



TRIBAL GOVERNMENT

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**TESTIMONY OF ROBERT J. WELCH, JR.
CHAIRMAN, VIEJAS BAND OF KUMEYAAY INDIANS**

BEFORE THE
U.S. SENATE COMMITTEE ON INDIAN AFFAIRS

HEARING ON S. 248 – "TRIBAL LABOR SOVEREIGNTY ACT OF 2015"

APRIL 29, 2015

Good afternoon. My name is Robert Welch, Jr. I serve as Chairman for the Viejas Band of Kumeyaay Indians (the "Viejas Band"), one of seven elected members of the Viejas Tribal Council. On behalf of the Viejas Band, I would like to thank you for allowing me to testify today regarding S. 248, the "Tribal Labor Sovereignty Act of 2015", and its critical importance for the preservation of the sovereignty of the Viejas Band and other Tribal governments across the nation.

ABOUT THE VIEJAS BAND AND VIEJAS CASINO & RESORT

The Viejas Band, one of the 12 remaining bands of the Kumeyaay Indian Nation, resides on a 1,600-acre reservation in the Viejas Valley, east of the community of Alpine in San Diego County, California. The Kumeyaay people have lived in the San Diego County region for over 10,000 years. Prior to the passage of the Indian Self-Determination and Education Assistance Act of 1975, the story of the Viejas Band, like that of many other tribes in California and throughout the nation, was one of struggle, resilience and survival against genocide, enslavement, forced removal from ancestral lands, termination, assimilation and extreme poverty. Following this critical shift towards Tribal self-determination, in 1976, the Viejas Band was able to secure funds in order to create its first Tribal enterprise: Ma Tar Awa RV Park. While the Indian Self-Determination and Education Assistance Act of 1975 helped start Tribes on a path towards rebuilding their governments, the revenue producing opportunities it created were not substantial enough to promote economic self-sufficiency, and most Tribes still relied heavily on federal funding to support their governments. And without a sizeable population base to generate tax revenue, Tribes desperately needed a mechanism, under their control, to generate meaningful government revenue and control their own destinies. That is where Tribal government gaming stepped in.

The U.S. Supreme Court's ruling in the *Cabazon*¹ decision, the passage of the Indian Gaming Regulatory Act of 1988² ("IGRA"), and the execution of Tribal-State gaming compacts, recognized and preserved the rights of Tribes to utilize government gaming to generate critical revenue, in the same way that many States earn substantial revenues through government-operated lotteries.

Today the Viejas Band proudly owns and operates the Viejas Casino & Resort, which is the primary source of revenue for the Viejas Tribal Government. The revenues generated by Viejas Casino & Resort fund the types of essential governmental departments, services, and programs that many non-Indians take for granted, such as education, health, housing, water, roads, fire, and public safety. In addition, Viejas Casino & Resort provides over 1,700 jobs to the local community, including employment opportunities for citizens of the Viejas Band, annually contributes millions of dollars to the local economy through the purchase of goods and services, and is a proud supporter of many charitable organizations throughout San Diego County. Indeed, Tribal government gaming has been a success story for the Viejas Band and our local community. It has made self-determination and economic self-sufficiency a reality, and is essential to the continued prosperity of the Viejas Band and its people.

THE NATIONAL LABOR RELATIONS ACT AND INDIAN TRIBES

The National Labor Relations Act ("NLRA") was first enacted in 1935. At that time Indian tribes around the country were trying to recover from the devastating impacts of allotment. The NLRA was intended to provide collective bargaining rights to employees of large corporations. For that reason, most governments were exempted from the NLRA, including the United States, states and local governments. Unfortunately, Indian tribes had almost no employees as all government and enterprise operations were handled by the Bureau of Indian Affairs, thus the thought of including Tribal governments in the list of exempted governments did not occur to the drafters of the NLRA. This oversight, however, was handled administratively by the National Labor Relations Board ("NLRB").

Underpinning the exemption for governments in the NLRA was an acknowledgment that governments have significantly different considerations in how they handle their business when compared to private enterprises. Governments are not driven by pure profit motive; rather they are driven by the responsibilities and authorities given them by their citizens. To best meet those responsibilities and exercise those authorities, governments need flexibility. Thus the NLRA left it to governments to best determine what laws would govern their employee relations. Tribal governments are no different. The operations and enterprises of a Tribal government, even those that raise revenues, are not driven by purely profit motives, but by the responsibility to deliver services and meet the present and future needs of its citizens. Ultimately, it is the sovereign responsibility of a Tribal government to determine how it can best deliver services and meet the needs of its people.

