

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

Little River Band of Ottawa)	
Indians Tribal Government,)	
)	
Petitioner/Cross-Respondent)	Nos. 13-1464 and 13-1583
)	
v.)	
)	
National Labor Relations Board,)	
)	
Respondent/Cross-Petitioner)	

**OPPOSITION OF THE LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL GOVERNMENT TO MOTION OF THE NATIONAL LABOR
RELATIONS BOARD TO VACATE AND REMAND**

The Little River Band of Ottawa Indians Tribal Government (“Band” or “Tribe”) hereby opposes the motion of the National Labor Relations Board (“NLRB” or “Board”) to vacate the NLRB’s order and remand this case to the Board.

As explained below, the issue decided by the Supreme Court in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014), provides no basis for vacatur or remand. The issue is nonjurisdictional, has not been raised by the Band in this case, and has likewise been waived by the NLRB. To the extent that the Court nevertheless has discretion in the matter, the equities strongly favor denial of the NLRB’s motion, because stopping this case in its tracks at this late date would be not only

destructive of judicial economy but highly prejudicial to the Tribe, leaving it without timely resolution of a longstanding attack upon its governance of labor relations within its reservation. The NLRB's motion should accordingly be denied.

If the Court does decide to give the NLRB an opportunity to further consider its decision in light of *Noel Canning*, however, the Band would request the Court to strictly condition its order, as more fully explained below, to ensure that the time and resources that have been committed to resolving this controversy are not wasted and to protect the Band's compelling interest in a timely disposition.

BACKGROUND

This case involves an unprecedented action by a federal agency: ordering a federally recognized Indian tribe to rescind laws it has enacted in accordance with established principles of federal Indian law governing tribal sovereignty. The case started over six years ago when the NLRB issued a charge against the Band, asserting that its labor-organization laws, Article XVI of the Band's Fair Employment Practices Code ("FEPC"), constituted an unfair labor practice as applied to the Tribe's reservation gaming operations under the Indian Gaming Regulatory Act. Those laws, amendments to them, and related implementing regulations were painstakingly enacted by the Band in accordance with its unique public-policy priorities. *See* Pet. Br. 8-10. And they have been operational within the Band for more than six years, with union elections occurring in accordance

with them, multiple collective-bargaining agreements negotiated pursuant to them, and numerous controversies, including bargaining impasses and alleged unfair labor practices, resolved under them. *See id.* at 10-11.

The NLRB's six-year effort to strike down these laws has caused considerable disruption within the Band by besetting it with a continuing challenge, under color of federal-agency authority, to its ability to govern critical activities in its own territory. Thus, at the outset of this case, the Band moved for, and was granted, expedited briefing and oral argument. *See* Motion to Expedite (filed May 9, 2013) (ECF 006111685320); Order Granting Motion to Expedite (issued May 21, 2013) (ECF 006111696874). Consistent with its desire to resolve the merits without further delay, the Band decided not to challenge the recess appointments of the Board under *Noel Canning* in its briefs, even though the Supreme Court had already granted review in that case. Nor did the NLRB ever see fit to raise the issue. Then, on the eve of oral argument last October, when the Board moved to postpone argument because of travel constraints due to a government-spending freeze, the Band opposed the motion, once again because it wanted a timely decision to remove the cloud over its ability to govern. *See* Response to Motion to Stay Oral Argument (filed Oct. 1, 2013) (ECF 006111836390). The Court denied the Board's request, heard oral argument as

scheduled on October 8, 2013, and has had the case under submission since that time.

Post-submission events have borne out the Band's need for timely resolution of this matter. To give just one example, last fall an employee of the Band sought remedies under both the FEPC and the NLRA for the same alleged unfair labor practice, and filed charges under both laws. *See* Exhibit A (NLRB charge) and Exhibit B (FEPC charge). The Tribe assigned a Fair Employment Practices Investigator ("FEPI"), who proceeded to investigate the tribal-law charge pursuant to the FEPC. *See* Exhibit C (FEPI certified letter with FEPC charge) and Exhibit D (subpoena issued under the FEPC). At the same time, an NLRB case investigator separately investigated the NLRA charge. *See* Exhibit E (NLRB investigator notice). The Band asked the NLRB to defer to its process, *see* Exhibit F (letter from Acting Speaker for the Band to General Counsel, NLRB), but to no avail. The FEPI issued a detailed report pursuant to the FEPC, *see* Exhibit G, and the NLRB investigator separately concluded his investigation. The cases were resolved, but not without a significant expenditure of time and resources due to the jurisdictional dispute at the heart of this case.

So the instant motion comes before this Court in a context where the Band has, for very good reasons, worked at every turn to obtain a timely disposition of the merits in this Court, including by declining to raise the *Noel Canning* issue, and

where the NLRB, throughout the proceedings, never uttered a word about that issue. Now, nine months after the case was submitted to the panel, the NLRB is seeking vacatur of the Board's decision and a remand to the Board in light of *Noel Canning*. Its motion offers no reason to believe that the Board will come to a different conclusion than it initially did, and the motion provides no indication of how long it might take the Board to act. All that can be known for sure is that, if the Board is granted the relief it seeks and then reaches the same conclusion on remand that it did previously (and it cannot seriously be disputed that that would be the most likely result), the Board will be in the same position it is in now—except that additional months or even years will have elapsed.

ARGUMENT

I. THE BOARD'S MOTION SHOULD BE DENIED.

A. In *GGNSC Springfield LLC v. N.L.R.B.*, 721 F.3d 403 (6th Cir. 2013), this Court expressly held that a constitutional challenge to the authority of the Board under *Noel Canning* is “nonjurisdictional.” *Id.* at 407. Other circuits have followed that decision. *Horton, Inc. v. N.L.R.B.*, 737 F.3d 344, 351 (5th Cir. 2013); *NLRB v. RELCO Locomotives, Inc.*, 734 F.3d 764, 793–96 (8th Cir.2013). Thus, if a party does not affirmatively raise the issue in its opening brief, the issue is waived. *GGNC*, 721 F.3d at 407; *see also United States v. Moore*, 376 F.3d 570, 576 (6th Cir. 2004); *Priddy v. Edelman*, 883 F.2d 438, 446 (6th Cir.1989).

The Board itself persuaded this Court not to entertain a *Noel Canning* claim on this ground in *GGNSC*. 721 F.3d at 407. As the Court explained:

The parties agree that *Noel Canning*'s legal conclusions, if followed here, would render the Board's order void. The Board asks that we not take up the challenge to its authority, claiming that the [petitioner] forfeited the argument by making it for the first time in a letter to us filed under Federal Rule of Appellate Procedure 28(j). See *Superior Bank, FSB v. Boyd (In re Lewis)*, 398 F.3d 735, 748 n.9 (6th Cir. 2005) (declining to consider a defense asserted for the first time in this way). The [petitioner] responds that its challenge is "jurisdictional" and thus can never be forfeited. If true, that would require us to address it before any non-jurisdictional challenges. See *Steel Co.*, 523 U.S. at 88–89. But the [petitioner] is mistaken. Errors regarding the appointments of officers under Article II are "nonjurisdictional." See *Freytag v. Comm'r*, 501 U.S. 868, 878–79 (1991); accord *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 574 F.3d 748, 756 (D.C. Cir. 2009) (per curiam).

Id.

The Board identifies no language in the Supreme Court's June 26, 2014 decision in *Noel Canning* affecting this Court's holding in *GGNSC* that the *Noel Canning* issue is nonjurisdictional and therefore waived if not properly presented in a party's opening brief, and none exists. The Band, as the petitioner in this case, had the right to decide what issues to raise. It chose not to raise the *Noel Canning* issue because, for the reasons set forth above, it wanted an expedited disposition on the merits. The NLRB said nothing about the issue and, consistent with its position in *GGNSC*, clearly viewed it as waived. In this setting, quite contrary to the tenor of the NLRB's motion, this Court is not obliged to vacate the Board's

decision and remand the case to the Board. To the contrary, the issue has been waived. *See GGNSC*, 721 F.3d at 407.

B. Since the Court is not required to overlook the Band's waiver, addressing the lawfulness of the NLRB's composition under *Noel Canning* at this late stage, even in the form of vacatur and remand to the Board, is purely discretionary. *See GGNSC*, 721 F.3d at 407. It would be quite odd to exercise that discretion to address the issue when, as in this case, it is the *waiving* party that is asking the Court not to. And given the harm that would be caused to judicial economy from vacatur and remand, as well as the destabilizing impact of this unresolved controversy upon an Indian tribal government, there is no warrant for the Court to exercise that discretion in the NLRB's favor.

