UNITED STATES
SENATE COMMITTEE ON INDIAN AFFAIRS

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

WRITTEN TESTIMONTY OF
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I. Introduction

Chairman Barrasso and Distinguished Members of the Committee:

The Native American Rights Fund (NARF) is a national, non-profit legal organization dedicated to securing justice on behalf of Native American tribes, organizations, and individuals. Since 1970, NARF has undertaken the most important and pressing issues facing Native Americans in courtrooms across the country and here within the halls of Congress.

We are honored to be invited to provide testimony to the Committee regarding S. 248, the "Tribal Labor Sovereignty Act of 2015" – a bill to clarify the rights of Indians and Indian tribes on Indian lands under the National Labor Relations Act (NLRA). The purpose of our testimony is to demonstrate that, in furtherance of its longstanding policies of Indian self-determination, tribal self-governance and tribal economic self-sufficiency, it is time for Congress to provide ***parity*** for tribal governments under the NLRA. In this context, ***parity*** encompasses the quality of being treated equally under the law alongside Federal

and State governments. Tribal governments are entitled to the freedom to choose the appropriate time, place and manner for regulating union activity on Indian lands and collective bargaining for its employees.

II. Parity with the Federal and State Governments

The National Labor Relations Act was enacted by Congress in 1935 to govern labor relations in the private sector. Under section 2 of the NLRA, the term "employer" is defined to include "any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof. . . ." Therefore, workers in the public sector—employees of the federal and state governments—were not afforded the rights and protections of the NLRA. Based on sound policy determinations, Congress provided those governments an opportunity to choose how to best regulate union organizing and collective bargaining labor relations with their workers given the essential and, oftentimes, sensitive nature of their work.

A. Parity with the United States

In 1978, forty-three years after it passed the NLRA, Congress enacted the Federal Labor Relations Act ("FLRA)," 5 U.S.C. § 7101 *et seq.,* regulating labor relations for most federal workers. The FLRA specifically aims to "prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government." 5 U.S.C. § 7101(a)(2). Congress determined that the rights of federal workers to organize, bargain collectively, and participate in labor organizations: "(1) safeguards the public interest, (2) contributes to the effective conduct of public business; and (3) facilitates and encourages the amicable settlement of disputes between employers and employees involving conditions of employment." 5 U.S.C. § 7101(a)(1).

However, the FLRA does not apply to all federal employers or employees. Coverage extends to individuals employed in an "agency," 5 U.S.C. § 7103(a)(2), but specifically excludes members of the military, noncitizens who work outside the United States, supervisory and management personnel, and various Foreign Service officers. 5 U.S.C. § 7103(a)(2)(B). It also excludes all employees of certain federal agencies, including the Federal Bureau of Investigation, the Central Intelligence Agency, and the United States Secret Service. 5 U.S.C. § 7103(a)(3).

Although patterned after the NLRA, based on the Federal government's unique public-service needs, obligations and vulnerabilities, the FLRA mandates certain proscriptions and prescriptions not contained in the NLRA. One important example is the scope of the authorized collective bargaining process. Under the NLRA, private-sector employees are entitled to collectively bargain with respect to wages, hours, benefits, and other working conditions. Under the FLRA, federal employees can only collectively bargain with respect to personnel practices. Under the FLRA, there is no right to negotiate working conditions such as wages, hours, employee benefits, and classifications of jobs.

A second important differnce is the right of private sector employees to engage in "concerted action," like workplace strikes. Under the FLRA, there is no right to strike for federal workers. In fact, the FLRA specifically excludes any person who participates in a workplace strike from the definition of "employee," 5 U.S.C. § 7103(a)(2)(B)(v), and it specifies that it is an unfair labor practice for labor unions to call or participate in a strike, a work stoppage, or picketing that interferes with the operation of a federal agency. 5 U.S.C. § 7116(b)(7)(A).

B. Parity with the States

According to a 2002 Report by the Government Accountability Office ("GAO"), about 26 states[1] and the District of Colombia had statutorily-protected collective bargaining rights for essentially all State and local government workers; 12 states[2] had collective bargaining only for specific groups of workers (e.g. teachers, firefighters); and 12 states[3] did not have laws providing rights to collective bargaining for any government worker. "Collective Bargaining Rights," GAO-02-835, p. 8-9 (September 2002). According to the Report, most State government workers who are entitled to collective bargaining rights under state law are prohibited from striking. Instead, those States provide compulsory binding interest arbitration (a procedure unavailable under the NLRA). *Id.* at p. 10.