¹ *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

² 25 U.S.C. 2701 *et seq.*

Gaming, whether through private commercial operations like Las Vegas casinos, or through governmental operations like Tribal gaming under IGRA or state lotteries, is a unique business that requires significant regulation and oversight. The unique regulatory and oversight needs of the business led to enactment of IGRA by the U.S. Congress, promulgation of significant regulations by the National Indian Gaming Commission, and enactment of a substantial body of Tribal law and regulation. Subsequent interactions with state governments has further led to the numerous Tribal-State compacts adopted around the country. To adequately address all of these laws, regulations, and agreements, while at the same time developing a well-trained, educated, and happy workforce, Tribal governments need great flexibility.

The Viejas Band's history in Tribal government gaming is a great example in how these sometime conflicting responsibilities can be reconciled by careful consideration and balancing of interests, and great flexibility.

S. 248 AND THE NLRB DECISION IN *SAN MANUEL*

S. 248, as its title suggests, is about respecting and protecting the sovereignty of Tribal governments. It is about affirming that Tribal governments possess the same status as the federal government, states and their political subdivisions, as it pertains to labor relations on sovereign lands. S. 248 would reverse the NLRB's improper and about-face change in policy found in the 2004 *San Manuel* decision³, when it ignored thirty years of precedent to rule, for the first time, that the NLRA applies to Tribal governments. Finally, S. 248 would set the record straight, once and for all, regarding Congress' intent as to the exemption of Tribal governments from the NLRA. As sovereign governments engaged in economic activities essential to fund government services, Tribes, such as the Viejas Band, should enjoy the same exempt status as the United States, State governments, and their government business. If exemption is appropriate for state lotteries, it should be for Tribal governments too.

THE VIEJAS BAND AS AN EMPLOYER

Opponents of S. 248 will likely characterize this measure as "anti-union". They will also likely suggest that imposition of the NLRA upon Tribal governments is essential to protect the rights of non-tribal member employees. But the voluntary actions of the Viejas Band, and many other Tribal governments across the U.S., fundamentally expose the fallacy of those myths. As one of the largest employers in East San Diego County, the Viejas Band takes its role as an employer very seriously. The Viejas Band recognizes the key role that its employees – we call them Team Members – play in the growth, success and well-being of Viejas Casino & Resort, and by extension the Viejas Band. That is why the Viejas Band continually strives to treat all of its Team Members fairly and with respect. The Viejas Band provides its Team Members with competitive salaries and great benefits including health, dental and vision insurance, basic life insurance, a 401(k) program with employer matching, a college tuition reimbursement program, a robust wellness program with fitness club dues reimbursement, and paid leave and vacation, to name a few. The Viejas Band treats its employees well because it is the right thing to do, not because it has been compelled to do so by some Federal or State law.

³ *San Manuel Indian Bingo & Casino*, 341 N.L.R.B 1055 (2004).

THE HISTORY OF UNION ORGANIZING AT VIEJAS CASINO & RESORT

The history of the Viejas Band and the organization of a portion of its workforce at the Viejas Casino & Resort is a striking example of why the application of the NLRA is unnecessary for Tribal governments, in the same way it is unnecessary for Federal and State governments.

In August 1998—long before anyone, including the NLRB, believed the NLRA should be applied to Tribal governments—the Viejas Band entered into a voluntary election agreement with Communications Workers of America ("CWA"), to provide access to service employees working at Viejas Casino & Resort for purposes of organizing. The voluntary election agreement provided for an election trigger (union authorization cards signed by 30% of the service employees) and a secret ballot election process supervised by an independent arbitrator.

In January 1999, a secret ballot election occurred and CWA was certified as the bargaining representative for approximately 30% of the Viejas Casino & Resort workforce. Shortly thereafter, the Viejas Band and CWA commenced negotiating the first collective bargaining agreement. The negotiation process concluded in October 1999, with the Viejas Band and members of the CWA ratifying the first-ever collective bargaining agreement between a Tribal government and a labor organization in the State of California.

Every stage of the process, from organizing activity to ratification of a collective bargaining agreement, reflected a choice made by the Viejas Band in the exercise of its sovereignty as a Tribal government. None of those procedures were compelled or forced upon the Viejas Band. And each stage started and concluded without the involvement of the NLRB or the application of the NLRA.