This Court and the parties have already expended considerable time and resources on this litigation. Were the Court to now vacate and remand as requested by the Board, it would place the six-year-old controversy back into a state of limbo, leaving the Board with the ability to linger without disposition for as long as it may see fit. The Board's eventual ratification of the order under review—which is plainly the most likely outcome, *cf. Galicks, Inc.*, 355 NLRB 366 (2010) (Board adopting prior decision after remand in light of *New Process Steel L.P. v. NLRB*, 560 U.S. 674 (2010)); *In Re SPE Util. Contractors*, 355 NLRB 349 (2010) (same)—would lead to a new petition for review in this Court, which would have

to start again from scratch. The parties and the Court would ultimately end up back in the same position that they are in today, only months or years out. *Cf. Galicks, Inc. v. NLRB*, 671 F.3d 602 (6th Cir. 2012) (decision of this Court on second petition for review, two years after remand).

That would be profoundly unfair. The petitioner in this Court is an Indian tribal government that has enacted laws to govern reservation affairs in accordance with Supreme Court authority and longstanding federal policies in support of tribal self-government. *See* Pet. Br. 19-20 and 28-31. The provisions of Article XVI of its FEPC, enacted and implemented to bring order to its affairs, have been under attack by the Board since 2008. The Tribe has persistently sought to obtain resolution of this controversy, and the remedy now sought by the Board would do nothing but perpetuate a cloud of uncertainty over its right to govern. Nothing could be more inconsistent with federal Indian policy promoting the strength and stability of Indian tribal governments.

Nor is there any countervailing equity favoring the Board. Quite the contrary, the NLRB successfully advocated to this Court in *GGNSC* that, if a party fails to raise a challenge to a Board order based upon *Noel Canning*, the issue is waived. Consistent with that position, the NLRB never raised the *Noel Canning* issue in this case. Now, a year later and nine months after the submission of this case to the panel for decision, the Board seeks vacatur and remand in light of *Noel*

Canning despite the Band's waiver, and despite the impossibility of having been surprised by the decision in *Noel Canning*, where the Supreme Court ruled against the NLRB by a vote of 9-0. There are no equities whatsoever to support that outcome.

Nor do the authorities cited by the Board support its position. While it is true that, following the Supreme Court's 2010 decision in *New Process Steel*, this Court remanded two cases, *Galicks, Inc. v. NLRB*, Nos. 09-1972, 09-2141, and *SPE Utility Contractors, LLC v. NLRB*, Nos. 09-1692, 09-1730, the circumstances in both were very different from those here. In *SPE*, the petitioner affirmatively raised the *New Process Steel* issue in this Court, *see SPE*, Nos. 09-1692, 09-1730, ECF 20 at 27-28, and it consented to the Board's motion to remand, *see SPE*, Nos. 09-1692, 09-1730, ECF 46-1 at 4. In *Galicks*, the petitioner took no position on the Board's motion. *See Galicks*, Nos. 09-1972, 09-2141, ECF 56 at 5. And of course, neither case involved a sovereign government confronting an attempt by the Board to strike down its laws. *Nguyen v. United States*, 539 U.S. 69 (2003), which involved an unlawfully constituted Article III court (rather than an Article II agency), and in which the petitioner *requested* that the case be returned to the lower court, is even further afield.

For all of these reasons, the Court's discretion should be exercised *against* further delay, and the Board's motion should be denied. *Cf. Manor West, Inc. v.*

NLRB, 60 F.3d 1195, 1198 (6th Cir. 1995) (denying NLRB's motion to remand to Board for reconsideration in light of intervening Supreme Court decision where remand was "not necessary and would only prolong these proceedings and increase the cost to all parties").

II. IF THE COURT GIVES THE NLRB AN OPPORTUNITY TO FURTHER CONSIDER ITS DECISION, THE COURT SHOULD IMPOSE STRICT CONDITIONS ON THE BOARD'S ACTIONS.

If the Court instead allows the Board to give further consideration to its decision in light of *Noel Canning*, the Band would request that it set strict conditions to protect the Band's justifiable need for expedition as well as the interests of judicial economy. As an initial matter, there is no need for the Court to vacate the NLRB's decision in order for the Board to have the opportunity to give further consideration to its decision. It would be sufficient to stay proceedings in this Court or, at most, to remand the case to the Board. In *Galicks* and *SPE*, the NLRB sought, and this Court ordered, only a remand, not a vacatur and remand. *See Galicks*, Nos. 09-1972, 09-2141, ECF 59-1; *SPE*, Nos. 09-1692, 09-1730, ECF 50-1.

More fundamentally, if the case is stayed and/or remanded (or vacated and remanded), the Band would ask the Court to direct: (1) that, within no more than 45 days of the Court's order, the Board report to the Court that it has decided either (a) to ratify its prior decision or (b) to engage in plenary reconsideration of the

decision; (2) that, upon the issuance of any decision by the Board ratifying its prior decision, the matter will immediately return to the panel for decision without further briefing or argument; and (3) that, if the Board decides to engage in plenary reconsideration of its prior decision, the Court will at that time determine the proper course of future proceedings. In the event that the Court decides to remand the case rather than merely stay it, the Band would ask that the Court expressly order that it is retaining jurisdiction during the pendency of the proceedings on remand. *See, e.g., Aquabrom, Div. of Great Lakes Chem. Corp. v. NLRB*, 746 F.2d 334, 337 (6th Cir. 1984) (remanding to NLRB and retaining jurisdiction); *see also Caterpillar, Inc. v. NLRB*, 138 F.3d 1105 (7th Cir. 1998) (Posner, J., in chambers) (explaining why court of appeals has authority to retain jurisdiction when it remands to NLRB).

The justifications for these conditions are the ones we have already described. This is a six-year-old controversy that has engendered instability to an Indian tribal government that is seeking to bring order to labor relations within its reservation in accordance with its own laws. After unceasing efforts by the Tribe to obtain a timely disposition, the controversy was fully briefed and argued to the panel over nine months ago. The Band knowingly and voluntarily waived any claim under *Noel Canning*, and the NLRB consistently took the position—until now—that such a waiver should be the end of the matter. In these circumstances,

it is only fair and just that, if the Board is given the opportunity to further consider its decision in light of *Noel Canning*, the Court condition the stay or remand along the lines requested by the Tribe to optimize efficient resolution of this case.

CONCLUSION

For all of the above reasons, the Tribe respectfully requests that the Board's motion be denied or, in the alternative, that a stay or remand be conditioned as set forth above.

Respectfully submitted, July 17, 2014

/s/ Kaighn Smith, Jr.

Dan Himmelfarb, Esq.
MAYER BROWN, LLP
1999 K Street, N.W.
Washington, DC 20006-1101
Telephone: (202) 263-3035
Email: dhimmelfarb@mayerbrown.com

Kaighn Smith Jr., Esq.
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, ME 04101-2480
Telephone: (207) 253-0559
Email: ksmith@dwmlaw.com

Kimberly G. McGrath, Esq.
LITTLE RIVER BAND OF
OTTAWA INDIANS
2608 Government Center Drive
Manistee, MI 49660
Telephone: (231) 398-6821
Email: kmcgrath@lrboi.com

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2014, I served the above response with attached Exhibits upon Respondent/Cross-Petitioner National Labor Relations Board, through counsel, who have entered appearances in this matter, by means of the Court's ECF system.

Dated: July 17, 2014

/s/ Kaighn Smith, Jr.

Kaighn Smith, Jr.
Drummond Woodsum
84 Marginal Way, STE 600
Portland, ME 04101-2480
Telephone: (207) 253-0559
E-mail: ksmith@dwmlaw.com

Counsel for Petitioner

EXHIBIT A

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

Date Filed

07-CA-114526

Oct 17, 2013

INSTRUCTIONS:

File an original 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

b. Tel. No.

231-398-3855

c. Cell No.

f. Fax No.

d. Address (Street, city, state, and ZIP code)

e. Employer Representative

2700 Orchard Hwy
Marquette, MI 49660

Lynn Saunders

g. e-Mail

h. Number of workers employed

i. Type of Establishment (factory, mine, wholesaler, etc.)

j. Identify principal product or service

Gambling Casino

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(A)(3) 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)

on Aug 16th 2013 the above name employer threw its officers, agents and representatives unlawfully terminated me in retaliation for my union activities.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Trudy Thomas

4a. Address (Street and number, city, state, and ZIP code)

2086 W 1st First St.
Scottville, MI 49454

4b. Tel. No.

231-757-9469

4c. Cell No.

231-510-5182

4d. Fax No.

4e. e-Mail

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)

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.

Tel. No.

Office, if any, Cell No.

