 Attorney</u> (signature of representative or person making charge) (Print type name and title or office, if any) 4891 Cascade Rd., S.E., Grand Rapids, MI 49548 (and 616-940-1942 Address 616-940-1911 3 28 2008 (Telephone No.) (date)		

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT

tabbies
GC Exhibit 1(a)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

LITTLE RIVER BAND OF OTTAWA
INDIANS TRIBAL GOVERNMENT
Respondent

and

CASE 7-CA-51156

LOCAL 406, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
Charging Union

COMPLAINT AND NOTICE OF HEARING

The Charging Union has charged that Respondent has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq. Based thereon, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Charging Union on March 28, 2008, and a copy was served by regular mail on Respondent on the same date.

2. At all material times, Respondent has owned, operated, and managed a hotel, restaurant, entertainment and gaming complex known as the Little River Casino Resort in Manistee, Michigan.

3. During calendar year 2009, a representative period, Respondent, in the course and conduct of its business operations described in paragraph 2, derived gross revenues in excess of \$500,000, and purchased and received goods and supplies at its Manistee, Michigan place of business valued in excess of \$50,000 directly from suppliers located outside the State of Michigan.

4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. At all material times, the Charging Union has been a labor organization within the meaning of Section 2(5) of the Act.

EXHIBIT

tabbies
GC Exhibit 1(b)

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6. Since its original adoption on November 2, 2005, and as amended, most recently on about July 28, 2010, Respondent has maintained and published a “Fair Employment Practices Code”, herein called the FEP Code, which is also known as Ordinance No. 05-600-03, that contains Article XVI, “Labor Organizations and Collective Bargaining,” and Article XVII, “Integrity of Fair Employment Practices Code,” copies of which are attached hereto as Exhibit 1.

7. Respondent’s FEP Code affects and governs terms and conditions of employment of its employees employed at its Little River Casino Resort in Manistee, Michigan, and their rights to organize and bargain collectively.

8. Respondent’s FEP Code interferes with, restrains, and coerces employees in the exercise of their rights guaranteed in Section 7 of the Act by the following provisions:

(a). Section 16.01 grants Respondent exclusive authority to regulate the terms and conditions under which collective bargaining may or may not occur, thereby preempting application of the Act and interfering with access to the Board’s processes.

(b). Section 16.02 prohibits all strikes by Respondent’s employees and requires any labor organization doing business within Respondent’s jurisdiction to obtain a license from Respondent.

(c). Section 16.06(a) prohibits employees and labor organizations from interfering with governmental operations of Respondent, including its Little River Casino Resort, and thereby prohibits or restricts lawful protected concerted activities.

(d). Sections 16.06(b) and (c) prohibit strikes by Respondent’s employees.

(e). Section 16.08 requires labor organizations to obtain a license from Respondent to organize employees or conduct other business within Respondent’s jurisdiction, including its Little River Casino Resort.

(f). Section 16.12(a)(1)(B) precludes collective bargaining over Respondent’s decisions to hire, to lay off, to recall, or to reorganize duties of its employees.

(g). Section 16.12(b) precludes collective bargaining over any subjects in conflict with provisions of Respondent’s tribal laws, thereby unlawfully asserting Respondent’s supremacy over bargaining rights and obligations established by the Act.

(h). Section 16.13(e) limits the period of time that employees may file a deauthorization petition to the first three months of a contract, thereby interfering with their right under Section 9(e) of the Act to file such a petition during the entire term of the contract.

(i). Section 16.15(b)(1) prohibits labor organizations from calling for any action that interferes with Respondent’s business operations, thereby prohibiting lawful strikes and other protected concerted activities of employees.

(j). Section 16.15(b)(5) prohibits labor organizations and employees from participating in, or instigating, or supporting a strike, and it subjects them to civil penalties for strike activity.

(k). Section 16.16 precludes review of arbitration decisions and awards by the Board and the courts, and it requires labor organizations to notify Respondent, in writing, of any alleged unfair labor practice and to attempt to resolve the dispute before resorting to any outside forum, thereby imposing an unlawful exhaustion requirement before seeking access to the Board's processes.

(l). Section 16.17 permits contractual interest arbitration but precludes review of any allegedly unlawful award by the Board or the courts.

(m). Section 16.18 mandates that collective-bargaining agreements have terms of three years or less, thereby unlawfully restricting bargaining over a mandatory subject.

(n). Section 16.20 excludes alcohol and drug abuse policies from collective bargaining, thereby unlawfully prohibiting bargaining over a mandatory subject.

(o). Sections 16.24(a) and (c) unlawfully subject labor organizations and employees to civil fines and injunctive relief for violating the strike prohibitions and union licensing requirements of Article XVI of Respondent's FEP Code.

(p). Section 16.24(d) provides that decisions by Respondent, through its Tribal Court, over disputes involving the duty to bargain in good faith or alleged conflicts between a collective-bargaining agreement and tribal laws shall be final and not subject to appeal, thereby unlawfully limiting access to the Board's processes.

(q). Section 17.1(c) discourages labor organizations and employees from invoking procedures or remedies outside of the FEP Code, thereby unlawfully interfering with access to the Board's processes and reasserting Respondent's authority to regulate collective bargaining and to preempt application of the Act.

9. By the conduct described in paragraphs 6, 7, and 8, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

10. The described unfair labor practices of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, it is prayed that Respondent be ordered to:

1. Cease and desist from engaging in the conduct described in paragraphs 6, 7, and 8, or in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action:

- (a). Rescind the provisions of Respondent's FEP Code described in paragraph 8.
- (b). Post appropriate notices.
- (c). Post appropriate notices, and contemporaneously post and maintain a signed and legible copy of the notice on Respondent's web site, on a page made accessible to all employees.

The Acting General Counsel further prays for such other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before December 27, 2010, or postmarked on or before December 26, 2010.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on the **E-Gov tab**, select **E-Filing** and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification for the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer needs to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL GOVERNMENT**

Respondent

and

Case 7-CA-51156

**LOCAL 406, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

Charging Union

I. STATEMENT OF ISSUES

1. Whether the Board has jurisdiction over the Respondent Little River Band of Ottawa Indians Tribal Government and the authority to proceed on the Complaint in this matter against it with respect to the application of its Fair Employment Practices Code and related regulations to the Little River Casino Resort.
2. Whether, if the Board has such jurisdiction, the Respondent has violated Section 8(a)(1) of Act by applying the provisions of its Fair Employment Practices Code and related regulations to the Little River Casino Resort.