The Viejas Band's exercise of its sovereignty demonstrates why Tribal governments should be empowered to exercise sovereignty, rather than have it stripped away by Federal or State laws. The Viejas Band's actions were received positively by its Team Members, other Tribes, and other labor organizations. In fact, a few months after the ratification of the historic collective bargaining agreement, the Viejas Band was honored by the San Diego-Imperial Counties Labor Council, AFL-CIO, at its 12th annual Worker's Memorial Dinner with its Spirit of Cooperation Award.

THE TRIBAL LABOR RELATIONS ORDINANCE

In the late 90's, during gaming compact negotiations, the issue of labor relations was critical to both the State of California and Tribal governments. Discussions on that issue ultimately resulted in several Tribal governments, such as the Viejas Band, exercising their sovereignty and adopting, as their own Tribal law, a September 14, 1999 Tribal Labor Relations Ordinance ("TLRO").⁴

The TLRO, like similar voluntarily adopted State laws addressing labor relations for government agencies, contains numerous provisions that are similar to the NLRA, including detailed

⁴ See attached Appendix A—Tribal Labor Relations Ordinance adopted by the Viejas Band of Kumeyaay Indians.

procedures for representation proceedings, a guarantee of rights to engage in concerted activity, enumeration of unfair labor practices by Tribes and unions, and procedures for secret ballot elections and union decertification. The TLRO, however, also diverges from the NLRA in matters that are unique to Tribal government gaming, including the recognition of an Indian hiring preference, the exclusion of certain employee classifications from organization (such as Tribal Gaming Commission employees), the ability for a Tribal Gaming Commission to require a labor organization to secure a gaming license, and the resolution of any labor disputes through binding arbitration before an independent Tribal Labor Panel comprised of labor arbitrators affiliated with the American Arbitration Association, rather than conferring jurisdiction to the NLRB.

The TLRO, in substantially the same form as it originally appeared in 1999, has now been adopted by over 70 Tribal governments in California. It has worked for over 15 years. And it is worth noting, again, that the TLRO was adopted by Tribal governments as an exercise of Tribal sovereignty, not because it was required by some Federal or State law.

THE UNRESOLVED IMPACT OF *SAN MANUEL* ON THE TLRO

The 14 year relationship between the Viejas Band and CWA was one of mutual respect. While the CWA and the Viejas Band often disagreed on economic provisions during contract negotiations, CWA always respected the Viejas Band as a government and abided by the TLRO. CWA never once challenged the TLRO, or attempted to invoke action by the NLRB even after the *San Manuel* decision. Consequently, the Viejas Band was generally unaware, at that time, of the threat that the *San Manuel* decision presented to the TLRO.

All of that changed in August 2014, when an employee within the bargaining unit filed a petition before the NLRB to decertify the CWA as the bargaining representative pursuant to the NLRA. The NLRB asserted that it had jurisdiction over the decertification election in light of the *San Manuel* decision and did not agree that the TLRO decertification procedures controlled. In addition, Viejas was informed that a majority of the bargaining unit Team Members had signed on to the decertification petition, such that the Viejas Band would alienate hundreds of Team Members if it objected to the NLRB process that they chose. It was a no win situation, under which the Viejas Band was essentially compelled to agree to NLRB jurisdiction to avoid expensive litigation concerning NLRB jurisdiction and angering its Team Members. Thus, the Viejas Band reluctantly stipulated to the NLRB election.

Through the NLRB election process, a new and previously unknown union, the United Food and Commercial Workers ("UFCW"), was allowed to intervene at the eleventh hour and was added to the election ballot, which would not have been permitted under the TLRO. During the "campaign" process immediately preceding the election, the NLRB notified the Viejas Band that it was required to comply with the NLRA election procedures. Through the election, the UFCW was selected as the new representative for bargaining unit employees at Viejas Casino & Resort. The UFCW was certified by the NLRB as the bargaining unit representative on September 30, 2014. Shortly thereafter, the UFCW and the Viejas Band commenced collective bargaining negotiations. The UFCW commenced negotiations under the NLRA, whereas the Viejas Band commenced negotiations in accordance with the TLRO.