Fax No.

e-Mail

By Trudy Thomas
(signature of representative or person making charge)

(Print/type name and title or office, if any)

Address 2086 W 1st St Scottville, MI 4945410-4-2013
(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 B

CHARGE OF DISCRIMINATION Fair Employment Practices Little River Band of Ottawa Indians			CHARGE NUMBER
NAME (Indicate Mr., Ms., Mrs.) Mrs. Trudy Thomas		HOME TELEPHONE (Include area code) 231-757-9469	
STREET ADDRESS 2086 W 1st St Scottville, MI 49454		CITY, STATE AND ZIP CODE DATE OF BIRTH 11/30/44	
EMPLOYER/LABOR ORGANIZATION SUBJECT OF CHARGE (If more than one list below.)			
NAME Little River Casino	NUMBER OF EMPLOYEES, MEMBERS ?	TELEPHONE (Include Area Code)	
STREET ADDRESS 2700 Orchardway		CITY, STATE AND ZIP CODE Manistee, MI 49660	COUNTY
NAME		TELEPHONE (Include Area Code)	
STREET ADDRESS		CITY, STATE AND ZIP CODE	COUNTY
CAUSE OF DISCRIMINATION BASE ON (Circle appropriate box (es))		DATE DISCRIMINATION TOOK PLACE	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input checked="" type="checkbox"/> SECTION 16.14 RIGHTS <input type="checkbox"/> OTHER (SPECIFY)		Earliest Latest Aug 12-2013 Aug 16, 2013 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (if additional space is needed, attach extra sheet (s)): Every since my activities with the United Steelworkers union I have been discriminated against. 2007 there one hundred of us filed for organizing and I have been over supervised, discriminated against, coerced, and unjustly disciplined and I consider this discrimination. I went home sick, vomiting and dizzy. I went home Aug 12-2013 sick HR called me and said I was terminated I said for going home sick. So HR put me on administrative leave till they investigate. So on Aug 16-2013 HR called and terminated me.			
I declare under penalty of perjury that the foregoing facts (including the facts set forth on the attached additional __ pages) are true and correct.			
Date 12-11-13		Charging Party Signature Trudy Thomas	

* See Attached

INTERNET
FORM NLRB-501
(2-08)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

Date Filed

INSTRUCTIONS:

File an original 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

b. Tel. No.

231-398-3855

c. Cell No.

f. Fax No.

g. e-Mail

h. Number of workers employed

d. Address (Street, city, state, and ZIP code)

e. Employer Representative

2700 Orchard Hwy

Marquette, MI 49801 Lynn Saunders

i. Type of Establishment (factory, mine, wholesaler, etc.)

j. Identify principal product or service

Gambling Casino

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(A)(3) 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)

on Aug 16th 2013 the above name employer threw its officers, agents and representatives unlawfully terminated me in retaliation for my union activities.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

TRUDY THOMAS

4a. Address (Street and number, city, state, and ZIP code)

2086 W 1st FIRST ST.
Scottville, MI 49454

4b. Tel. No.

231-757-9469

4c. Cell No.

231-510-5182

4d. Fax No.

4e. e-Mail

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)

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 Trudy Thomas
(signature of representative or person making charge)

(Print/type name and title or office, if any)

Tel. No.

Office, if any, Cell No.

Fax No.

e-Mail

Address 2086 W 1st ST Scottville, MI 4945410-4-2013
(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

LRCR Grievance Information Form

Request for Board of Review Meeting

Date filed with HR: _____

Section A
Employee InformationEmployee Name: Trudy ThomasDate of hire: 9-3-2003Position: House KeeperDepartment: HotelStatus: ☒ Full time ☐ Part TimeTelephone: 231-757-9469 Alternate #: _____

Best time to call: _____ (circle one) AM PM

Home Address: _____

Section B
Complaint Information

Please describe the policy violation in detail (use additional paper, if necessary):

set was not insubordination or company policy violation I was
and wanted to go home I told Debbie I would return tomorrow
she said okay I have been discriminated against, over supervised, harassed
since my activities with the Steelworkers. Management is aware of such
List witnesses, if any (Required): activities and I consider this unjust discipline.
Board of review one aware of the problems and that I would be
fixed.

Section C**Remedy Request**

3. What do you believe would be a fair remedy? (use additional paper, if necessary):

Reinstate me back in my job and stop the harassment

Employee Signature: _____

Date: _____

Section D
For HR Use only - BoR Qualification

Qualifies?: ☐ Yes ☐ No

If no, please explain: _____

Determined by: ☐ _____ ☐ _____ Date Employee notified: _____

Grievance submitted to: _____

Director

Directly to Board of Review

Date: _____

9-17-2013 Trudy Thomas 362-46-0458

I didn't quit I went home sick. I told the supervisor that I was sick and vomiting and wanted to go home and that I would be back tomorrow and hoped they had some answers for me. Human Resources called me and said I was terminated and I said for going home sick. Human Resources said they would call me back and not to come to work till I heard from them. So on 8-16-2013 Human Resources called and said I was terminated. Every worker in our department can go home if they are sick so why am I being discriminated against. Every since 2007 when I was fired for union activities I have been discriminated against, harassed, over supervised, coerced and discriminated against. I was sick and vomiting why would they make me stay? Why wouldn't I be able to go home? I had a doctor's appointment Aug 8-2013 and had cortisone shots in both shoulders and both hips. I was not feeling good at all.

EXHIBIT C

**SMITH HAUGHEY****RICE & ROEGGE**

ATTORNEYS AT LAW

101 N. Park St., Ste. 100

Traverse City, MI 49684

Phone: 231-929-4878 Fax: 231-929-4182

01-13-14 A07:42 IN

Anders J. Gillis
Direct: 231-486-4507
agillis@shrr.com

January 8, 2014

CERTIFIED MAIL***Confidential***

Lynn Saunders
Director of Human Resources
Little River Casino Resort
PO Box 417
2700 Orchard Highway
Manistee, MI 49660

RE: FEPI Investigation, Trudy Thomas v. Little River Casino Resort

Dear Ms. Saunders:

This letter is to confirm that Janis Adams and I have been appointed as FEPI Investigators by the Tribal Court in the above matter. Enclosed you will find a copy of the Complaint and the Charge of Discrimination. I will be contacting you shortly to arrange for witness interviews. You can reach me at 231-486-4507, or at agillis@shrr.com. In the meantime, please be advised that you must preserve any relevant documents, records, or evidence with regard to the Complainant's allegation.

Best regards,

Anders J. Gillis

AJG:ajg

CHARGE OF DISCRIMINATION Fair Employment Practices Little River Band of Ottawa Indians		CHARGE NUMBER
NAME (Indicate Mr., Ms., Mrs.) Mrs. Trudy Thomas		HOME TELEPHONE (Include area code) 231-757-9469
STREET ADDRESS 2086 W 1st ST Scottville, MI 49454		DATE OF BIRTH 11/30/44
EMPLOYER/LABOR ORGANIZATION SUBJECT OF CHARGE (If more than one list below.)		
NAME Little River Casino	NUMBER OF EMPLOYEES, MEMBERS 2	TELEPHONE (Include Area Code)
STREET ADDRESS 2700 Orchardway		CITY, STATE AND ZIP CODE Manistee, MI 49660
NAME		COUNTY
STREET ADDRESS		CITY, STATE AND ZIP CODE
NAME		TELEPHONE (Include Area Code)
STREET ADDRESS		CITY, STATE AND ZIP CODE
CAUSE OF DISCRIMINATION BASE ON (Circle appropriate box (es))		DATE DISCRIMINATION TOOK PLACE
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input checked="" type="checkbox"/> SECTION 16.14 RIGHTS <input type="checkbox"/> OTHER (SPECIFY)		Earliest Aug 12-2013 Latest Aug 16, 2013
<input type="checkbox"/> CONTINUING ACTION		
THE PARTICULARS ARE (if additional space is needed, attach extra sheet (s)): <p>Every since my activites with the united Sleetworker union I have been discriminated against. 2007 there one hundred of us fired for organizing and I have been over supervised, discriminated against, coerced, and unjustly disciplined and I consider this discrimination. I went home sick, vomiting and dizzy. I went home Aug 12-2013 sick HR called me and said I was terminated I said for going home sick. So HR put me on administrated leave till they investigated. So on Aug 16-2013 HR called and terminated me.</p>		
I declare under penalty of perjury that the foregoing facts (including the facts set forth on the attached additional ___ pages) are true and correct.		
Date 12-11-13		Charging Party Signature Trudy Thomas

* See Attached

INTERNET
FORM NLRB-301
(2-09)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

Date Filed

INSTRUCTIONS:

File an original 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	b. Tel. No.
Little River Casino & Resort	231-398-3855
d. Address (Street, city, state, and ZIP code)	c. Cell No.
2700 Orchard Hwy	
e. Employer Representative	f. Fax No.
Manistee, MI 49660 Lynn Saunders	
l. Type of Establishment (factory, mine, wholesaler, etc.)	g. e-Mail
Gaming Casino	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) 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.	h. Number of workers employed

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

on Aug 16th 2013 the above name employer threw its officers, agents and representatives unlawfully terminated me in retaliation for my union activities.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Trudy Thomas

4a. Address (Street and number, city, state, and ZIP code)

2086 W 1st First St.
Scottville, MI 49454

4b. Tel. No.