II. STATEMENT OF STIPULATED FACTS

The parties stipulate as follows:

1. The Little River Band of Ottawa Indians (*Gaá Čhíng Ziibi Daáwaa Aníshinaábek*) (the “Band” or the “Tribe”) is a federally recognized Indian tribe. 25 U.S.C. § 1300k-2(a).
2. The Tribe has over 4,000 enrolled members (or “tribal members”), most of whom live within or near the Tribe’s aboriginal lands in the State of Michigan. Approximately 380 tribal members reside in Manistee County, Michigan, the principal location of the Band’s government.
3. Pursuant to Congress’s 1994 Act reaffirming the Band’s federal recognition, 25 U.S.C. §§ 1300k to 1300k-7 (the “Reaffirmation Act”), the Band has enacted a Constitution

(“LRBOI Const.”), and amendments thereto, in accordance the Indian Reorganization Act, 25 U.S.C. § 476 (the “IRA”), which have been approved by the Secretary of the Interior. (Joint Exhibit 1)

4. Article II, section 1 of the Tribe’s Constitution restricts tribal membership to certain individuals who possess at least one-fourth (1/4) degree Indian blood, of which at least one-eighth (1/8) degree must be Grand River Ottawa or Michigan Ottawa. (Joint 1 Ex. 1, LRBOI Const. Art. II, § 1)

5. Pursuant to the Band’s Constitution, the Band is governed by an executive branch, through the office of the Tribal Ogema; a legislative branch, through the office of the Tribal Council; and a judicial branch, through the Tribal Court. (Joint Exhibit 1, LRBOI Const. Articles IV-VI)

6. The Band’s Constitution provides, that “[t]he Tribe’s jurisdiction over its members and territory shall be exercised to fullest extent consistent with this Constitution, the sovereign powers of the Tribe, and federal law.” (Joint Exhibit I, Art. I, § 2.)¹

7. Since the passage of the Reaffirmation Act, the United States, through the Secretary of Interior, has taken over 1, 200 acres of the Tribe’s ancestral lands in and near Manistee and Mason Counties into trust on behalf of the Tribe (said lands are referred to herein as “trust lands”).

8. The Band exercises governmental authority over the activities of tribal members, other Native Americans, and non-Indians on these trust lands.

¹ The Band publishes its Constitution, laws, and regulations, including those referenced in these stipulations, on its public website at <https://www.lrboi-nsn.gov/council/ordinances.html>. The Band’s laws and regulations are regularly updated and amended, and such changes are reflected in the materials posted on said website. The Tribal laws and regulations that have been made Joint Exhibits and a part of the Stipulated Record are the current tribal laws and regulations of the Band. It is understood that the Band’s website and any future changes made to the Constitution, laws and regulations posted on the website are not a part of the Stipulated Record

9. The Little River Casino Resort (“LRCR”) is a tribally chartered instrumentality and a subordinate organization of the Band established by the Tribal Council pursuant to Article IV, Section 7 of the Band's Constitution to operate gaming pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2710-2721 (“IGRA”). The LRCR is overseen by a Gaming Enterprise Board of Directors, which is subject to the oversight of the Tribal Ogema and the Tribal Council as described below. (Joint Exhibit 1, LRBOI Const. Art., IV, § 7).

10. Pursuant to the IGRA, the Band has entered into a compact with the State of Michigan in order to conduct class III gaming activities, as defined by 25 U.S.C. § 2703(8), on the Band’s trust lands in Manistee Michigan. (See Joint Exhibit 25, Compact and Amended Compact, with Department Interior Letter on Amended Compact). Further, as mandated by IGRA and the Band’s Gaming Ordinance (Chapter 400, Title 1 of the Tribal Code of the Band), (a) the Band has the sole proprietary interest in, and responsibility for gaming at LRCR and (b) the net revenues generated from gaming at LRCR are the governmental revenues of the Band, which may be used only for the Band's governmental services, the general welfare of the Band and its members, tribal economic development, to support local governmental organizations, or to donate to charitable organizations. See 25 U.S.C. §§ 2710(b)(2)(A), 2710(b)(2)(B), 2710(d)(2)(A); LRBOI Gaming Ordinance, Chapter 400 §§ 5.01, 6.01 (Joint Exhibit 20);

11. The facilities of the LRCR include: (1) a casino with more than 1500 slot machines, as well as gaming tables, a high limits gaming area, and bingo facilities, (2) a 292 room hotel, (3) a 95 space RV park, (4) a 1700 seat events center, which is rented for business conferences and weddings and is used for entertainment events featuring nationally known acts, (5) three restaurants, and (6) a lounge. The gross revenues for the LRCR exceed \$20,000,000 annually. During the 2010 fiscal year, ending December 31, the Band earned in excess of \$20,000,000

from its LRCR gaming operation. During the 2010 fiscal year, the Band purchased and received at its Manistee facilities gaming supplies, services, and other supplies directly from suppliers located outside of the State of Michigan valued in excess of \$50,000 for use in connection with the LRCR. During the same period of time, the Band received in excess of \$50,000 from the federal government to fund various programs for its tribal members.

12. The LRCR currently has 905 employees, including 107 employees who are enrolled members of the Band and 27 who are other Native Americans. The majority of employees employed at the LRCR are neither enrolled members of the Band nor Native Americans. The majority of the LRCR employees live outside of the Band's trust lands. The majority of LRCR customers are non-Native American, and come from Michigan outside of the Tribe's trust lands, other states, and Canada. The LRCR competes with other Indian-owned casinos and non-Indian owned casinos located in Michigan, other states, and Canada. The LRCR advertises for customers using various media in Michigan and in other states.

13. The Band's governmental services and programs for its members and community include: health services, including clinic and community health, behavioral health, and treatment programs provided through the Band's Health Clinic; educational services to support tribal members pursuing, or enrolled in, higher education programs through the Band's Department of Education; family services through the Band's Department of Family Services; housing services for tribal members and elders through the Band's Housing Department; the provision of police and other public safety services within the Tribe's territory through the Band's Department of Public Safety; conservation, restoration, and monitoring of natural resources within the Tribe's territories through the Band's Department of Natural Resources; reservation economic development and the provision of employment opportunities for the Band's members through the

Band's Department of Commerce and its subordinate organizations, including the Band's reservation gaming operations (LRCR) under the IRGA; the administration of justice through a prosecutor's office and Tribal Court system; the maintenance of the Band's legislative, judicial, and executive branches of government; and infrastructure support for all of these activities.

14. The Band's Housing Department, for example, has built, and is continuing to build, reservation homes for low income and elderly tribal members. The Band's Health Department provides direct health care services to many tribal members and their families. It is upgrading its clinic to include a fitness center and has plans for a pharmacy to better serve the tribal community. The Band's *Bedabin* services (meaning "coming of the dawn") support tribal members in need of mental health counseling, including substance abuse counseling. Through its Department of Natural Resources, the Band is engaged in restoring sturgeon fish populations within the reservation. The Tribe is preserving its language through *Anishinaabemowin* language programs for tribal member youths and elders, and it recently completed construction of a new Community Center on the reservation to unify, and enhance services to, the tribal community.

15. The Band has no significant base within its jurisdiction upon which to levy taxes.

16. The Band's governmental programs and services are jointly funded by (a) the Band's generation of revenues through its gaming operations (LRCR) pursuant to the IGRA, and (b) federal government support, principally through contracts entered into by the Band with federal agencies through Congress's Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 450 *et seq.* (known as "P. L. 638"), Indian Health Care Improvement Act of 1976, 25 U.S.C. §§ 1601, *et seq.*, administered by the U.S. Department of Health and Human Services, Indian Health Service ("IHS"), and Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. §§ 4101-4212 ("NAHASDA"). The Band's IGRA gaming

revenues from the LRCR generally provide in the order of \$20 million per year in support of tribal government, which is over 50% of the Band's total budget. The remainder is covered primarily through a combination of the above-referenced federal programs.