In a January 2014 Report, *Regulation of Public Sector Collective Bargaining in the States,* the Center for Economic and Policy Research (CEPR) reviewed the rights and limitations on public-sector bargaining in the 50 states and the District of Colombia in order to answer three key questions—whether workers have the right to bargain collectively, whether unions can bargain over wages, and whether workers have the right to strike. A copy of the Report is attached to this testimony (minus the Appendix). The CEPR did not update the numbers provided by GAO, but it did provide helpful charts to better illustrate the types of policy choices State governments are making in regulating the rights of government workers: Chart 1,

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[1] Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, and Wisconsin. As with the NLRA, the state laws that provide collective bargaining rights to public employees often exclude various groups of employees (e.g., many states expressly exclude management officials) from coverage. GAO 02-835, at note 12.

[2] Georgia, Indiana, Idaho, Kansas, Kentucky, Maryland, Missouri, Nevada, North Dakota, Oklahoma, Tennessee, and Wyoming. Three of these states, Indiana, Kentucky and Missouri, extend collective bargaining rights to certain public employees through an executive order from the governor. GAO 02-835, at note 14.

[3] Alabama, Arizona, Arkansas, Colorado, Louisiana, Mississippi, New Mexico, North Carolina, South Carolina, Texas, Virginia, and West Virginia. Texas prohibits collective bargaining for most groups of public employees, but firefighters and police may bargain in jurisdictions with approval from a majority of voters. GAO 02-835, at note 13.

"Legality of Collective Bargaining for Select Public-Sector Workers" lists the states which regulate collective bargaining for specific workers is legal, illegal, or simply no ; Chart 2, "Legality of Collective Wage Negotiation for Select Public-Sector Workers"; and Chart 3, "Legality of Striking for Select Public-Sector Workers." As you review each chart, you can see that certain states make it illegal, or do not protect the rights of certain government workers, to engage in collective bargaining or wage negotiations, with most states making it illegal for these government workers to strike.

And of final note, according to the National Right to Work Legal Defense Foundation (http://www.nrtw.org/), 25 States have enacted right to work laws and 25 States do not have right to work laws.[4] Therefore, half of the State legislatures have determined that—as a matter of State labor relations policy—a worker in a Right to Work State not only has the right to refrain from becoming a union member, but cannot be required to pay anything to the union unless the worker chooses to join the union.

III. Regulating Labor Relations on Indian Lands

Before its 2004 decision in *San Manuel Indian Bingo and Casino*, the National Labor Relations Board did not exercise jurisdiction over tribal-owned businesses located on Indian lands. In *Fort Apache Timber Co.* (1976), and *Southern Indian Health Council* (1988), the NLRB held that tribal-owned businesses operating on tribal lands were exempt from federal labor law jurisdiction as "governmental entities."[5] However, in *Sac & Fox Indus.* (1992), the NLRB held that the provisions of the NLRA would apply to a tribal-owned business operating

[4] The 25 states that have right to work laws are: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming.

[5] The NLRB did exercise jurisdiction over non-Indian enterprises operating. For example, in *Simplot Fertilizer Co.* (1952), the NLRB exercised jurisdiction over a union's attempt to organize a non-Indian phosphate mining company leasing Shoshone-Bannock tribal land in Idaho. Also *see Texas-Zinc Minerals Corp.* (1960), and *Devils Lake Sioux Mfg. Corp.* (1979).

outside the reservation. Thus, prior to 2004, the NLRB drew a distinction regarding its jurisdiction based on whether the tribal business was located on Indian lands (no jurisdiction) versus off-reservation (jurisdiction). Today, in considering S. 248, the Committee should be mindful that the 566 federally-recognized Indian tribes enjoy demographic, cultural, political and economic diversity, and should not be subject to any one-size fits all approach.

