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

September 15, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA,
AND SCHIFFER

On March 18, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB No. 84. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Sixth Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order, and remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the stipulated record and the parties' briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein. Accordingly, to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB No. 84, which is incorporated herein by reference, we assert jurisdiction over the Respondent and find that the Respondent violated the National Labor Relations 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 Fair Employment Practices Code and related regulations that are expressly applicable to the Resort, 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 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 Fair Employment Practices Code and regulations to the Little River Casino 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 Fair Employment Practices 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 Fair Employment Practices 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."¹ 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

¹ 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. September 15, 2014

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Nancy Schiffer, 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 repre-

sent 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

The Board's decision can be found at www.nlr.gov/case/07-CA-051156 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