17. For example, under the Band's fiscal year 2011 Government Services Budget, the Band combines federal funds with its IGRA gaming revenues from the LRCR to support the activities of its Department of Natural Resources, with about 60% of the budget funded from IGRA gaming revenues from the LRCR and 40% from P. L. 638 funds from the federal government; its Department of Public Safety, with 62% of the budget funded from IGRA gaming revenues and 38% from P. L. 638 funds from the federal government; its behavioral health (*Bedabin*) services, with about 80% of that budget funded from IGRA gaming revenues from the LRCR and 20% from IHS funds from the federal government; maintenance and overhead for its Health Clinic building, with about 80% of those costs covered by IGRA gaming revenues from the LRCR and 20% from P. L. 638 funds from the federal government; its Department of Family Services, with 77% of the budget funded from IGRA gaming revenues and 23% from P. L. 638 funds from the federal government; its Housing Department, with 60% of the budget funded from IGRA gaming revenues from the LRCR and 40% from NAHASDA, (apart from 2011 "stimulus" funds). In that same budget, the Band's IGRA gaming revenues from the LRCR provide 100% of the funds to support the Tribal Prosecutor's office and the Tribal Court. All of these percentages of funding sources for the Band's governmental services have remained the same, on average, from year to year since 2007.

18. The Band's current funding agreement with the IHS (see Joint Exhibit 3, selected pages of the agreement) is a good example of the method by which the Band supports its services to tribal members with both federal funds and LRCR gaming revenues. Under that agreement,

which covers all aspects of health services, ranging from clinical services to behavioral, family, and home care services, the Band is required to merge its own revenues sources with those provided by IHS in order to supplement funds provided by IHS. (Joint Exhibit 3 at page 8 of 18.).

19. A total of 1,150 employees (including 905 at LRCCR) currently work for the Tribe's governmental departments and subordinate organizations. This includes tribal members and members of their immediate family, members of other Indian tribes, and non-Indians. Under the Tribe's laws, qualified enrolled members of the Tribe are given preferences over non-Indians for employment positions within the Tribe's governmental departments and subordinate organizations, including the LRCCR. In addition to the 107 tribal members currently working at the Band's IGRA gaming operations (LRCCR), 108 tribal members work for the Band's other operations. For example, thirteen tribal members provide health care services, with three providing *Bedabin* services; five tribal members work for the Band's Tribal Court (including three Judges and two probation officers); five tribal members work for its Family Services Department; and four work for its Public Safety Department.

20. The Band's Constitution vests the Tribal Council with the legislative authority of the Tribe and provides that the Tribal Council has the power "[t]o exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution . . . to govern the conduct of members of the Little River Band and other persons within its jurisdiction" and "to promote, protect and provide for the public health, peace, morals, education, and general welfare" of the Tribe and its members. (Joint Exhibit 1, LRBOI Const. Art. IV, § 7).

21. The process by which the Tribal Council enacts legislation is governed by the Band's Constitution (Joint Exhibit 1, LRBOI Const. Art. IV, § 6), the Tribal Council Meeting Procedures Ordinance, Chapter 100, Title 2 of the Tribal Code ("TCMPO"), (Joint Exhibit 19), and the Band's Administrative Procedures Act — Ordinances, Chapter 100, Title 7 of the Tribal Code ("APA"). (Joint Exhibit 18).

22. The Band's legislative process is designed to maximize input from the community and tribal members affected by the development of ordinances of the Tribe. It includes: the posting of all ordinances for public comment, review of public comments by the Tribal Council, open working sessions of the Tribal Council as needed to address policy considerations, and formal adoption of any ordinance by Tribal Council Resolution in open session. (Joint Exhibit 18, APA § 1.01; Joint Exhibit 19, TCMPO § 6.03).

23. Larry Romanelli, an enrolled member of the Band, serves as the elected Ogema (head of the Executive Branch), pursuant to vote of the enrolled members of the Band. He has served as the Ogema of the Band since June 20, 2007, and has recently been reelected to another term. Pursuant to Article V of the Band's Constitution, the Ogema is vested with the executive powers of the Band to (among other things) enforce and execute the laws, ordinances, and resolutions of the Tribal Council; to manage the economic affairs of the Tribe, including the Tribe's IGRA gaming operations (LRCR), consistent with the ordinances and resolutions enacted by the Tribal Council; to prepare and present the annual budget of the Band to the Tribal Council for approval or other action; and, with the approval of the Tribal Council, to appoint, among other officials, members of the Band's regulatory commissions created by ordinance. (LRBOI Const. Art V, Joint Exhibit 1).

24. Pursuant to its authority to create regulatory commissions and subordinate organizations under Article IV, Section 7(f) of the Band's Constitution, the Tribal Council has delegated authority to a Gaming Enterprises Board of Directors ("Gaming Enterprise Board") to oversee the Band's IGRA gaming operations (including the LRCR and future gaming operations) pursuant to the Gaming Enterprise(s) Board of Directors Act of 2010, Chapter 800, Title 3 of the Tribal Code of the Band ("GEBDA"). (Joint Exhibit 1, LRBOI Const. Art. IV, § 7(f); Joint Exhibit 5, GEBDA §§ 1.02 and 4.01). Currently, the Band's only gaming operations are at the LRCR.

25. The Gaming Enterprise Board is comprised of five Directors, all of whom must be enrolled members of the Band. Two are elected officials of the Band and three are "at large" (not elected officials). The first seat for an elected official may be held by the Tribal Ogema, and if the Ogema declines to serve, the Ogema shall appoint a sitting member of the Tribal Council to serve in his place with approval of the Tribal Council. The second seat for an elected official is held by a sitting member of the Tribal Council, appointed by the Ogema and approved by the Tribal Council. The three at large directors are appointed by the Ogema and approved by the Tribal Council. If the Ogema decides to serve as a member of the Board, the Ogema may serve as the Chairperson of the Gaming Enterprise Board of Directors, and if he declines to serve then the member of the Tribal Council that he appoints to serve in his stead becomes the Chairperson. (Joint Exhibit 5, GEBDA § 4.02).

26. The Gaming Enterprise Board of Directors may vote to remove a Director for cause, and the Tribal Council may likewise remove a Director for cause in the event that the Gaming Enterprise Board fails to bring a charge for removal. (Joint Exhibit 5, GEBDA §§ 5.01-5.03, 5.05).

27. The Gaming Enterprise Board is charged with responsibility “[to] ensure compliance with the laws and resolutions enacted by the Tribal Council”; to ensure that the Band’s IGRA gaming operations at LRCR comply with the provisions of the IGRA, the Band’s gaming compact with the State of Michigan, the laws of the Band, and all applicable laws; and to ensure that all revenues from the Band’s IGRA gaming operations are accounted for and transferred to the accounts of the Band controlled by the Tribal Council as directed by the laws of the Band and procedures approved by the Tribal Council. (Joint Exhibit 5, GEBDA § 9.01(a)-(c).

28. The Gaming Enterprise Board is also charged with responsibility to increase the number of enrolled members of the Band employed by LRCR in accordance with the Band’s Indian Preference in Employment Ordinance, Chapter 600, Title 2 of the Tribal Code. (Joint Exhibit 5, GEBDA § 9.01(d)-(e), Joint Exhibit 23, Indian Preference in Employment Ordinance).