A. The Navajo Nation Labor Code

Enacted by resolution in 1985, the Navajo Preference in Employment Act ("NPEA") serves as the Navajo Nation's general labor code. 15 N.N.C. Sec. 601 *et seq*; Resolution No. CAU-63-85 in 1985, and amended through Resolution No. CO-78-90 in 1990. Incorporated into the NPEA is a clause which enables unionization on the Navajo Nation. 15 N.N.C. Sec. 606 Union and Employment Agency Activities; Rights of Navajo Workers

> A. Subject to lawful provisions of applicable collective bargaining agreements, the basic rights of Navajo workers to organize, bargain collectively, strike, and peaceably picket to secure their legal rights shall not be abridged in any way by any person. The right to strike and picket does not apply to employees of the Navajo Nation, its agencies, or enterprises.
> B. It shall be unlawful for any labor organization, employer or employment agency to take any action, including action by contract, which directly or indirectly causes or attempts to cause the adoption or use of any employment practice, policy or decision which violates the Act.

It was the legislative intent of the council in 1985 to incorporate the most basic of those privileges of the National Labor Relations Act ("NLRA") to tribal employees, whom the council acknowledged were otherwise exempt from the NLRA. The rights of Navajo Nation employees to collectively bargain were debated and CAU-63-85 ultimately passed. 14 NTC 8/1/1985

The 1990 Navajo Nation council debated whether to include in the amendments "closed shop" language, which would permit labor organizations to collect union dues from non-members. This sparked much debate in the council, which ultimately decided 34 to 33 to ensure

the Navajo Nation is a "right to work" jurisdiction, and amended the Labor Investigative Task Force's proposed amendments to strike the "closed shop" language otherwise amending 15 N.N.C. Sec. 606. 28 NNC 10/25/90

The NPEA confers upon the Human Services Committee ("HSC") of the legislative council to "promulgate rules and regulations necessary for the enforcement and implementation of the provisions of this Act." 15 N.N.C. Sec. 616. HSC has availed themselves with this authority in the otherwise sparsely worded enabling legislation through Resolution No. HSCJY-63-94 Adopting the Navajo Preference in Employment Act Regulations to Provide Rules and Enforcement Procedures to Permit Collective Bargaining for Employees of the Navajo Nation, Its Agencies or Enterprises

These regulations provide additional guidance as to, for example, management's role of neutrality, prohibited employer practices, how to become an exclusive bargaining agent, the process for certification, an impasse resolution in the event of failed bargaining, and the process for decertification of a bargaining agent.

Collective bargaining is occurring on the Navajo Nation, with private enterprise as well as government. The United Mine Workers of America ("UMWA") represents employees at the Navajo Nation Head Start Program, a tribal government program. The Nal-Nishii Federation of Labor AFL-CIO includes 12 labor organizations that represent miners, power plant workers, construction workers, school employees and city employees working on or near the Navajo Nation.

B. California Tribal Labor Relations Ordinances

In negotiating tribal-state gaming compacts in 1999, Indian tribes in California agreed to adopt a process for addressing union organizing and collective bargaining rights of tribal gaming

employees, or the compact is null and void. From these negotiations, a *Model Tribal Labor Relations Ordinance* ("Ordinance") was crafted, and tribes with 250 or more casino-related employees were required to adopt the Ordinance. In its 2007 Report, *California Tribal State Gambling Compacts 1999-2006,* the California Research Bureau provided the following summary:

- Under the ***Model Tribal Labor Relations Ordinance*** ("Ordinance"), employees have the right to engage in employee organizations, bargain collectively, and join in concerted activities for the purpose of collective bargaining. The Ordinance defines unfair labor practices on the part of a tribe or a union, guarantees the right to free speech, and provides for union access to employees for bargaining purposes. (Excluded employees include supervisors, employees of the tribal gaming commission, employees of the security or surveillance departments, cash operations employees or any dealer.)

  Key Issues: Certification of union representation and dispute resolution

- Upon a showing of interest by 30 percent of the applicable employees, the tribe is to provide the union an election eligibility list of employee names and addresses. A secret ballot is to follow. An elections officer chosen by the tribe is to verify the authorization cards and conduct the election. If the labor organization receives a majority of votes, the election officer is to certify it as the exclusive collective bargaining representative for the unit of employees. Decisions may be appealed to a tribal labor panel.

- The Ordinance establishes procedures to address an impasse in collective bargaining, including the union's right to strike outside of Indian lands, and to decertify a certified union. It also creates three levels of binding dispute resolution mechanisms, beginning with a tribal forum, followed by an arbitration panel, and finally tribal court and federal court. Collective bargaining impasses may only proceed to the first level of binding dispute resolution, in which a designated tribal forum makes the decision.