231-757-9469

4c. Cell No.

231-510-5182

4d. Fax No.

4e. e-Mail

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)

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 Trudy Thomas
(signature of representative or person making charge)

(Print type name and title or office, if any)

Tel. No.

Office, if any, Cell No.

Fax No.

e-Mail

Address 2086 W 1st St Scottville, MI 49454 10-4-2013
(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 (Mar. 13, 2006). The NLRB will further obtain these uses upon request. Disclosure of this information to the NLRB is

LRCR Grievance Information Form

Request for Board of Review Meeting

Date filed with HR:

Section A
Employee Information

Employee Name: TRUDY Thomas Date of hire: 9-3-2003Position: House Keeper Department: HotelStatus: ☒ Full time ☐ Part Time Telephone: 331-757-9469 Alternate #: _____
Best time to call: _____ (circle one) AM PM

Home Address: _____

Section B
Complaint Information

Please describe the policy violation in detail (use additional paper, if necessary):

set was not insubordination in company policy violation I was fired
and wanted to go home I told them I would return tomorrow
she said okay I have been discriminated against over supervisor harassment
since my activation with the Steelers management is cause of dish
List witnesses, if any (Required): activator and I consider this unjust discipline.
Board of directors are aware of the problems and that I would like
fixed.

Section C
Remedy Request

3. What do you believe would be a fair remedy? (use additional paper, if necessary):

Reinstates me back in my job and stop the harassment

Employee Signature: _____

Date: _____

Date: _____

Section D
For HR Use only - BoR Qualification

Qualifies?: ☐ Yes ☐ No

If no, please explain: _____

Determined by: ☐ _____ ☐ _____ Date Employee notified: _____

Grievance submitted to:

Director

Directly to Board of Review

Date: _____

9-17-2013 Trudy Thomas

I didn't quit I went home sick. I told the supervisor that I was sick and vomiting and wanted to go home and that I would be back tomorrow and hoped they had some answers for me. Human Resources called me and said I was terminated and I said for going home sick. Human Resources said they would call me back and not to come to work till I heard from them. So on 8-16-2013 Human Resources called and said I was terminated. Every washer in our department can go home if they are sick so why am I being discriminated against. Every since 2007 when I was fired for union activities I have been discriminated against, harassed, over supervised, coerced and discriminated against. I was sick and vomiting why would they make me stay? Why wouldn't I be able to go home? I had a doctor's appointment Aug 8-2013 and had cortisone shots in Both shoulders and Both hips. I was not feeling good at all.

EXHIBIT D

Little River Band of Ottawa Indians Tribal Court

3031 Domres Road Manistee, Michigan 49660	SUBPOENA Order to Appear and/or Produce	Case Number: 14001CD
--	---	-----------------------------

Plaintiff(s)/Petitioner(s) <input type="checkbox"/> People of the Little River Band of Ottawa Indians <input checked="" type="checkbox"/> <u>Trudy Thomas</u>	V	Respondent(s) Little River Casino Resort Charge:
--	----------	---

In the matter of: _____

— In the name of the People of the Little River Band of Ottawa Indians —

TO: Little River Casino Resort

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

YOU ARE REQUIRED:

- ☐ 1. To appear personally at the time and at the place stated below. You may be required to appear time to time and day to day until excused.
☒ To produce the requested information by:

Date: **February 4, 2014**

Time: _____

- ☐ 2. Testify at trial/examination/hearing.
☒ 3. Produce/permit copying of: **See Exhibit A attached hereto; and delivered to**
☐ 4. Testify as to your assets, and bring with you items listed in line 3 above. **Anders J. Gillis**
☐ 5. Testify at deposition. **101 N. Park St., Ste. 100**
☐ 6. Prohibition against transferring or disposing of property attached. **Traverse City, MI 49684**
☐ 7. Other: _____

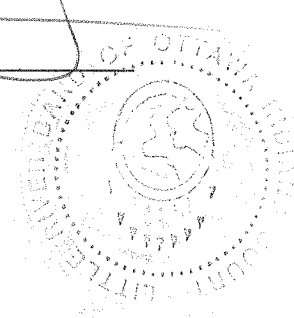
Person Requesting Subpoena Anders J. Gillis, Tribal Court Investigator		Telephone No (231) 929-4878, Ext. 64507	
Address: 101 N. Park St., Ste. 100	City/Town Traverse City	State: MI	Zip Code: 49684

Note: If requesting a debtor's examination or injunction under Item 6, this subpoena must be issued by a judge. Debtor's assets can also be discovered without the need for an affidavit of debtor examination or issuance of this subpoena by a judge.

FAILURE TO OBEY THE COMMANDS OF THIS SUBPOENA OR APPEAR AT THE STATED TIME AND PLACE MAY SUBJECT YOU TO PENALTY FOR CONTEMPT OF COURT.

Date: 1/21/14

Signature: [Signature]
 Signature - Judge Daniel Bailey



**EXHIBIT A
TO SUBPOENA (INVESTIGATIVE)**

Trudy Thomas v Little River Casino Resort

1. Provide a copy of any and all documents, including written and electronic, relating or referring in any way to Trudy Thomas's 2013 termination.
2. Provide a copy of any and all correspondence pertaining to Trudy Thomas's employment and/or termination of employment, including written and electronic documents between Little River Casino Resort ("Resort") and Trudy Thomas.
3. Produce a copy of Trudy Thomas's personnel file.
4. Provide a copy of the Resort's employee handbook/manual in effect during 2013.
5. Produce a copy of Trudy Thomas's grievance file.
6. Produce a copy of any of the Resort's Medical/ Personal Leave policies.
7. Provide a copy of any and all documents, including written and electronic, relating or referring in any way to Trudy Thomas's prior termination and her subsequent reinstatement in or around 2007.
8. Provide a copy of any and all documents relating or referring in any way to the Steelworker's Union ("Union") and the Resort during 2013.

EXHIBIT E



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 7 - Resident Office

Gerald R. Ford Federal Building
 110 Michigan Street, NW Room 299
 Grand Rapids, MI 49503-2363

Telephone (616) 456-2200 Fax (616) 456-2596 Email ethan.ray@nlrb.gov
 Toll-Free Number 1-866-667-NLRB (1-866-667-6572)
 Visit our website – www.nlrb.gov

October 22, 2013

Lynn Saunders, Director of Human Resources
 Little River Casino Resort
 P.O. Box 417
 2700 Orchard Hwy
 Manistee, MI 49660-0417

Re: Little River Casino Resort
 Case: 07-CA-114526

Dear Ms. Saunders:

The above-captioned case has been assigned to me for investigation. In order to fully evaluate the issues raised by this charge please address the following allegations and supply the any documentary evidence to me as soon as possible, but not later than close of business **October 29, 2013**.

The charge alleges that the Little River Casino Resort (Employer), discharged and discriminated against Trudy Thomas. Please provide the Employer's response to following:

1. It is alleged that on about August 12, Thomas spoke with Vicki Glover while working. Thomas explained to Glover that she was sick and had been vomiting and requested to leave work. Glover denied Thomas' request. Please provide the Employer's account of this meeting.
2. It is alleged that on about August 12, you called Thomas at home and initially informed her that she had been discharged for going home without permission. Thomas explained that she had been sick and that she had gone home sick. You later called Thomas to explain that she was placed on administrative leave pending the outcome of an investigation. Please provide the Employer's account of this meeting.
3. It is alleged that on about August 16, the Employer discharged Thomas for insubordination and leaving work without authorization. Please provide the Employer's position.
4. Please provide copies of discipline issued to employees for the past two years for the same or similar misconduct that Thomas was discharged for.
5. Please provide copies of any documents, records, emails or phone notes utilized by the Employer during its investigation of Thomas' misconduct and the determination to discharge her.
6. Please provide a copy of Thomas' personnel files.
7. If the Employer maintains a progressive disciplinary system, please indicate how the decision to discharge Thomas was in accordance with the Employer's system.
8. It is alleged that in about June, an employee told Karl Stone that they were not going to go back and clean rooms that were already done and that they were going home and that Karl should have fun

tearing the rooms apart. The employee was not disciplined or discharged. Please provide the Employer's position.