Given the differences mentioned earlier between the NLRA and the TLRO, there was substantial disagreement on certain issues authorized by the TLRO, including the ability for the Viejas Tribal Gaming Commission to require the UFCW to secure a gaming license. In contrast to CWA, the UFCW refused to be licensed and filed an unfair labor practice charge with the NLRA. The Viejas Band, of course, objected to the jurisdiction of the NLRB, while also disputing the unfair labor practice charge on the merits.

Fortunately, in the months that followed, and prior to the NLRB issuing any decision, Viejas and the UFCW were able to complete negotiations on a collective bargaining agreement and temporarily resolve their differences, including UFCW's voluntary agreement to licensure by the Viejas Tribal Gaming Commission. But the collective bargaining agreement remains silent as to whether the TLRO or the NLRA governs labor relations for Viejas Casino & Resort, based on the ongoing disagreement of the parties. This has created an environment ripe for ongoing jurisdictional disputes in the future, which S. 248 could prevent.

CONCLUSION

In conclusion, S. 248 is about protecting Tribal sovereignty. The Viejas Band and other Tribes across the nation serve as key examples of how Tribal governments are capable of developing laws that protect the rights of workers within a fair framework, while continuing to meet the strict regulatory needs of their gaming enterprises. The Viejas Band believes that its agreement with the State of California, and its adoption of the TLRO, should be respected. The NLRA and NLRB should have no application or role in labor relations at Viejas Casino & Resort.

The Viejas Band respectfully requests that Congress enact S. 248 and reaffirm that Tribal governments possess the same status as the federal government, states and their political subdivisions. This is not an issue to be left for the courts decide what Congress "intended". S. 248 should set the record straight, once and for all, regarding Congress' intent to exempt Tribal governments and their government enterprises from the NLRA. Thank you.

APPENDIX A – TRIBAL LABOR RELATIONS ORDINANCE

TRIBAL LABOR RELATIONS ORDINANCE

September 14, 1999

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40**Section 1: Threshold of applicability**

(a) Any tribe with 250 or more persons employed in a tribal casino and related facility shall adopt this Tribal Labor Relations Ordinance (TLRO or Ordinance). For purposes of this ordinance, a "tribal casino" is one in which class III gaming is conducted pursuant to a tribal-state compact. A "related facility" is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.

(b) Any tribe which does not operate such a tribal casino as of September 10, 1999, but which subsequently opens a tribal casino, may delay adoption of this ordinance until one year from the date the number of employees in the tribal casino or related facility as defined in 1(a) above exceeds 250.

(c) Upon the request of a labor union, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in 1(a) above. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel.

Section 2: Definition of Eligible Employees

(a) The provisions of this ordinance shall apply to any person (hereinafter "Eligible Employee") who is employed within a tribal casino in which Class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the Class III gaming operations, except for any of the following:

(1) any employee who is a supervisor, defined as any individual having authority, in the interest of the tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(2) any employee of the Tribal Gaming Commission;

- 1 (3) any employee of the security or surveillance department, other
2 than those who are responsible for the technical repair and maintenance of
3 equipment;
4 (4) any cash operations employee who is a "cage" employee or money
5 counter; or
6 (5) any dealer.

7 **Section 3: Non-interference with regulatory or security activities**

8 Operation of this Ordinance shall not interfere in any way with the
9 duty of the Tribal Gaming Commission to regulate the gaming operation in
10 accordance with the Tribe's National Indian Gaming Commission-approved
11 gaming ordinance. Furthermore, the exercise of rights hereunder shall in no
12 way interfere with the tribal casino's surveillance/security systems, or any
13 other internal controls system designed to protect the integrity of the tribe's
14 gaming operations. The Tribal Gaming Commission is specifically excluded
15 from the definition of tribe and its agents.

16 **Section 4: Eligible Employees free to engage in or refrain from**
17 **concerted activity**

18
19 Eligible Employees shall have the right to self-organization, to form,
20 to join, or assist employee organizations, to bargain collectively through
21 representatives of their own choosing, to engage in other concerted activities
22 for the purpose of collective bargaining or other mutual aid or protection,
23 and shall also have the right to refrain from any or all such activities.
24

25 **Section 5: Unfair Labor Practices for the tribe**

26
27 It shall be an unfair labor practice for the tribe and/or employer or
28 their agents:

- 29 (1) to interfere with, restrain or coerce Eligible Employees in the
30 exercise of the rights guaranteed herein;
31 (2) to dominate or interfere with the formation or administration of
32 any labor organization or contribute financial or other support to it, but this
33 does not restrict the tribe and/or employer and a certified union from
34 agreeing to union security or dues checkoff;
35 (3) to discharge or otherwise discriminate against an Eligible
36 Employee because s/he has filed charges or given testimony under this
37 Ordinance;

1 (4) to refuse to bargain collectively with the representatives of
2 Eligible Employees.