California Tribal State Gambling Compacts 1996-2006, at p. 33-34 (a copy of the Labor Standards section, P. 33-39, of the Report is appended to this testimony).In a presentation to the International Association of Gaming Attorneys in September 1999, the following observations were provided regarding the Ordinance as a product of compromise between powerful forces, including:

1. the public policy of providing economic support for Indians from non-tax sources through Indian gaming;

2. the drive by the State of California to reclaim some of the economic benefit it had forfeited to Nevada by blocking the expansion of gaming in California[3];

3. the expectation of employees working at Indian casinos that they will have the same rights as employees working at non-Indian enterprises;

4. the need and desire by many tribes to maintain and expand their gaming operations; and

5. the wish by other interested parties in the gaming business (most importantly, Nevada gaming companies and unions representing their employees) to create, at a minimum, a "level playing field" by eliminating the competitive advantage enjoyed as a result of the non-union status of California's Indian casinos.

The full written presentation is available at http://corporate.findlaw.com/litigation-disputes/the-california-tribal-labor-relations-ordinance-overview-and.html.

The Ordinance provides labor unions at tribal gaming facilities with a number of advantages not provided for under the NLRA. Most importantly, under the Ordinance unions at tribal casinos: (1) have the right to enter onto casino property at any time to talk to employees and post leaflets and posters there in order to facilitate the organizing of employees; and (2) may engage in secondary boycotts after an impasse is reached in negotiations without suffering any penalty under the Ordinance.

The Ordinance also provides tribes with certain advantages not enjoyed by employers under the NLRA. Most importantly, unions representing tribal casino employees may not strike, picket or engage in boycotts before an impasse is reached in negotiations. Since 1999, a number of new tribal-state gaming compacts have been negotiated, or renegotiated, some with additional provisions regulating labor, but all requiring the adoption of the 1999 Model Tribal Labor Relations Ordinance.

The examples of the Navajo Nation and the California tribes exemplify the growing list of Indian tribes who are regulating labor relations with their employees. Mr. Chairman, we hope that you and each member of the Committee will recognize that each of the 566 tribes—as governments—must have the opportunity to make their own policy judgments regarding labor relations on their reservations based on the values and priorities which best serve the needs of their community. In general, there are four areas of concern for Indian tribes: (1) a guaranteed right to strike threatens tribal government revenues and the ability to deliver vital services; (2) the broad scope of collective

bargaining for "other working conditions" will undermine federal and tribal policies requiring Indian preference in employment; (3) pre-emption of the power to exclude which is a fundamental power of tribal government diminishes the ability of tribes to "place conditions on entry, on conditioned presence, or on reservation conduct"; and (4) the potential for substantial outside interference with tribal politics and elections.

IV. Conclusion

In closing Mr. Chairman, we would simply remind you and members of the Committee that under the Indian Gaming Regulatory Act ("IGRA"), Congress recognized "a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government," 25 U.S.C. § 2701, and declared its purpose was "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702.

Congress said that, and we believe Congress meant that tribal gaming is a part of tribal government—a means of generating tribal revenues to support tribal programs and services. In 25 U.S.C. § 2710(b)(2)(B), Congress stated "net revenues from any tribal gaming are not to be used for purposes other than-- (i) to fund tribal government operations or programs; (ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government agencies." Congress determined that tribal gaming is a governmental activity of Indian tribes—and should not be treated as a commercial activity on par with non-Indian casinos as the NLRB has determined in *San Manuel Indian Bingo and Casino*.

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CENTER FOR ECONOMIC AND POLICY RESEARCH
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Regulation of Public Sector Collective Bargaining in the States

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Introduction

While the unionization of most private-sector workers is governed by the National Labor Relations Act (NLRA), the legal scope of collective bargaining for state and local public-sector workers is the domain of states and, where states allow it, local authorities. This hodge-podge of state-and-local legal frameworks is complicated enough, but recent efforts in Wisconsin, Michigan, Ohio, and other states have left the legal rights of public-sector workers even less transparent.

In this report, we review the legal rights and limitations on public-sector bargaining in the 50 states and the District of Columbia, as of January 2014. Given the legal complexities, we focus on three sets of workers who make up almost half of all unionized public-sector workers: teachers, police, and firefighters, with some observations, where possible, on other state-and-local workers.[1] For each group of workers, we examine whether public-sector workers have the right to bargain collectively;[2] whether that right includes the ability to bargain over wages; and whether public-sector workers have the right to strike.