9. It is alleged that in about July, another housekeeper quit by walking off the job. Charmine Stone called the employee and urged her not to quit and to return to work. The employee returned to work. Please provide the Employer's position.
10. It is alleged that in about July another employee engaged in a heated discussion with Karl Stone and Jake Kequam. The employee announced that they were quitting and turned in their badge. Karl Stone then meet privately with the employee and called Charmine Stone where Charmine Stone asked the employee not to quit. The employee was only off work for one day. Please provide the Employer's position.
11. It is alleged that it is not uncommon for the Employer to grant employee requests to leave work early due to a personal matter or due to illness and that the Employer maintains a point system for attendance. Please provide the Employer's position.
12. Please provide copies of documents showing the attendance points for all housekeepers for the past year.
13. Please provide copies of any work rules, handbook or other documents showing the terms and conditions of employment for bargaining unit employees as of August 12, 2013.

I require the Employer's response to the issues raised by this charge as soon as possible, but not later than close of business **October 29, 2013**. If you wish to respond to this charge by making witnesses available for the provision of sworn affidavits to Board agents, please contact me as soon as possible so that arrangements can be made. Please be cautioned, however, that submission of a position statement alone does not constitute full and complete cooperation in the investigation.

If you wish to provide a position statement, in lieu of affidavits, or other documentary evidence in response to these charges, I encourage you to utilize our electronic filing system at mynlrb.nlr.gov and click on the E-File tab.

Feel free to contact me if I can be of any assistance.

Regards,

Ethan N. Ray
Field Examiner

EXHIBIT F

***Gaa Ching Ziibi Daawaa Anishinaabek*****Little River Band of Ottawa Indians**

2608 Government Center Drive

Manistee, MI 49660

(231) 398-6845

Tribal Council

November 8, 2013

Richard F. Griffin, Jr., Esq.
General Counsel
National Labor Relations Board
1099 14th St., N.W.
Washington, D.C. 20570-0001

Terry A. Morgan
Regional Director
National Labor Relations Board
110 Michigan St., N.W., Room 229
Grand Rapids, MI. 49503-2363

Re: Request for Consultation and Case No. 07-CA-114526 (Trudy Thomas/Little River Casino Resort)

Dear Mr. Griffin and Ms. Morgan:

We write on behalf of *Gaá Čhíng Ziibi Daáwaa Aníshinaábek*, the Little River Band of Ottawa Indians (the "Band") to request consultation pursuant to the President's Memorandum on Tribal Consultation, 74 Fed. Reg. 57881 (Nov. 5, 2009) (the "President's Memorandum") with regard to the controversy that is the subject of the above-referenced Charge.

Reconfirming Executive Order 13175, the President directs federal agencies to consult with tribal officials concerning "actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." See President's Memorandum (incorporating definition of Executive Order 13175, 65 Fed. Reg. 67249 (Nov. 6, 2000), of "policies that have tribal implications").

The above-referenced Charge has substantial direct effects upon the Band, its relationship with the Federal Government, and the distribution of power and responsibilities between the Federal Government and the Band because it directly implicates the Band's self-governing authority over labor relations within its jurisdiction. Specifically, by proceeding with this Charge before the claimant has exhausted her remedies under the Band's law, the NLRB will impinge upon the authority of the Band and its Tribal Court to adjust rights and remedies associated with labor controversies within its reservation in accordance with its own laws.

We ask for consultation to address (a) why, under the circumstances presented, proceedings related to this Charge should not be stayed to allow for the exhaustion of tribal remedies and (b) if the Band and the NLRB have a dispute about the application of the tribal exhaustion doctrine to this case, how we may most effectively resolve that dispute and avoid adversarial tensions to the detriment of our government-to-government relationship.

Background

The Band comprehensively governs labor relations within its agencies, commissions, and subordinate organizations pursuant to its Fair Employment Practices Code (“FEPC”). In the Charge at issue, a former employee of the Little River Casino Resort (“LRCR”), Trudy Thomas, asserts that she was wrongfully terminated in retaliation for her union affiliation. A copy of the Charge is attached as Tab 1. As explained in more detail below, the Band’s FEPC addresses this controversy by establishing rights and remedies for employees within the Band’s public sector employers who claim that they have suffered employment discrimination due to union affiliation or support.¹

LRCR is a wholly-owned instrumentality and subordinate organization of the Band, operating the Band’s gaming under the Indian Gaming Regulatory Act (“IGRA”) on lands held by the United States in trust for the Band. IGRA codified the Supreme Court’s decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), which held that Indian tribes have inherent authority to engage in, and regulate, gaming activity within their reservations for the purpose of raising government revenues. The Band’s IGRA gaming operations at LRCR are not unlike state-owned horse-racing facilities or lotteries, the purpose of which is to raise revenues to support governments.

Indeed, the very purpose of IGRA is to allow tribes to generate governmental revenues through gaming in order to “promot[e] tribal economic development, self-sufficiency, and strong tribal governments,” 25 U.S.C. § 2702(1). And pursuant to IGRA and the Band’s law, the net revenues from the Band’s gaming at LRCR must be used to support tribal government. *Id.* § 2710(b)(2)(B).

Upon enacting IGRA, Congress announced, consistent with *Cabazon*, that “Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.” 25 U.S.C. § 2701(5). The application of the Band’s FEPC to LRCR falls within this confirmed regulatory authority and is an exemplary exercise of tribal governmental authority under established principles of federal Indian law.

The Band’s labor relations law, set forth in Article XVI of its FEPC is similar, in many respects, to the public sector labor laws of states. In addition to providing for union election procedures, the law includes licensing provisions for unions doing business within the reservation. It prohibits strikes and lock-outs and establishes bargaining impasse resolution procedures. It also defines the duties of employers and unions, and establishes remedies for unfair labor practices.

Of most significance to this consultation request, the Band’s law prohibits discrimination against employees for supporting unions, the basis of the Charge at issue. Under the Band’s law, it is an

¹ The Band’s FEPC is accessible at <https://www.lrboi-nsn.gov/images/docs/council/docs/ordinances/Title%20600-03.pdf>.

unfair labor practice for any public employer to take adverse employment action against an employee because the employee supports a union. Remedies, including injunctive relief, reinstatement, back pay, and attorney fees, can be awarded by the Little River Band of Ottawa Indians Tribal Court to prevailing employees. *See* FEPC §§ 6.02, 16.16(a)(4), and 16.16(b), highlighted in Tab 2.

Employees commence such actions by filing a Charge of Discrimination with the Tribal Court. The Tribal Court, in turn, assigns the Charge to a neutral Fair Employment Practices Investigator, drawn from a small pool of local lawyers, who must have experience in the field of labor and employment law. The assigned Investigator has subpoena power to fully investigate the Charge. Upon completing the investigation, the Investigator issues a report setting forth the substance of the complaint, persons interviewed, and “a determination of whether there is reasonable cause to believe that a violation” of the Band’s law has occurred. Mandatory mediation follows if the Investigator finds such reasonable cause. Regardless of the findings of the Investigator, employees may commence actions in the Tribal Court for the remedies established in the law. *See* FEPC provisions, Tab 2 (highlighted sections).

Trudy Thomas, the complaining party in Case No. 07-CA-114526 has not proceeded with her available remedies under the Band’s law. By letter dated November 7, 2013, Kimberly McGrath, the Chief Legislative Counsel for the Band, informed Ms. McGuire of her available tribal law remedies for the occurrences alleged in the Charge. A copy of that letter is provided under Tab 3.

The Tribal Exhaustion Doctrine

The doctrine of tribal exhaustion, established by the Supreme Court and applied by innumerable federal courts, requires federal tribunals to refrain from reaching the merits of a controversy when there is a colorable basis for tribal jurisdiction over the matter and tribal remedies have not been exhausted. The doctrine applies whether there is a pending tribal proceeding or not.

The Supreme Court has said that placing tribal and federal forums in direct competition with each other undermines tribal self-government. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987). *See Ninigret Development Corp. v. Narragansett Indian Wetuomuck Hous. Authority*, 207 F.3d 21, 33 (1st Cir. 2000) (describing this concern as the “epicenter of the tribal exhaustion doctrine”). The doctrine therefore operates as a matter of comity to favor tribal adjudications, including those concerning jurisdiction.