3
4 **Section 6: Unfair Labor Practices for the union**

5
6 It shall be an unfair labor practice for a labor organization or its
7 agents:

8 (1) to interfere, restrain or coerce Eligible Employees in the exercise
9 of the rights guaranteed herein;

10 (2) to engage in, or to induce or encourage any individual employed
11 by any person engaged in commerce or in an industry affecting commerce to
12 engage in, a strike or a primary or secondary boycott or a refusal in the
13 course of his employment to use, manufacture, process, transport or
14 otherwise handle or work on any goods, articles, materials, or commodities
15 or to perform any services; or to threaten, coerce, or restrain any person
16 engaged in commerce or in an industry affecting commerce or other terms
17 and conditions of employment. This section does not apply to section 11;

18 (3) to force or require the tribe and/or employer to recognize or
19 bargain with a particular labor organization as the representative of Eligible
20 Employees if another labor organization has been certified as the
21 representative of such Eligible Employees under the provisions of this
22 TLRO;

23 (4) to refuse to bargain collectively with the tribe and/or employer,
24 provided it is the representative of Eligible Employees subject to the
25 provisions herein;

26 (5) to attempt to influence the outcome of a tribal governmental
27 election, provided, however, that this section does not apply to tribal
28 members.

29
30 **Section 7: Tribe and union right to free speech**

31
32 The tribe's and union's expression of any view, argument or
33 opinion or the dissemination thereof, whether in written, printed, graphic or
34 visual form, shall not constitute or be evidence of interference with, restraint
35 or coercion if such expression contains no threat of reprisal or force or
36 promise of benefit.

37
38 **Section 8: Access to Eligible Employees**

39

1 (a) Access shall be granted to the union for the purposes of organizing
2 Eligible Employees, provided that such organizing activity shall not interfere
3 with patronage of the casino or related facility or with the normal work
4 routine of the Eligible Employees and shall be done on non-work time in
5 non-work areas that are designated as employee break rooms or locker
6 rooms that are not open to the public. The tribe may require the union and
7 or union organizers to be subject to the same licensing rules applied to
8 individuals or entities with similar levels of access to the casino or related
9 facility, provided that such licensing shall not be unreasonable,
10 discriminatory, or designed to impede access.

11
12 (b) The Tribe, in its discretion, may also designate additional
13 voluntary access to the Union in such areas as employee parking lots and
14 non-Casino facilities located on tribal lands.

15
16 (c) In determining whether organizing activities potentially interfere
17 with normal tribal work routines, the union's activities shall not be permitted
18 if the Tribal Labor Panel determines that they compromise the operation of
19 the casino:

20 (1) security and surveillance systems throughout the casino, and
21 reservation;

22 (2) access limitations designed to ensure security;

23 (3) internal controls designed to ensure security;

24 (4) other systems designed to protect the integrity of the tribe's
25 gaming operations, tribal property and/or safety of casino personnel, patrons,
26 employees or tribal members, residents, guests or invitees.

27
28 (d) The tribe shall provide to the union, upon a thirty percent (30%)
29 showing of interest to the Tribal Labor Panel, an election eligibility list
30 containing the full first and last name of the Eligible Employees within the
31 sought after bargaining unit and the Eligible Employees' last known address
32 within ten (10) working days. Nothing herein shall preclude a tribe from
33 voluntarily providing an election eligibility list at an earlier point of a union
34 organizing campaign.

35
36 (e) The tribe agrees to facilitate the dissemination of information
37 from the union to Eligible Employees at the tribal casino by allowing
38 posters, leaflets and other written materials to be posted in non-public
39 employee break areas where the tribe already posts announcements

1 pertaining to Eligible Employees. Actual posting of such posters, notices,
2 and other materials, shall be by employees desiring to post such materials.