Our work updates, in part, a 1988 study by Robert Valletta and Richard Freeman, who conducted a comprehensive review of collective-bargaining laws for state employees, local police, local firefighters, non-college teachers, and other local employees. Much of the attention to public-sector bargaining since Valletta and Freeman has concentrated on public school teachers and we have relied heavily on a statutes database compiled by the National Council on Teacher Quality for an important part of the information presented here.

At the state-and-local level, the right to bargain collectively, the scope of collective bargaining, and the right to strike in connection with union activity is determined by a combination of state laws and case law. The interpretations of the relevant laws and court interpretations, and the frequent silences of both legislators and the courts with respect to specific types of public-sector workers in particular legal jurisdictions, makes it difficult to summarize the legal state of play across 50 states, Washington, DC, and thousands of local jurisdictions. In the rest of this report, we offer our best interpretation of how the relevant state statutes and case law answer our three key questions – whether workers have the right to bargain collectively, whether unions can bargain over wages, and whether workers have the right to strike – for the three groups of workers we focus on (teachers, police, firefighters). The detailed appendix also includes, where available, information on the law as it applies to public-sector workers in general. Our approach is to look first at state statutes. Where

1 In 2013, according to Current Population Survey data, the United States had 16.9 million state-and-local public-sector workers. Of these, 4.5 million (26.6 percent) were teachers; about 700,000 (4.3 percent) were police officers; and about 350,000 (2.1 percent) were fire fighters. In the same year, 40 percent of all state-and-local workers were unionized. The unionization rate for teachers was 55 percent; police, 60 percent; and firefighters, 67 percent.

2 "Collective bargaining" is the term most used in statutes across the states. In some instances other terms such as "conferencing," the term used for teachers' collective bargaining in Tennessee, are used in regulations for the same principle.

state statutes have left ambiguities or do not address public-employee collective bargaining or related issues of interest, we have looked to case law and executive orders.

Given the complexities involved – and current efforts in many states to restructure the legal framework regulating public-sector unionization – we see the work here as an ongoing effort. We will revise our interpretations, and this document, as new information comes to our attention and as states implement important changes to existing laws.

Right to Collective Bargaining

Chart 1 shows the legality of collective bargaining for public-sector firefighters, police and teachers in each state. We have divided states into three categories: Illegal, Legal, and No Statute/Case Law. States labeled "Illegal" have specific statutes – or case law in the absence of a statute – that bars public employees from collectively bargaining (and, by extension, negotiating over wages or striking). In these cases, statutes or court cases directly address – and prohibit – collective bargaining. For states labeled "Legal," definitive laws or case law exist that actively protect or promote collective bargaining (or negotiating wages or the right to strike). States labeled "No Statute/Case Law" are ones where statutes and case law are ambiguous. In these cases, we were not able to identify any explicit state-level regulation of public-sector employees' collective bargaining (or right to negotiate wages or strike). In some of these cases, a lack of relevant state-level statutes means that a combination of historical practice and local laws ends up determining workers' rights. The leeway involved appears to vary across states. Details on the specific statutes or case law we used to assign states to the three categories appear in the appendix.

In four states –North Carolina, South Carolina, Tennessee, and Virginia– it is illegal for firefighters to bargain collectively. In these same states and Georgia, it is also illegal for police officers to bargain collectively. Five, mostly overlapping, states –Georgia, North Carolina, South Carolina, Virginia, plus Texas– do not allow collective bargaining for teachers. North Carolina, South Carolina, and Virginia have blanket statutes that prohibit collective bargaining for all public-sector employees and do not make exceptions. Texas and Georgia have state statutes banning collective bargaining in the public sector, but explicitly carve out exceptions for police and firefighters in the case of Texas (Tex. Gov't Code Ann. § 174.002) and fire fighters in the case of Georgia (Ga. Code Ann §25-5-4). Georgia is the only state that singles out teachers in legislation in order to prevent them from bargaining collectively (Ga. Code Ann. § 20-2-989.10).[3] In Tennessee, case law has ruled public-sector collective bargaining to be illegal, but the state legislature passed a law that specifically permits collective bargaining for teachers.