Federal adjudications of reservation controversies must be dismissed without prejudice or stayed to allow tribal proceedings governing the same controversy to run their course. The Supreme Court has said that application of the exhaustion doctrine is necessary to further the well-established federal goal of promoting tribal self-government. *Iowa Mutual*, 480 U.S. at 14-15. Complete exhaustion of all tribal remedies is required, including all available appeals. *Id.* at 15. Although the doctrine is not jurisdictional, federal courts hold that if a transaction or occurrence arises within an Indian reservation or trust lands and involves rights and remedies affecting tribal entities or members, courts have no discretion not to apply the doctrine. *E.g., Hartman v. Kickapoo Tribe Gaming Commission*, 319 F.3d 1230, 1233 (10th Cir. 2003); *Bank One, N.A. v.*

Shumake, 281 F.3d 507, 514-515 (5th Cir. 2002); *Duncan Energy Co. v. Three Affiliated Tribes*, 27 F.3d 1294, 1300 (8th Cir. 1994). See also *Ninigret Development Corp.*, 207 F.3d at 32 (jurisdiction “presumptively lies in the tribal courts” quoting *Iowa Mut.*, 480 U.S. at 18). So important is the doctrine that it will be raised and addressed by a federal court on its own, even if not raised by any of the parties. *Id.* at 31-32.

The doctrine applies to any reservation-based controversy where there is colorable jurisdiction unless (a) the assertion of jurisdiction by a tribal forum involves harassment or bad faith, (b) exhaustion of tribal remedies would be futile because of a lack of a tribal forum, (c) tribal jurisdiction is plainly lacking over a non-member of a tribe under principles of federal Indian common law, or (d) asserted tribal jurisdiction would violate express jurisdictional prohibitions. See *Ninigret Development Corp.*, 207 F.3d at 33-34. See also *Nevada v. Hicks*, 533 U.S. 353, 369 (2001) (delineating exceptions).

None of these exceptions apply in the instant case. The first two are easily set aside because tribal law remedies are fully available to Ms. Thomas without harassment or bad faith. The third exception is inapplicable because it is firmly established that the Band has regulatory and adjudicatory authority over consensual relations between non-members and the Band or its subordinate organizations within its reservation or trust lands. Employment between non-members and tribes or tribal entities within trust or reservation lands is a consensual relationship falling within this jurisdiction. See, e.g., *MacArthur v. San Juan County*, 497 F.3d 1057, 1072-73 (10th Cir. 2007); *Paddy v. Mulkey*, 656 F. Supp. 2d 1241, 1244-48 (D. Nev. 2009); *Graham v. Applied Geo Technologies, Inc.*, 593 F. Supp. 2d 915, 919 (S.D. Miss. 2008). Finally, there is no express jurisdictional prohibition against the application of the Band’s laws to resolve the controversies at issue.

It is not surprising, therefore, that the federal courts routinely hold that the tribal exhaustion doctrine applies to labor and employment controversies arising within tribes’ reservations or trust lands and involving employees of tribes or tribal organizations. E.g., *Graham*, 593 F. Supp.2d at 922; *Hartman v. Kickapoo Tribe Gaming Commission*, 176 F.Supp.2d 1168, 1181 (D.Kan. 2001), *aff’d* 319 F.3d 1230 (10th Cir. 2003); *Abdo v. Fort Randall Casino*, 957 F. Supp. 1111, 1114 (D.S.D. 1997); *Davis v. Mille Lacs Band of Chippewa Indians*, 26 F.Supp.2d 1175, 1179 (D. Minn. 1998), *aff’d*, 193 F.3d 990 (8th Cir. 1999).

Requested Consultation

We request consultation with the appropriate decision-makers at the NLRB to discuss our respective views about why, under the circumstances presented, the pending Charge should not be stayed under the exhaustion doctrine. Further, if we cannot come to agreement on such a stay, we would like to discuss how we may most effectively resolve a dispute about the application of the tribal exhaustion doctrine in a manner that is respectful to our differences.

On the latter subject, we recognize that, in the ordinary case, NLRB regional offices process unfair labor practice charges with initial investigations to assess the merits, and that they possess subpoena authority for that purpose. If the LRCR is forced to respond to the merits of the present charges, however, core values of the tribal exhaustion doctrine will be undermined. The

purpose of the doctrine is to allow reservation-based controversies (including questions of tribal jurisdiction) to be resolved in accordance with tribal law processes. Again, those processes reflect public policy assessments unique to the Band, including careful consideration of the time, costs, and inconvenience of the parties, and the appropriate delineation of rights, remedies, and processes to resolve disputes. Indeed, the Band has built, and funds, a comprehensive infrastructure to ensure that its policy goals are met. As just one example, the Band expends governmental revenues to compensate Fair Employment Practice Investigators assigned to investigate Charges of Discrimination and issue their reports; these investigations proceed at no cost to employees. *See* FEPC § 6.01

Forcing the LRRC to respond to the merits of the NLRB Charge places the NLRB in direct conflict with the Band. For it would launch a process that is outside the design of the Band's law, which reflects policy values and judgments unique to this Indian tribe.

In this context, we ask that you consult with us so we can explore ways to avoid this friction. Should our views differ about the application of the exhaustion doctrine to the current controversy, we would like to find a way to attain a binding ruling on the issue without the NLRB seeking to force a response to the merits Case No. 07-CA-114526. Any attempt by the NLRB to force such responses would do significant harm to the spirit of the exhaustion doctrine and, therefore, tribal self-government, which is the overarching goal of federal Indian policy.

* * *

We believe the problems we have identified above fall squarely within the concerns of the President's directive, calling for consultation before action, and we appreciate your careful consideration of our request. We propose meeting at your convenience either at our Tribal Government Offices in Manistee, Michigan or at the NLRB's Regional Office in Grand Rapids, Michigan.

Sincerely,



Sandy Mezeske
Acting Tribal Council Speaker
Little River Band of Ottawa Indians

cc: Tribal Council, Little River Band of Ottawa Indians
Jodi Gillette, Senior Policy Advisor for Native American Affairs, White House Domestic Policy Council
Hillary Tompkins, Solicitor, U.S. Department of Interior
Tracy Toulou, Director, Office of Tribal Justice, U.S. Department of Justice
Ethan N. Ray, Field Examiner, NLRB
Kaighn Smith Jr., Special Counsel, Little River Band of Ottawa Indians

EXHIBIT G

**SMITH HAUGHEY****RICE & ROEGGE**

ATTORNEYS AT LAW

101 N. Park St., Ste. 100
Traverse City, MI 49684
Phone: 231-929-4878 Fax: 231-929-4182

Janis L. Adams
Direct: 231-486-4539
jadams@shrr.com

**THE LITTLE RIVER BAND OF
OTTAWA INDIANS TRIBAL COURT**

TRUDY THOMAS,

Charge No. 14001CD

Claimant,

VS

LITTLE RIVER CASINO RESORT,

Respondent.

**FAIR EMPLOYMENT PRACTICES
INVESTIGATOR'S REPORT**

This report is prepared pursuant to the Little River Band of Ottawa Indians Fair Employment Practices Code, Ordinance No. 05-600-03 ("FEPC" or "Code"). Under the FEPC, employees are protected from unlawful employment discrimination as described in the Code. Employees who believe their rights have been violated can file a Charge of Discrimination ("Charge") with the Tribal Court, which is then assigned to a Fair Employment Practices Investigator ("FEPI"). The undersigned have been assigned as the FEPI investigators to investigate the Charge filed by Trudy Thomas ("Charging Party" or "Thomas") on December 11, 2013 against the Little River Casino Resort (the "Resort"). This report is based upon consideration of the following: (1) the investigative interview of the Charging Party, (2) investigative interviews with

(3) a review of relevant documents produced by the Resort pursuant to an Investigative Subpoena, and (4) relevant documents produced by Thomas.

I. EXECUTIVE SUMMARY OF CLAIMS

Thomas alleges that she was subjected to discrimination, coercion, highly scrutinized supervision, and wrongful discipline on the basis of her union activities. Pursuant to Article XVI, Section 14 of the FEPC, union activities are protected. Thomas claims that her employer, the Resort, interfered with these protected rights, and that she was wrongfully terminated because of her union activities.

March 31, 2014
Page 2

II. PROCEDURAL STATUS OF CLAIM

Pursuant to the FEPC, Section 6.02, any person who believes that he or she has been subjected to unlawful employment discrimination may file a Charge of Discrimination under oath with the Tribal Court Clerk on the "Charge of Discrimination" form available from the Tribal Court Clerk, setting forth the facts of alleged discrimination, provided that such Charge is filed with the Clerk not more than 180 days after the alleged act of unlawful discrimination.