29. The Band’s Tribal Council has delegated to the Gaming Enterprise Board limited authority to execute collective bargaining agreements for the LRCR and to execute a waiver of sovereign immunity on behalf of the Tribe in such an agreement, but only to the extent that such a waiver is consistent with the waiver of sovereign immunity provided by Article XVI of the Band’s Fair Employment Practices Code, Chapter 600, Title 3 of the Tribal Code of the Band (“FEP Code”). Except as specifically delegated, the ability to waive sovereign immunity rests with the Tribal Council. (Joint Exhibit 5, GEBDA §§ 10.02(a), 10.03; Joint Exhibit 4, FEP Code).

30. The Band’s Tribal Council has delegated to the Gaming Enterprise Board additional limited authority to waive the sovereign immunity of LRCR only in contracts for "essential daily operational needs," and any such waiver must be by Board resolution. (Joint Exhibit 5, GEBDA §§ 10.02(b); 10.04(a)).

31. In accordance with the Band's Constitution and GEBDA, the Gaming Enterprise Board prepares (or has prepared) a proposed annual budget, various reports and operating plan for the LRCR, which must be presented to, and approved or amended by, the Tribal Council by September 1. The Chairperson of the Gaming Enterprise Board, which may be the Tribal Ogema or someone appointed by the Ogema to act as Chairperson, or in such Chairperson's absence, the Vice Chairperson, is responsible for presenting the proposed budget, operating plan and reports to the Tribal Council. The budget must be accompanied by an operating plan for the LRCR and a human resources report and other detailed reports for the LRCR for the current fiscal year to date as well as for the upcoming year by month.

The Gaming Enterprise Board is required to submit an operating plan that "shall report on proposed activities for the upcoming fiscal year by month and shall include but not be limited to:

1. Operating goals for the enterprise
2. Operating goals for each department
3. Proposed changes in operations
4. Status of collective bargaining agreement and other union activities
5. Schedule and discussion of risks and opportunities.

The Gaming Enterprise Board is required to include in the annual human resources report the following:

1. Head count schedule
2. Preference employment report
3. Hiring plans

4. Employee development plans
5. Proposed changes to employee benefits/plans
7. Compensation plans
8. Disclosure of bonus type plans
9. Status of collective bargaining agreements and other union activities
10. Termination report.

(Joint Exhibit 5, GEBDA §§ 12.01, 12. 02(a), 12. 02(c)-12. 02(e) and § 12.03).

In addition, the Gaming Enterprise Board is required to submit a monthly report to the Ogema and the Tribal Council, including all resolutions adopted by the Board and summarizing the status of material aspects of the LRCR, including, among other reports, a human resources report and a report on the status of collective bargaining and other union activities. (Joint Exhibit 5, GEBDA § 12.03).

Section 12.01 of the Band's Gaming Enterprise Act provides in part, "No deviation from approved plans and budgets shall occur unless approved by Board of Directors and ratified by Tribal Council Resolution." (Joint Exhibit 5, GEBDA § 12.01).

The Tribal Council takes actions that affect the terms and conditions of employment of the LRCR employees, including, for example, approving their health insurance plans; enacting laws concerning employment matters, such as hiring preferences for tribal members and the limitations on collective bargaining set forth in provisions of the FEP code; and exercising authority to approve or amend the personnel manual.

32. The Gaming Enterprise Board accounts to the Band's Tribal Council for all revenues generated by LRCR and transfers those funds to the accounts of the Band under the control of the Tribal Council, excluding authorized operating funds. (Joint Exhibit 5, GEDBA § 9.01(c)).

33. The Gaming Enterprise Board has authority to approve and amend the personnel manual for the LRCR, subject to overriding authority of the Tribal Council to alter the personnel manual by law or resolution. The Gaming Enterprise Board must give the Ogema and Tribal Council 30 days notice of any proposed changes to the personnel manual. (Joint Exhibit 5, GEDBA § 9.03(c)).

34. The Gaming Enterprise Board also has authority to hire a General Manager for the LRCR and to enter into an employment contract with said manager, subject to ratification by the Tribal Council. (Joint Exhibit 5, GEDBA § 9.03(a)).

35. In 2005, following the legislative processes described in paragraphs 20-22 above, the Tribal Council permanently enacted the Band's Fair Employment Practices Code, Chapter 700, Title 3 of the Tribal Code, to govern a variety of employment and labor matters within its jurisdiction, including rights and remedies for employment discrimination, minimum wages, and other matters. (Joint Exhibit 4, FEP Code, Art. I.).

36. In 2007, following the above-referenced legislative processes, the Tribal Council permanently enacted Article XVI of the FEP Code ("Article XVI") to govern labor organizations and collective bargaining within public employers. Section 16.01 of the FEP Code provides:

The Little River Band of Ottawa Indians exercises powers of self-government over its members and territory. The Tribe has inherent authority to govern labor relations within its jurisdiction, and this includes regulating the terms and conditions under which collective bargaining may or may not occur within its territory. The Tribe's inherent authority further includes the right to protect the health, welfare, and political integrity of the Tribe from being harmed or threatened by the activities of nonmembers within the Tribe's territory. The purpose of this Article is to protect essential attributes of tribal self-government and the health and welfare of the members of the Tribe if labor organizations conduct operations within the jurisdiction of the Tribe. (Joint Exhibit 4, FEP Code § 16.01).

37. In furtherance of that purpose, the Tribal Council decided that it was in the best interest of the Band to allow collective bargaining by employees within its public sector, subject

to regulations that would protect the integrity of its governmental operations, the Band's governmental revenues, and the economic welfare of its members.

38. To this end, the Tribal Council considered examples of public sector labor laws of the state and federal governments and enacted provisions to, among other things, prohibit strikes against its governmental operations; ensure that if a labor organization was elected to represent a bargaining unit of employees within the Band's governmental operations, no employee would be required to join the union or to pay union dues; and establish jurisdiction within the Band's Tribal Court to enforce certain provisions of Article XVI. (Joint Exhibit 4, FEP Code §§ 16.05, 16.06, 16.24).

39. Pursuant to Article XVI, Section 16.03 of the FEP Code, a "Public Employer" is defined as "a subordinate economic organization, department, commission, agency, or authority of the Band engaged in any Governmental Operation of the Band," and "Governmental Operations of the Band" are defined as:

the operations of the Little River Band of Ottawa Indians exercised pursuant to its inherent self-governing authority as a federally recognized Indian tribe or pursuant to its governmental activities expressly recognized or supported by Congress, whether through a subordinate economic organization of the Band or through a department, commission, agency, or authority of the Band including, but not limited to (1) the provision of health, housing, education, and other governmental services and programs to its members; (2) the generation of revenue to support the Band's governmental services and programs, including the operation of . . . gaming through the Little River Casino Resort; and (3) the exercise and operation of its administrative, regulatory, and police power authorities within the Band's jurisdiction. (Joint Exhibit 4, FEP Code § 16.03).

Section 16.03 of the FEP Code also states:

Little River Casino Resort means the Band's gaming enterprise, including related hotel and restaurant services, located at 2700 Orchard Highway, Manistee, Michigan, wherein the Tribe operates Class II and Class III gaming to generate governmental revenue for the Tribe pursuant to the Indian Gaming Regulatory Act. (Joint Exhibit 4, FEP Code § 16.03).

In accordance with these provisions of the FEP Code, the Band considers the LRCR to be a public employer within the meaning of the FEP Code, and the Band at all material times has applied and continues to apply the provisions of the FEP Code, as amended, to the LRCR, to the employees of the LRCR, and to labor organizations seeking to represent employees of the LRCR, including the provisions of the FEP Code alleged in paragraphs 8(a)-(q) in the Complaint in the instant case. The Band at all material times has also applied Labor Organization Licensing Regulations described below to the LRCR, to the employees of the LRCR and to labor organizations seeking to represent employees of the LRCR. (See Joint Exhibits 4, 6, 7, 8 and 9).