3
4 **Section 9: Indian preference explicitly permitted**

5
6 Nothing herein shall preclude the tribe from giving Indian
7 preference in employment, promotion, seniority, lay-offs or retention to
8 members of any federally recognized Indian tribe or shall in any way affect
9 the tribe's right to follow tribal law, ordinances, personnel policies or the
10 tribe's customs or traditions regarding Indian preference in employment,
11 promotion, seniority, lay-offs or retention. Moreover, in the event of a
12 conflict between tribal law, tribal ordinance or the tribe's customs and
13 traditions regarding Indian preference and this Ordinance, the tribal law,
14 tribal ordinance or the tribe's customs and traditions shall govern.

15
16 **Section 10: Secret ballot elections required**

17
18 (a) Dated and signed authorized cards from thirty percent (30%) or
19 more of the Eligible Employees within the bargaining unit verified by the
20 elections officer will result in a secret ballot election to be held within 30
21 days from presentation to the elections officer.

22
23 (b) The election shall be conducted by the election officer. The
24 election officer shall be a member of the Tribal Labor Panel chosen pursuant
25 to the dispute resolution provisions herein. All questions concerning
26 representation of the tribe and/or Employer's Eligible Employees by a labor
27 organization shall be resolved by the election officer. The election officer
28 shall be chosen upon notification by the labor organization to the tribe of its
29 intention to present authorization cards, and the same election officer shall
30 preside thereafter for all proceedings under the request for recognition;
31 provided however that if the election officer resigns, dies or is incapacitated
32 for any other reason from performing the functions of this office, a substitute
33 election officer shall be selected in accordance with the dispute resolution
34 provisions herein.

35
36 (c) The election officer shall certify the labor organization as the
37 exclusive collective bargaining representative of a unit of employees if the
38 labor organization has received the majority of votes by employees voting in
39 a secret ballot election that the election officer determines to have been
40 conducted fairly. If the election officer determines that the election was

1 conducted unfairly due to misconduct by the tribe and/or employer or union,
2 the election officer may order a re-run election. If the election officer
3 determines that there was the commission of serious Unfair Labor Practices
4 by the tribe that interfere with the election process and preclude the holding
5 of a fair election, and the labor organization is able to demonstrate that it had
6 the support of a majority of the employees in the unit at any point before or
7 during the course of the tribe's misconduct, the election officer shall certify
8 the labor organization.

9
10 (d) The tribe or the union may appeal any decision rendered after
11 the date of the election by the election officer to a three (3) member panel of
12 the Tribal Labor Panel mutually chosen by both parties.

13
14 (e) A union which loses an election and has exhausted all dispute
15 remedies related to the election may not invoke any provisions of this labor
16 ordinance at that particular casino or related facility until one year after the
17 election was lost.

18
19 **Section 11: Collective bargaining impasse**

20
21 Upon recognition, the tribe and the union will negotiate in
22 good faith for a collective bargaining agreement covering bargaining unit
23 employees represented by the union. If collective bargaining negotiations
24 result in impasse, and the matter has not been resolved by the tribal forum
25 procedures sets forth in Section 13 (b) governing resolution of impasse
26 within sixty (60) working days or such other time as mutually agreed to by
27 the parties, the union shall have the right to strike. Strike-related picketing
28 shall not be conducted on Indian lands as defined in 25 U.S.C. Sec. 2703 (4).

29
30 **Section 12: Decertification of bargaining agent**

31
32 (a) The filing of a petition signed by thirty percent (30%) or more
33 of the Eligible Employees in a bargaining unit seeking the decertification of
34 a certified union, will result in a secret ballot election to be held 30 days
35 from the presentation of the petition.

36
37 (b) The election shall be conducted by an election officer. The
38 election officer shall be a member of the Tribal Labor Panel chosen pursuant
39 to the dispute resolution provisions herein. All questions concerning the
40 decertification of the labor organization shall be resolved by an election

1 officer. The election officer shall be chosen upon notification to the tribe
2 and the union of the intent of the employees to present a decertification
3 petition, and the same election officer shall preside thereafter for all
4 proceedings under the request for decertification; provided however that if
5 the election officer resigns, dies or is incapacitated for any other reason from
6 performing the functions of this office, a substitute election officer shall be
7 selected in accordance with the dispute resolution provisions herein.

8
9 (c) The election officer shall order the labor organization
10 decertified as the exclusive collective bargaining representative if a majority
11 of the employees voting in a secret ballot election that the election officer
12 determines to have been conducted fairly vote to decertify the labor
13 organization. If the election officer determines that the election was
14 conducted unfairly due to misconduct by the tribe and/or employer or the
15 union the election officer may order a re-run election or dismiss the
16 decertification petition.