Thomas was terminated from her employment with the Resort on August 16, 2013. She filed her Charge of Discrimination with the Tribal Court on December 11, 2013. **See Exhibit A.** In her Charge of Discrimination, Thomas alleged discriminatory acts going back until at least 2007. *Id.* Though her Charge of Discrimination was timely filed, most of this time frame is relevant only for the purposes of background information. Since a Charge of Discrimination can only be filed "not more than 180 days after the alleged act of unlawful employment discrimination," this Report focuses on the time frame from June 13, 2013 – 180 days prior to the date the Charge of Discrimination was filed – until Thomas's termination on August 16, 2013. **See FEPC 6.02.**

III. DOCUMENTS/WITNESSES

During the course of the investigation, the following documents were reviewed:

1. Fair Employment Practices Code, Ordinance #05-600-03, approved July 28, 2010
2. Charge of Discrimination by Thomas
3. Termination Letter
4. Thomas's Request for Board Review
5. Performance Improvement Plans for Thomas
6. Annual Performance Reviews for Thomas
7. Records Relevant to Thomas's Loss of Employment in 2008
8. Video Recording of Thomas on August 12, 2008 (the day of her termination)
9. Resort Employee Emails with Regard to Thomas's Termination
10. Employee Handbook
11. Management Guidelines for Attendance and Punctuality
12. Email from Thomas to Saunders on August 12, 2013
13. Redacted Termination Letters to Other Employees who Abandoned Jobs

March 31, 2014
Page 3

14. Union Placards
15. Thomas's Medical Records from August 8, 2013
16. All other Material/Exhibits Produced by the Resort Pursuant to its Position Statement
17. All other Subpoenaed Materials

During the course of the investigation, the following individuals were interviewed:

1. Trudy Thomas
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

IV. FINDINGS OF FACT

Based upon the above interviews and review of records, I make the following findings of fact:

Background of Employment

A. Time Period of 2003-2008

Trudy Thomas is sixty-nine year old woman with a high school education. She started working at the Resort on September 3, 2003, and from her date of hire, until her termination, she worked primarily in laundry and housekeeping. **See Exhibit A.** As a part of her job, Thomas was often expected to clean an allotted amount of rooms in what she felt was a short period of time. Physically, the job could exhaust her.

According to Thomas, around 2006, after the Resort changed certain employment practices and policies, some Resort employees became increasingly involved in union activities. Thomas was among them. As a result, when she was laid off from her job on November 23, 2008, she filed a grievance on January 5, 2009, alleging that she was discriminated against because of her union activities. **See Exhibit B.** The Resort, however, viewed the layoff as an economic decision. **See Exhibit C.** Thomas was eventually reinstated with back pay. *Id.* Thomas felt that the fact that she was reinstated was an admission of guilt on behalf of the Resort.

March 31, 2014

Page 4

Thereafter, Thomas became even more involved in union activities. She stated that as a result of those activities, she was consistently subject to a higher level of supervision than other employees. In support of her allegation, Ms. Thomas provided, for my review, a notebook where she kept contemporaneous notes as to her work activities. She claimed that the notebook evidenced the fact that she had been over supervised. The record does reflect that after her increased involvement in union activities, and after her recall from the layoff, her performance review scores diminished. However, the relevance of the allegations made with regard to years 2003-2008 is of minimal consequence with regard to this Charge of Discrimination as Resort management, supervision, and policies changed. Moreover, under FEPC 6.02, a "Charge of Discrimination must be filed with the Clerk not more than 180 days after the alleged act of unlawful employment discrimination." Therefore, I make no findings of fact, or conclusions of law, with regard to this time period.

B. Time Period of 2008-2012

According to [redacted], a United Steelworkers Representative, Thomas became increasingly involved with union activities during this time. As stated by [redacted], Thomas's leadership, and her opinions, quickly earned her the trust and respect of others involved in union activities. Within union circles, she was purportedly referred to as "Mother Theresa." During this time period, the Resort's records evidence that Thomas exhibited flashes of insubordination and at times argued with supervisors.

C. Time Period of 2013

According to [redacted], by the summer of 2013, Thomas was the "runner" for the entire Resort, meaning that she coordinated, led, and recruited for union activities. During the summer of 2013, she actively recruited on behalf of the United Steelworkers Union and provided employees with union placards. Thomas also provided Union brochures for the employee dining room. During August 2013, the month of Thomas's termination, she was actively recruiting other employees to unionize.

Throughout this time, Thomas claims she was continually over supervised, harassed, coerced and discriminated against for her union activities. She even claims to have been regularly sabotaged by those who did not support the United Steelworkers Union. According to Thomas, others would place coins on the floor of the rooms after she cleaned them so that the rooms would not fully pass inspection and she would receive unfavorable reviews. When pressed for specifics as to who sabotaged her, Thomas could only speculate. In her interview, she predicted that video evidence would show that she had in fact been sabotaged.

On August 12, 2013, at 10:44 am, Thomas was cleaning Room 102 at the Resort. She was scheduled to complete the cleaning of eleven other rooms after finishing Room 102. At 11:39 am, [redacted], Thomas's immediate supervisor, following required protocol, inspected Thomas's clipboard, which tracked her progress.

At 11:59 am, Thomas talked to [redacted], a Resort houseman in charge of maintenance. According to [redacted], Thomas claimed that she was being sabotaged, and that someone had

March 31, 2014

Page 5

placed coins in her room and spilled coffee on her sheets. [redacted] states that Thomas never advised that she was sick.

The video record reflects that Thomas was not sabotaged. Nobody went into the rooms she was cleaning, no guest or employee spilled coffee on the bed sheets on her cart, and no one threw coins into the rooms while passing by. In short, though Thomas may have earnestly believed that she was being "sabotaged," the record reveals that there is no such evidence.

After making her claim of sabotage to [redacted], Thomas made a phone call to [redacted] met Thomas in the hallway. According to [redacted], Thomas made the same allegations about sabotage, pulled out her notebook, and mentioned that she had documented her discrimination. Like [redacted] maintained that Thomas did not mention that she was sick, or that she had thrown up, but merely demanded "answers."

Thomas admits that she made accusations of sabotage and that she hoped to return the very next day to get her "answers." But unlike [redacted] and [redacted], she maintains that she plainly stated that she "didn't feel well," and that she was vomiting and dizzy when she went home. After speaking with [redacted] Thomas – almost routinely – collected her personal items and left down the hallway without incident.

Subsequently, [redacted] reported the incident to [redacted], Human Resources Generalist, claiming that Thomas walked off the job without permission. Thomas was thereafter terminated for insubordination and leaving work without authorization. When informed of her termination, Thomas responded with communication indicating that she was sick and that she had informed [redacted] that she was sick. [redacted] stated that Thomas's claims of sabotage, and sickness, concerned her. As a result she initiated an investigation to determine what actually occurred.

As a part of the investigation, [redacted] watched a video of the incident outside Room 102 (as described above). See **Exhibit G**. Unfortunately, the video lacks audio. After watching the video and noticing that Thomas showed no appearance of fatigue, sickness, vomiting, or dizziness, and after interviewing [redacted] and [redacted], both of who stated that Thomas never claimed she was sick or showed any signs of illness, Saunders concluded that Thomas was in fact lying, and that she never stated she was sick before leaving the Resort.

On August 16, 2013, after consulting with those in upper management, including [redacted], [redacted] confirmed with Thomas that her employment was terminated. See **Exhibit I**. At the time of her termination, Thomas had been employed by the Resort for approximately ten years. See **Exhibit A**.

According to [redacted], after Thomas's termination, union activities at the Resort effectively ceased.

March 31, 2014
Page 6

V. STANDARD OF REVIEW

Under FEPC 6.03, a FEPI must make a determination of whether there is “reasonable cause to believe that a violation of this Code has occurred, including findings of fact and conclusions of law.”

VI. FAIR EMPLOYMENT PRACTICES CODE

A. Rights of Public Employees

The relevant portions of the FEPC, state as follows:

16.14. *Rights of Public Employees.*

It shall be lawful for public employees to organize together or to form, join, or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of the own free choice:

Public employees also have the right to refuse to join or participate in activities of labor organizations and to represent themselves individually in their employment relations with public employers.

16.15 *Unfair Labor Practices*

a. A public employer is prohibited from:

1) Interfering with, restraining, or coercing public employees in the exercise of their rights guaranteed under section 16.14

* * *

4) Discharging or discriminating against a public employee because he or she has exercised rights guaranteed under section 16.14...

* * *

March 31, 2014

Page 7

VI. ANALYSIS

A. Claim of Highly Scrutinized Supervision

According to Thomas, after being laid off in 2008, and subsequently recalled, she was over supervised as a result of her outspoken union activities. In support of this allegation, Thomas produced a notebook which documented her activities at work. On August 12, 2013, the day she was first informed of her termination, Thomas pointed to her notebook's documentation as proof that she was being sabotaged, over supervised, coerced, and discriminated against.