40. In early 2008, the Tribal Council adopted permanent amendments to Article XVI of the FEP Code to, among other things, require labor organizations doing business within the jurisdiction of the Band to apply for and obtain a license; prohibit lock-outs by the Band's public employers; and expand the enforcement powers of the Band's Tribal Court with respect to said licensing requirement and prohibition against lock-outs and strikes. (Joint Exhibit 4, FEP Code §§ 16.07, 16.08 (a)-(c) and 16.24).

41. In enacting these 2008 amendments, the Tribal Council decided that it was in the best interest of the Band, and would promote fairer labor relations, if public employers were prohibited from engaging in lock-outs in the same manner that public employees are prohibited from engaging in strikes under the labor organization laws of most states.

42. In enacting these 2008 amendments, the Tribal Council also decided to delegate authority to the Band's Gaming Commission (the "Gaming Commission" or "Commission") to license labor organizations operating within any of the governmental operations of the Band because the Commission is the only governmental body of the Band with licensing experience and capability. (Joint Exhibit 4, FEP Code § 16.08).

43. The Gaming Commission is a regulatory body, established by the Tribal Council under authority of the Band's Constitution, and governed by the Band's Gaming Commission Ordinance, Chapter 400, Title 4 of the Tribal Code of the Band, and the Commissions Ordinance, Chapter 150, Title 01 of said Code. (Joint Exhibit 26, Gaming Commission Ordinance).

44. The Gaming Commission is made up of between three and five Commissioners, each of whom is appointed by the Band's Tribal Ogema with approval by the Band's Tribal Council for four year terms. Each Commissioner is an enrolled member of the Band and is subject to rigorous background checks and regulatory training in order to qualify to serve as Commissioner. LRBOI Gaming Commission Ordinance, Chapter 400, Title 4, §§ 5.01-5.05. (Joint Exhibit 26).

45. The Gaming Commission is charged with licensing outside entities that conduct business within the territorial jurisdiction of the Band to protect the health, safety, and welfare of the Band and its community; it has significant experience in carrying out investigations and related licensing activities for the issuance of licenses to entities or individuals who engage in economic activity within the territorial jurisdiction of the Band; and no other commission or body of the Band has such licensing experience or authority. *See* LRBOI Gaming Commission Ordinance, §§ 6.01(a), (d), (g), and 8.01-8.03 (Joint Exhibit 26).

46. Pursuant to the FEP Code, the Tribal Council has given the Gaming Commission authority to enact regulations to investigate and license labor organizations engaged in organizing employees working for public employers within the jurisdiction of the Band. (Joint Exhibit 4, FEP Code § 16.08(b)).

47. In 2008, the Gaming Commission drafted regulations to govern labor organizations operating within the Band's IGRA gaming operations, and, in so doing, studied examples of licensing procedures from other jurisdictions, including Michigan.

48. On June 3, 2008, after several drafting sessions and meetings, the Commission completed its first draft regulations to govern labor organizations within the Band's gaming operations and posted them for public comment. Thereafter, on July 24, 2008, the Commission enacted those regulations and, thereafter, on February 16, 2010 amended the regulations to better delineate information about background checks and related authorizations from applicants. The Tribal Council approved the initial regulations and the amendments to the regulations. As a condition of obtaining a license under these regulations, a labor organization must agree to be bound by the laws and regulations of the Tribe, including, among others, the FEP Code. (Joint Exhibit 4, FEP Code § 16.08(a)(3)(A) & (B); Joint Exhibits 6, 7, 8 & 9).

49. Since 2008, the Gaming Commission has issued three annual licenses to the United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("USW"). (Joint Exhibits 15, 16, & 17).

50. In April of 2008, the Tribal Council voted unanimously in favor of a resolution directing all elected officials to remain impartial with respect to union activity within the Band's jurisdiction and prohibiting said officials from commenting, discussing, or announcing their personal opinions on union activity. (Joint Exhibit 21, Neutrality Resolution).

51. Later in 2008, pursuant to Article V, section. 5 of the Band's Constitution, the Band entered into an Agreement with the USW ("Security Officers Bargaining Unit Election Procedures Agreement") to establish procedures for employees within the security department of the Band's IGRA gaming operations, LRCR, to identify themselves as an appropriate

bargaining unit for collective bargaining and to make a showing that 30% or more of the employees within the unit supported union representation so as to trigger a union election; to establish “civility” rules for union and management to follow during any election campaign; to set forth secret ballot voting procedures for employees to vote for union representation; and to establish processes for resolving disputes arising out of any campaign or vote. (Joint Exhibit 22).

52. The Ogema’s office negotiated and entered into said Agreement with a goal to minimize disruptions to the Band by establishing fair and orderly procedures for a union campaign, and it became a template for a “Model Band-Union Election Procedures Agreement,” later adopted by the Tribal Council.

53. Pursuant to October 15, 2008 amendments to Article XVI of the FEP Code, the Tribal Council provided that the Model Band-Union Election Procedures Agreement, may serve as the basis for other Agreements entered into by the Band and labor organizations to establish procedures for determining appropriate bargaining units for collective bargaining within the governmental operations of the Band and elections by such units of public employees for exclusive bargaining representatives. (Joint Exhibit 4, FEP Code XVI §§ 16.09, 16.10; Joint Exhibit 10, Model Band-Union Election Procedures Agreement).

54. In 2008, the Tribal Council approved Attorney David M. Peterson (of Straub, Seaman & Allen, St. Joseph, Michigan) to serve as the Band’s Neutral Election Official to oversee the processes established by the Security Officers Election Procedures Agreement (or any future similar Agreement based on the “Model Band-Union Election Procedures Agreement”) for determining (among other things) an appropriate bargaining unit within a public employer for union representation, when employees within such a bargaining unit could

trigger a secret ballot election for union representation, and the outcome of any such secret ballot election.

55. Neutral Election Official Peterson previously served as Chief Judge for the Fifth District Court in the State of Michigan and as Presiding Judge of the Criminal Division of the Berrien County Trial Court. He currently serves as Tribal Judge for the Pokagon Band of Potawatomi Indians.

56. Neutral Election Official Peterson's duties are set forth in a memorandum approved by the Tribal Council (Joint Exhibit 13).

57. Section 16.02 of the FEP Code provides as follows:

The Tribal Council declares that it is the policy of the Tribe to promote harmonious and cooperative relationships between tribal government and its employees by permitting employees within the Governmental Operations of the Band to organize and bargain collectively; to protect orderly Governmental Operations of the Band to provide for the health, safety, and welfare of the Band and its members; to prohibit and prevent all strikes by employees within the Governmental Operations of the Band; to protect the rights of employees within the jurisdiction of the Band to join or refuse to join, and to participate in or refuse to participate in, labor organizations; to protect the rights of tribal members to employment preferences; and to ensure the integrity of any labor organization doing business within the jurisdiction of the Band by requiring any such labor organization to obtain a license. (Joint Exhibit 4; FEP Code § 16.02).