17
18 (d) A decertification proceeding may not begin until one (1) year
19 after the certification of a labor union if there is no collective bargaining
20 agreement. Where there is a collective bargaining agreement, a
21 decertification petition may only be filed no more than 90 days and no less
22 than 60 days prior to the expiration of a collective bargaining agreement. A
23 decertification petition may be filed anytime after the expiration of a
24 collective bargaining agreement.

25
26 (e) The tribe or the union may appeal any decision rendered after
27 the date of the election by the election officer to a three (3) member panel of
28 the Tribal Labor Panel mutually chosen by both parties.

29
30 **Section 13: Binding dispute resolution mechanism**

31
32 (a) All issues shall be resolved exclusively through the binding
33 dispute resolution mechanisms herein, with the exception of a collective
34 bargaining negotiation impasse, which shall only go through the first level of
35 binding dispute resolution.

36
37 (b) The first level of binding dispute resolution for all matters
38 related to organizing, election procedures, alleged unfair labor practices, and
39 discharge of Eligible Employees shall be an appeal to a designated tribal
40 forum such as a Tribal Council, Business Committee, or Grievance Board.

1 The parties agree to pursue in good faith the expeditious resolution of these
2 matters within strict time limits. The time limits may not be extended
3 without the agreement of both parties. In the absence of a mutually
4 satisfactory resolution, either party may proceed to the independent binding
5 dispute resolution set forth below. The agreed upon time limits are set forth
6 as follows:

7
8 (1) All matters related to organizing, election procedures and
9 alleged unfair labor practices prior to the union becoming certified as the
10 collective bargaining representative of bargaining unit employees, shall be
11 resolved by the designated tribal forum within thirty (30) working days.

12 (2) All matters after the union has become certified as the
13 collective bargaining representative and relate specifically to impasse during
14 negotiations, shall be resolved by the designated tribal forum within sixty
15 (60) working days;

16
17 (c) The second level of binding dispute resolution shall be a
18 resolution by the Tribal Labor Panel, consisting of ten (10) arbitrators
19 appointed by mutual selection of the parties which panel shall serve all tribes
20 that have adopted this ordinance. The Tribal Labor Panel shall have
21 authority to hire staff and take other actions necessary to conduct elections,
22 determine units, determine scope of negotiations, hold hearings, subpoena
23 witnesses, take testimony, and conduct all other activities needed to fulfill its
24 obligations under this Tribal Labor Relations Ordinance.

25
26 (1) Each member of the Tribal Labor Panel shall have relevant
27 experience in federal labor law and/or federal Indian law with preference
28 given to those with experience in both. Names of individuals may be
29 provided by such sources as, but not limited to, Indian Dispute Services,
30 Federal Mediation and Conciliation Service, and the American Academy of
31 Arbitrators.

32 (2) Unless either party objects, one arbitrator from the Tribal
33 Labor Panel will render a binding decision on the dispute under the
34 Ordinance. If either party objects, the dispute will be decided by a three-
35 member panel of the Tribal Labor Panel, which will render a binding
36 decision. In the event there is one arbitrator, five (5) Tribal Labor Panel
37 names shall be submitted to the parties and each party may strike no more
38 than two (2) names. In the event there is a three (3) member panel, seven (7)
39 TLP names shall be submitted to the parties and each party may strike no
40 more than two (2) names. A coin toss shall determine which party may

1 strike the first name. The arbitrator will generally follow the American
2 Arbitration Association's procedural rules relating to labor dispute
3 resolution. The arbitrator or panel must render a written, binding decision
4 that complies in all respects with the provisions of this Ordinance.
5

6 (d) Under the third level of binding dispute resolution, either party
7 may seek a motion to compel arbitration or a motion to confirm an
8 arbitration award in Tribal Court, which may be appealed to federal court. If
9 the Tribal Court does not render its decision within 90 days, or in the event
10 there is no Tribal Court, the matter may proceed directly to federal court. In
11 the event the federal court declines jurisdiction, the tribe agrees to a limited
12 waiver of its sovereign immunity for the sole purpose of compelling
13 arbitration or confirming an arbitration award issued pursuant to the
14 Ordinance in the appropriate state superior court. The parties are free to put
15 at issue whether or not the arbitration award exceeds the authority of the
16 Tribal Labor Panel.