I found the notebook unpersuasive. My finding is based on the fact that Thomas also strongly believed she was being sabotaged when the video evidence plainly revealed that there was no sabotage. Thomas may have felt targeted, but it is just as likely that her beliefs were misperceptions.

Thomas's other piece of evidence to support her allegation that she was over supervised because of her union activities was her claim that supervisors began following her in order to prevent union organization activities.

The evidence does reflect that on at least one occasion, in 2008, a supervisor stood in her presence as she worked, ostensibly to give Thomas an assignment, and that Thomas angrily confronted him and refused to listen to his directions. **See Exhibit E.** However, at the end of the day, this is only one piece of evidence to support Thomas's allegation. Furthermore, the evidence is long past the 180 day period during which Thomas could have filed a Charge of Discrimination. Moreover, Thomas could point to no specific incident within the 180 day period. One incident in the span of ten years of employment is hardly enough.

Finally, the video record reflects that on the day of her termination, [redacted] walked by Thomas's cart, checked her clipboard to investigate her progress, and then, promptly left. **See Exhibit G.** There was no video evidence of Thomas's claim of over supervision. As a result, there is no reasonable basis to believe that Ms. Thomas was over supervised.

B. Discrimination

Thomas also alleges that she was discriminated against because of her union activities. When pressed on how she was treated disparately, however, Thomas was indefinite and vague. She alleged that her rooms were monitored with greater frequency. This evidence was rebutted by [redacted] and [redacted], both supervisors of the cleaning staff. The most specific incident Thomas could point to was her termination, which she claims would have not occurred for an employee who was not supportive of union activities. The wrongful termination claim is addressed below.

C. Coercement

Thomas also alleges that she was coerced to not join the Union. I could find no specific indication that she was personally coerced by the Resort to not join the Union within the relevant time period.

March 31, 2014
Page 8

All of the specific alleged acts of coercion that Thomas pointed to, including repeated Resort employee meetings supposedly meant to delegitimize the Union, related to actions prior to June 2013. Those acts are outside the scope of this investigation. **See FEPC 6.02.** As a result, there is no reasonable cause to believe that Thomas was coerced.

D. Unjust Discipline/Wrongful Termination

Thomas claims that she was wrongly terminated because of her union activities. In support of her claim, Thomas produced union placards which evidence that she was becoming increasingly involved in union activities during the summer prior to her termination. **See Exhibit F.** The placards signed before Thomas's termination were witnessed and collected by Thomas. *Id.* Furthermore, the placards were signed between July 6, 2013, and August 1, 2013. The placards stated:

YES! I WANT UNITED STEELWORKERS UNION REPRESENTATION!

During the summer of 2013, a United Steelworkers Representative, [REDACTED], provided Thomas with United Steelworkers' brochures and encouraged Thomas to speak openly about her union involvement. [REDACTED] claimed that in the two years prior, Thomas joined him during union negotiations with the Resort, and that Union supervisors were fully aware of the extent of her involvement. Thomas confirmed that she was open about her union involvement, claiming that it was conspicuous because she spoke openly about union activities in the Employee Dining Room, recruited others to join union activities, provided brochures on union activities, and openly spoke in favor of the Union at public meetings with supervisors and employees.

In interviewing Resort supervisors, however, all of them claimed that they knew Thomas was involved in the Union, but denied that they were aware of the full extent and nature of her leadership activities, or the fact that she had become particularly active in the weeks and days just before her termination.

While it cannot be conclusively presumed that Resort supervisors knew the full extent of her union activities, there is a reasonable basis to conclude that Resort supervisors knew that Thomas was an important Union leader. I base this finding on: (1) the close proximity in time between when some of the Union placards were signed, on August 1, 2013, and when Ms. Thomas was initially terminated, on August 12, 2013; (2) Laney's testimony that Thomas was providing United Steelworker Union brochures for the Employee Dining Room during the Summer of 2013; (3) the fact that Thomas had openly, in the past, spoke in support of the Union; and (4) the fact that, according to Laney, she was the "main runner" for the Resort's union organization activities.

The Resort maintains that it performed an unbiased investigation to determine whether or not Thomas stated she was sick, or whether she simply left her job. [REDACTED], and [REDACTED] all seemed to indicate that Thomas is generally honest. Nevertheless, the decision was still made to terminate her based on a finding by the Resort that she lied about stating she was sick. **See Exhibit I.**

March 31, 2014

Page 9

According to the Resort's Employee Handbook, Section 7(D), insubordination includes a "refusal to respond to a request or order from a supervisor." Thomas was also terminated under Section 7(O), which requires employees to not leave work without following absence reporting procedures.

Under Section 3.2 of the Employee Handbook, in order to follow the proper reporting procedure for leaving work, an employee "must personally contact his/her supervisor." While generally an employee is to provide two hours of notice, there are exceptions under 3.2 for "rare circumstances when an employee is unable to provide the expected notice." According to the Resort's Employee Handbook, Section 7, insubordination, and failure to properly report, are both offenses which may result in termination. The subpoenaed evidence reveals that employees have consistently been terminated on such bases. **See Exhibit J.** However, the subpoenaed evidence also appears to reveal that none of the employees terminated on such bases also claimed that they were sick, and most of the employees had worked at the Resort for short periods of time. *Id.*

It is not in dispute that Thomas did personally contact her supervisor, [REDACTED]. It is not in dispute that Thomas wrongly accused the Resort of sabotage. It is not in dispute that [REDACTED] did not give Thomas permission to leave. What is in dispute is whether Thomas also informed [REDACTED] that she was sick, which could have constituted a "rare circumstance" legitimizing Thomas's short notice prior to leaving work. See Employee Handbook, Section 3.2.

When interviewing [REDACTED] as to whether Thomas stated that she was sick, I noticed that he fidgeted, had trouble making eye-contact, and periodically glanced at the Resort's attorney, as if searching for approval. In speaking with [REDACTED] she seemed to indicate that she was not particularly fond of Thomas. Both indicated that they did not support union activities.

Thomas, conversely, without hesitation or time to think of an answer, laughed when confronted with [REDACTED] statement that Thomas never mentioned being sick. Thomas is adamant that she informed [REDACTED] and [REDACTED] that she was "not feeling good." Furthermore, it is reasonable to conclude that Thomas was too paranoid about being unjustly terminated – as evidenced by her thorough documentation of materials – and too savvy to leave her work without advising that she was sick.

Thomas was a nearly ten year employee with a general reputation for honesty. Nevertheless, she was not given the benefit of the doubt, even though she had been to the doctor's office in days prior. Though Thomas failed to mention her doctor's appointment in her Charge of Discrimination, she did specifically claim that she was sick, vomiting, and dizzy. **See Exhibit A.** The video evidence can neither conclusively deny, nor affirm, what Thomas was feeling. Furthermore, she did make the Resort aware of her doctor's appointment months before she filed her Charge of Discrimination and has provided documentary evidence to substantiate her claim. **See Exhibit A and Exhibit K.**

Thomas's allegation that she was being sabotaged was either false or a misperception. However, her claim of sabotage was not so novel that it would have necessarily required termination. According to [REDACTED], Thomas had made such allegations at least four times in the past, all without being terminated.

March 31, 2014
Page 10

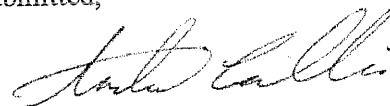
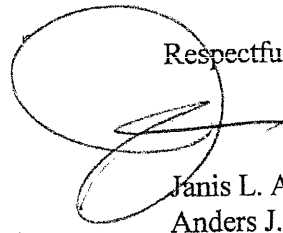
In short, the decision to terminate Thomas for abandonment and insubordination was based on a review of a video with no audio, and a credibility determination that found [redacted] and [redacted] more credible than Thomas. Despite her general reputation for honesty, the Resort was willing to terminate a ten year employee for what amounted to an inconclusive "he said/she said" investigation. More compelling, however, is the fact that the Resort made this decision to terminate just eleven days after Thomas was recruiting union pledge placards. The contemporaneous nature of that event to the termination, combined with the weak evidence supporting policy violations, leads me to find that the policy violations were mere pretext and there is reasonable cause to believe that Thomas was wrongly terminated.

VII. CONCLUSION

- The Investigators do not find reasonable cause to believe that the Resort over supervised Ms. Thomas.
- The Investigators do not find reasonable cause to believe that the Resort discriminated against Ms. Thomas prior to August 12, 2013.
- The Investigators do not find reasonable cause to believe that the Resort coerced Ms. Thomas to not participate in union activities.
- The Investigators do find reasonable cause to believe that Thomas was unjustly terminated for her union activities.

If you have any questions, please do not hesitate to contact us.

Respectfully submitted,



Janis L. Adams
Anders J. Gillis