58. In furtherance of the policy set forth in Section 16.02 of the FEP Code, in enacting additions to Article XVI in October 2008, the Tribal Council drew from the public sector labor laws of states to: (a) define the rights and duties of employers, employees, and labor organizations within the Band's public sector with respect to collective bargaining, including the duty to bargain in good faith, which excepts from such duty any requirement to bargain over any matter that would conflict with the laws of the Band (all as reflected in FEP Code §§ 16.12, 16.14, 16.21, and 16.24(d)); (b) provide procedures for resolving alleged violations of those rights and duties, including unfair labor practice procedures (as reflected in FEP Code §§ 16.15

and 16.16); (c) design processes for management of public employers and exclusive bargaining representatives to resolve bargaining impasses through mediation, fact finding and arbitration, and setting the standards for consideration by arbitrators (all as reflected in FEP Code §§ 16.17); (d) establish that management and exclusive bargaining representatives may bargain over “fair share” contributions by public employees within a bargaining unit who do not join the union, and setting procedures for employees to vote to rescind any such “fair share” provision (all as currently reflected in FEP Code § 16.13); (e) limit the duration of public sector collective bargaining agreements to three years or less (as currently reflected in FEP Code § 16.18); and (f) provide a process for a bargaining unit of public employees to vote to decertify an exclusive bargaining representative with oversight by the Band’s Neutral Election Official (as reflected in FEP Code § 16.19).

59. In furtherance of the public policy set forth in FEP Code § 16.02, in enacting additions to Article XVI in October, 2008, the Tribal Council provided that the terms and conditions under which the Band's public employers may test employees for alcohol or drug use shall not be subject to collective bargaining with any labor organization (as reflected in FEP Code § 16.20). It also waived the sovereign immunity for the Band's public employers from suit for the purpose of the enforcement of any collective bargaining agreement in the Tribal Court and for limited review of certain arbitrator decisions related to unfair labor practices (as reflected in FEP Code § 16.26) and provided for the use of the “Model Band-Union Election Procedures Agreement” as referenced above.

60. In March, 2009, the Tribal Council enacted additional amendments to the FEP Code in furtherance of the public policy set forth in FEP Code § 16.02 to, among other things: (a) establish a Charge of Discrimination form for public employees to use to assert rights and

remedies under the Band's law for alleged employment discrimination on the basis of union affiliation (as currently reflected in FEP Code §§ 6.02 and 16.16(b) of the FEP Code); (b) clarify limits on the duty of public employers to bargain in good faith with regard to management prerogatives, consistent with other public sector labor laws by specifying that management does not have a duty to bargain about its decisions to hire, layoff, recall or reorganize the work duties of employees (as reflected in FEP Code § 16.12(a)(1)); (c) clarify procedures for resolving different categories of unfair labor practice charges to ensure that those involving management or elected bargaining representatives, if not settled, are resolved by arbitration with limited judicial review, that those involving alleged discrimination against an individual employee by employer or union go through discrimination procedures provided in Article VI of the FEP Code, and that claims of breach of duty of fair representation by an employee against an exclusive bargaining representative proceed to the Band's Tribal Court (as reflected in FEP Code § 16.16); (d) clarify and further streamline bargaining impasse procedures (currently reflected, in part, in FEP Code §§ 16.17(c) and 16.17(d)); and (e) provide for limited review of an arbitrator's award resolving a bargaining impasse by the Tribal Council and by the Tribal Court (as currently reflected in FEP Code § 16.17(e) and 16.17(h)).

61. In January, 2010, the Tribal Council again amended the FEP Code by enacting Title XVII. Sections 17.1 (b) and (c) of Article XVII state:

(b). In providing for procedures, rights, and remedies for employers, employees, and labor organizations under this Code, including those afforded through actions in the Little River Band of Ottawa Indians Tribal Court, the Tribal Council has carefully considered (and continues to consider) the values and interests of the Band in order to establish fair processes, rights, and remedies for the parties and interests at stake. This has included careful consideration of, amongst other things, (i) the time, costs, and inconvenience of parties and witnesses involved in proceedings to resolve controversies or to establish rights and remedies under this Code; (ii) the need to protect the governmental operations of the Band from undue burdens from litigation, while according fair treatment to

employees within those operations; and (iii) methods to resolve disputes through early settlement, including mediation.

(c). The integrity of this Code is threatened if parties bypass the procedures, rights, and remedies established herein and seek, instead, to invoke procedures or remedies outside of this Code for controversies that this Code is designed to address and resolve in accordance with the unique public policies of the Band. Investigations or proceedings directed at employers, apart from those provided for by this Code, which seek to address controversies or rights covered by this Code, require the expenditure of time and resources to the detriment of those involved and, in many instances, to the governmental operations of the Band. Such investigations or proceedings also threaten duplicative witness testimony and production of documents already available, or undertaken, pursuant to the provisions of this Code. (Joint Exhibit 4, FEP Code § 17.4).

62. In furtherance of the policy set forth in Section 17.1 of the FEP Code, the Tribal Council in January 2010 enacted sections 17.4 and 17.5 of Article XVII to prohibit public employers from producing documents or giving testimony under subpoena from such outside authorities without the approval of the Tribal Council in circumstances where the employee initiating proceedings by external authorities has failed to exhaust his or her remedies provided by the FEP Code. (Joint Exhibit 4, FEP Code §§ 17.4-17.5).

63. In July, 2010, the Tribal Council adopted permanent amendments to Article XVI of the FEP Code, in furtherance of the public policy set forth in § 16.02 to, among other things: (a) correct perceived unfairness in the allocation of costs between parties in paying for the arbitration of unfair labor practices by allowing the arbitrator to allocate costs consistent with the parties' relative successes on issues (as reflected in FEP Code § 16.16(a)(2)(D)); (b) clarify that no complaint for employment discrimination based on union affiliation may be brought in the Band's Tribal Court unless a charge of discrimination is filed within 180 days of the alleged discrimination (as reflected in FEP Code § 16.16(b)(iii)); and (c) correct perceived unfairness in the process for resolving collective bargaining impasses, which had allowed public employers to reject the award of an interest arbitrator with respect to economic terms of a collective

bargaining agreement (i.e. wages, salaries, bonuses, insurance premiums, and pension or retirement contributions), by (i) requiring any public employer seeking to reject such an award to show cause to the Tribal Council for the rejection, (ii) providing opportunity to both the public employer and the exclusive bargaining representative to be heard on the matter, and (iii) providing for the Tribal Council to resolve the impasse either by accepting the arbitrator's award or the public employer's final offer on such economic terms (as reflected in FEP Code §16.17(e)).

64. All of the above-referenced enactments and amendments of provisions to the FEP Code set forth in paragraphs 35-42, 46, 53, and 57-63 proceeded in accordance with the legislative processes described in paragraphs 20-22 above. The Tribal Council conducted ten (10) work sessions between 2007 and 2010 to address public policy considerations relative to the above-referenced enactments and amendments of provisions to the FEP Code.

65. In the work sessions and open session meetings at which the Tribal Council addressed said enactments and amendments to the FEP Code, the Tribal Council deliberated over a number of public policy considerations. The following are examples:

- In deciding whether or not to prohibit strikes within the governmental operations of the Band, the Tribal Council considered whether bargaining impasses could be resolved through mandatory mediation, fact finding, and arbitration with less disruption to the ordinary operations of the Band's departments, agencies, commissions and subordinate organizations, and it concluded that such impasse resolution methods would better serve the Band's interests and the welfare of its community than allowing strikes.
- In designing said mandatory bargaining impasse procedures — mediation, fact finding, and interest arbitration, with limited review of continuing impasses over economic terms before the Tribal Council —the Tribal Council sought to provide an efficient, non-disruptive procedure for the parties to come to agreement, and left Tribal Council with the ultimate role to resolve any ongoing impasse with respect to the economic terms of a collective bargaining agreement because such terms affect the treasury of the Band, its governmental revenues, and therefore its ability to provide governmental services.

- In requiring parties to attempt to resolve alleged unfair labor practices before commencing arbitration and then limiting judicial review of arbitration decisions on unfair labor practice charges to review for legal error or inconsistencies with the laws of the Band, the Tribal Council determined that it was in the best interests of the Band and its governmental operations to promote early resolution of such disputes by mandating early, good faith settlement discussions and to streamline any post-arbitration judicial review.
- In excluding from the mandatory subjects of bargaining between management of a public employer and an exclusive bargaining representative any provisions that would conflict with the laws of the Band, the Tribal Council ensured that the public policies reflected in the body of the Band's laws would not be placed in conflict with the terms of a collective bargaining agreement entered into under Article XVI. This would cover such things as the requirements of the Band's Indian Preference in Employment Ordinance, Chapter 600, Title 2 of the Tribal Code.
- In deciding whether or not to allow management and exclusive bargaining representatives within the Band's governmental operations to bargain over fair share contributions from employees who decide not to join a union, the Tribal Council considered whether or not workplace harmony would be better promoted by allowing such bargaining to occur or whether the choice of individual employees should be given more value. The Tribal Council concluded, on balance, that allowing bargaining over fair share contributions would be in the best interests of the Band and its community by furthering workplace equity. The Tribal Council then limited the time frame for employees to petition for a vote to deauthorize a fair share provision in a collective bargaining agreement to ninety (90) days after the execution of the collective bargaining agreement in order to foster workplace stability.
- In considering whether to eliminate from the mandatory subjects of bargaining any drug or alcohol testing policy of a public employer that comports with the laws of the Band, the Tribal Council considered the devastating impact that drug and alcohol abuse has had upon its tribal members and Native American communities generally and decided that it was in the best interests of the Band and its community to eliminate such policies from the mandatory subjects of bargaining, provided that such policies are consistent with the Band's law, which includes civil rights under the Band's Constitution.

66. The Tribal Council continues to assess the provisions of the FEP Code and Article XVI to consider improvements in light of the experience of ongoing collective bargaining within certain bargaining units at its IGRA gaming operations. In making such assessments, the Tribal Council regularly looks for lessons to be drawn from other public sector labor laws of state governments, including those of the State of Michigan.

67. Since 2008 the Band has entered into three Band-Union Election Procedures Agreements to govern elections procedures for bargaining units at LRCR, all containing the requisite provisions of the Model Band-Union Election Procedures Agreement (Joint Exhibit 10).

68. Elections for union representation, the initiation and resolution of election disputes, collective bargaining, the initiation and resolution of alleged unfair labor practices, and the initiation and resolution of bargaining impasse procedures have all proceeded apace for nearly three years pursuant to Article XVI of the FEP Code and the terms of the above-referenced Band-Union Election Procedures Agreements.

69. Since his appointment in 2008, Neutral Election Official Peterson has (a) overseen (and issued sworn declarations in reference to) the count of signatures of employees to verify the requisite support for union elections with respect to four separate bargaining units of employees at LRCR, (b) subsequently overseen four elections for union of representation in four bargaining units at the LRCR, and (c) issued Official Tallies of Votes with respect to those elections. (Joint Exhibit 14).

70. Over the course of the last three years, at least four unfair labor practice claims have been resolved under Article XVI of the FEP Code or the provisions of an executed Band-Union Election Procedures Agreement, including one by written decision of an arbitrator.

71. During the last four years, there have been collective bargaining agreement negotiations with respect to four separate bargaining units of employees at the LRCR, involving over 40 full days of negotiation sessions. The four bargaining units constitute over 250 employees, and each of the four bargaining units is made up of enrolled tribal members as well as nonmembers.

72. Enrolled tribal members have served on the LRCR management's negotiating team with respect to collective bargaining for all four bargaining units.

73. Enrolled tribal members also serve on management's negotiating team with respect to meetings held to administer the collective bargaining agreement entered into with the USW with respect to the LRCR security officers bargaining unit as described in paragraphs 74-77 below, and a tribal member served on the employees' initial negotiating team, represented by the USW, with respect to that agreement.

74. After over a year of collective bargaining with respect to the security employees' bargaining unit, the LRCR management and the USW reached an impasse over certain terms and conditions of employment. As a result, they invoked the three step impasse resolution process provided for in Article XVI of the FEP Code. (Joint Exhibit 4, FEP Code § 16.17).

75. A hearing was held on or about June 24, 2010, by a fact finder, chosen by the parties—Attorney Anne T. Patton, Esq. — and, in accordance with FEP Code Section 16.17(c)(2), she issued a 32 page "Findings of Fact and Recommendations," dated August 8, 2010. As a result of said Findings of Fact and Recommendations, the LRCR management and the USW narrowed the issues left for negotiation and then preceded to interest arbitration.

76. In accordance with FEP Code Section 16.17(d), an interest arbitration hearing was held on or about October 11, 2010, by the arbitrator chosen by the parties, Attorney Richard N. Block, Esq, and, thereafter he issued a 39 page "Opinion and Award" in the matter.

77. Thereafter, the Gaming Enterprise Board of Directors agreed to accept the interest arbitration award with respect to the payment of wages, bonus, and economic terms subject to certain conditions. (See Joint Exhibit 11). The USW and the LRCR management tentatively agreed to a collective bargaining agreement covering security employees' bargaining unit, which

was ratified by the security employees on December 16, 2010 and was approved by the Gaming Enterprise Board on December 20, 2010. (See Joint Exhibits 12 and 24). Tribal Omega, Larry Romanelli, commented on the signing of this collective bargaining agreement in the February, 2011 edition of *Currents* the monthly newsletter of the Tribe which is published on its public website, as follows:

In the last half of December, two controversial agreements were signed by the Little River Band of Ottawa Indians. . . . LRBOI also signed a collective bargaining agreement with the United Steel Workers after months of negotiations. The agreement is one of the first of its kind in the Nation and follows our Tribal Law. There will be much written on this for some time.

78. A decertification petition was filed and related union decertification election was held resulting in the decertification of the exclusive bargaining representative in another bargaining unit of employees at LRCR in August, 2010, in accordance with Article XVI of the FEP Code, and was overseen by Neutral Election Official Peterson, who issued an Official Tally of Votes to certify the results. One hundred and thirty four (134) employees (excluding a challenged ballot) casted votes in that election. A separate decertification petition and related union decertification vote by a separate unit of employees at LRCR, held in February, 2011, did not result in the decertification of the exclusive bargaining representative for that separate unit. The petition and vote for this decertification also proceeded in accordance with Article XVI of the FEP Code and was overseen by Neutral Election Official Peterson, who issued an Official Tally of Votes to certify the results. Sixty-eight employees (excluding 2 challenged ballots) casted votes in that election. (Joint Exhibit 14).

79. Collective bargaining negotiations continue pursuant to Article XVI of the FEP Code with respect to the two other bargaining units of employees at LRCR.

80. The Respondent maintains that LRCR employees and any labor organization that seeks to represent them are subject to and are governed by the FEP Code, and that LRCR employees any labor organization seeking to represent them are not governed by the National Labor Relations Act.

81. The Charging Union, Local 406, International Brotherhood of Teamsters is, and at material times has been, a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

82. The parties do not stipulate to the relevance of the facts herein, and any party objecting to the relevance may do so in their brief.

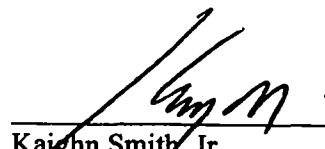
83. The parties agree that in addition to the forgoing stipulated facts, Joint Exhibits 1-26 shall be part of the record. The parties stipulate to the authenticity of the Joint Exhibits, but reserve the right to object to their relevance, and may do so in their briefs.

84. The parties stipulate that upon the Board's acceptance of the stipulated facts, no party will rely on evidence contained in the affidavits or exhibits attached to the "Statement of Undisputed Facts in Support of the Motion of Respondent Little River Band of Ottawa Indians Tribal Government to Dismiss or For Summary Judgment," filed in this matter on March 4, 2011 unless specifically included in these Stipulations or the Joint Exhibits.

Respectfully submitted this 3rd day of August, 2011



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LIST OF JOINT EXHIBITS

Constitution of the Little River Band of Ottawa Indians, as amended, with certificates of approval. (Approved July 10, 1998) (Amendments approved May 13, 2004)	Joint Exhibit 1
Little River Band of Ottawa Indians (Resolution # 04-0728-313) <i>Re-Authorizing the Chartering of a Tribal Enterprise to be Known as "Little River Casino Resort" and Re-Authorizing Use of the Tribal Seal in Connection with Such Tribal Enterprise</i> (Adopted July 28, 2004)	Joint Exhibit 2
Multi-Year Funding Agreement between the Little River Band of Ottawa Indians and the Secretary of Health and Human Services of the United States of America (Effective February 1, 2009 through December 31, 2011) (Selected Pages).	Joint Exhibit 3
Little River Band of Ottawa Indians Fair Employment Practices Code Ordinance # 05-600-03 (As amended, July 28, 2010) ("FEP Code")	Joint Exhibit 4
Little River Band of Ottawa Indians Gaming Enterprise(s) Board of Directors Act of 2010 Ordinance # 10-800-03 (As amended, July 6, 2011) ("GEBDA")	Joint Exhibit 5
Little River Band of Ottawa Indians Gaming Commission Resolution #GC08-0724-21 <i>Approving Gaming Commission Regulation Chapter 13-- Labor Organization Licensing Regulations #R400-04: GC-03</i> (Adopted July 24, 2008)	Joint Exhibit 6
Little River Band of Ottawa Indians Gaming Commission Regulation: Chapter 13, Labor Organization Licensing Regulations (Gaming Enterprise), Regulation # R400-04:GC-13 (Approved July 24, 2008) (Tribal Council Approved August 6, 2008)	Joint Exhibit 7

LIST OF JOINT EXHIBITS

Little River Band of Ottawa Indians Gaming Commission Resolution #GC10-0223-03 <i>Approving Revised Gaming Commission Regulation Chapter 13--Labor Organization Licensing Regulations #R400-04: GC-13</i> (Adopted February 16, 2010)	Joint Exhibit 8
Little River Band of Ottawa Indians Gaming Commission Regulation: Chapter 13, Labor Organization Licensing Regulations (Gaming Enterprise), Regulation #R400-04:GC-13 (Approved February 23, 2010) (Tribal Council Approved March 17, 2010)	Joint Exhibit 9
Little River Band of Ottawa Indians Resolution # 08-1015-350 <i>Approving and Adopting the Model Band-Union Election Procedures Agreement (Adopted October 15, 2008) and Model Band Union Election Procedures Agreement</i>	Joint Exhibit 10
Little River Casino Resort Board of Directors Resolution #10-1209-027 <i>Ratifying Management Decision to Accept Those Portions of The November 22, 2010 Interest Arbitration Award Relating To the Payment of Wages, Bonuses and other Economic Terms For the Security Officer Bargaining Unit With Contingency Condition</i> (Adopted December 9, 2010) .	Joint Exhibit 11
Little River Casino Resort Board of Directors Resolution #10-1220-059 <i>Ratifying Collective Bargaining Agreement Between the Little River Casino Resort, an economic enterprise of the Little River Band of Ottawa Indians, a federally recognized Indian Tribe and Sovereign Nation, and The United Steel, paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC</i> (Adopted December 20, 2010) .	Joint Exhibit 12
Memorandum: Little River Band of Ottawa Indians Neutral Election Official Duties With Respect to Elections	Joint Exhibit 13
Little River Band of Ottawa Indians Neutral Election Official Tallies of Votes (October 16, 2008), (March 5, 2009), (May 26, 2009), (August 5, 2009), (August 4, 2010), (February 17, 2011)	Joint Exhibit 14

LIST OF JOINT EXHIBITS

Little River Band of Ottawa Indians Gaming Commission, Tribal Labor Organization License Issued To: United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (Effective Date 08/26/08)	Joint Exhibit 15
Little River Band of Ottawa Indians Gaming Commission, Tribal Labor Organization License Issued To: United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC (Effective Date 08/26/09)	Joint Exhibit 16
Little River Band of Ottawa Indians Gaming Commission, Tribal Labor Organization License Issued To: United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO, CLC (Effective Date 08/26/10)	Joint Exhibit 17
Little River Band of Ottawa Indians Administrative Procedures Act -- Ordinances # 04-100-07 (Adopted November 10, 2004) ("APA")	Joint Exhibit 18
Little River Band of Ottawa Indians Tribal Council Meeting Procedures Ordinance # 06-100-02 (Adopted June 25, 2008) ("TCMPO")	Joint Exhibit 19
Little River Band of Ottawa Indians Gaming Ordinance # 10-400-01	Joint Exhibit 20
Little River Band of Ottawa Indians Tribal Council Resolution #08-0409-99, Restricting Comments by Elected Officials Regarding Union Activities (partially redacted) (Adopted April 9, 2008)	Joint Exhibit 21
Little River Band of Ottawa Indians - USW Security Officers Election Procedures Agreement (August 6, 2008)	Joint Exhibit 22
Little River Band of Ottawa Indians Indian Preference in Employment Ordinance, Ordinance # 11-600-02 (Adopted May 4, 2011)	Joint Exhibit 23
Little River Casino Resort and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied	Joint Exhibit 24

LIST OF JOINT EXHIBITS

Industrial and Service Workers International Union Collective Bargaining Agreement for Security Officers (Dec. 20, 2010 – Dec. 19, 2012)	
Compact Between the Little River Band of Ottawa Indians and the State of Michigan Providing for the Conduct of Tribal Class III Gaming By Little River Band of Ottawa Indians (entered into on December 3, 1998), Amendment to Compact (entered into on January 24, 2008), and letter from Office of the Secretary of Interior to Governor Jennifer Granholm (dated March 11, 2008)	Joint Exhibit 25
Little River Band of Ottawa Indians Gaming Commission Ordinance, Ordinance # 04-0400-04	Joint Exhibit 26