3 Ga. Code Ann. § 20-2-989.10 – *"Nothing in this part shall be construed to permit or foster collective bargaining as part of the state rules or local unit of administration policies."*

CHART 1

Legality of Collective Bargaining for Select Public-Sector Workers

	Firefighters	Police	Teachers
Illegal	North Carolina South Carolina Tennessee Virginia	Georgia North Carolina South Carolina Tennessee Virginia	Georgia North Carolina South Carolina Texas Virginia
Legal	Alaska Arizona Arkansas California Colorado Connecticut Delaware District of Columbia Florida Georgia Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York North Dakota Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Texas Utah Vermont Washington West Virginia Wisconsin Wyoming	Alaska Arizona Arkansas California Connecticut Delaware District of Columbia Florida Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York North Dakota Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Texas Utah Vermont Washington West Virginia Wisconsin	Alabama Alaska Arkansas California Colorado Connecticut Delaware District of Columbia Florida Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Mississippi Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York North Dakota Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Tennessee Utah Vermont Washington West Virginia Wisconsin Wyoming
No Statute/ Case Law	Alabama Mississippi	Alabama Colorado Mississippi Wyoming	Arizona

Source: Authors' analysis. See Appendix for details.
Note: See text for discussion of Colorado, Idaho, Tennessee, and Wisconsin.

In almost all of the remaining states, firefighters, police, and teachers have the legal right (but not the requirement) to bargain collectively. Many states have legislation that covers all public employees in the state and establishes both the right to organize and to bargain collectively.

In a small number of states, neither legal statutes nor case law clearly establish or prohibit collective bargaining (see the third row of the chart). Firefighters in Alabama and Mississippi, police in Alabama, Colorado, Mississippi, and Wyoming, and teachers in Arizona all find themselves in a legal environment where no set statutes or existing case law governs collective bargaining at the state level. As a result, collective bargaining is permissible at the state level, but the actual legality of collective bargaining depends on local laws.

The case of Colorado provides a useful example of some of the challenges involved in categorizing state collective bargaining regimes. For firefighters, rights are spelled out in a state statute giving firefighters the right to form unions, meet and confer, and bargain collectively. However, for police (or peace officers), Colorado has no state-level laws specifically addressing these rights. The Colorado Firefighter Safety Act, however, does mention other public employees:

> C.R.S. 29-5-212 (1) – *The collective bargaining provisions of this part 2 do not apply to any home rule city that has language in its charter on June 5, 2013, that provides for a collective bargaining process for firefighters employed by the home rule city. This part 2 applies to all other public employers, including home rule cities without language in their charters that address a collective bargaining process for firefighters.*

Based on this language and the home rule regulations, some police officers have the right to bargain collectively depending on local determination. The Colorado State Lodge Fraternal Order of Police has several member lodges that represent these bargaining units. Meanwhile, teachers in Colorado have taken a different approach to their apparent exclusion from state law and have secured their collective bargaining through case law:

> Littleton Educ. Ass'n v. Arapahoe County Sch. Dist., 191 Colo. 411, 553 P.2d 793 (1976) – *School boards have the authority to enter into collective bargaining agreements with representatives of their employees provided that the agreements do not conflict with existing laws governing the conduct of the state school system.*

Other state employees that don't fall into one of the three categories have their collective bargaining rights granted through an executive order, Executive Order Authorizing Partnership Agreements with State Employees (12/28/2007).

Recent state actions in Idaho, Tennessee, and Wisconsin, and under consideration in other states have not eliminated public-sector bargaining, but have sought to limit significantly its scope. These recent actions do not change the status of these states in Chart 1 (or their status in Chart 2 where new limitations do not prohibit bargaining over compensation). However, these new legislative actions have reduced public-sector workers bargaining rights. In Idaho, SB 1108 (2011), restricted the scope of many teachers' collective bargaining. For teachers in Tennessee, a 2011 law changed the way bargaining is done to allow non-union professional organizations to represent employees with the effect that union representation is no longer a requirement for bargaining.[4] Wisconsin's Act 10, which has received extensive media attention, limits bargaining for public employees by imposing raise caps, limiting contracts to one year with salary freezes during the contract term, and requiring annual recertification of unions.[5]

4 Winkler, et al (2012), p. 315.

5 Greenhouse (2014).

Wage Negotiations

Fewer state statutes address the specific legality of wage negotiations than address the general right to bargain collectively. The only states where it is specifically illegal to negotiate over wages are those where collective bargaining is already illegal and therefore wage negotiations aren't allowed by default (see **Chart 2**). Of the remaining states, most protect the bargaining of wages and benefits through legislative definitions and as part of more broad-reaching statutes that cover general labor policy. In general, negotiations over wages and benefits are legal where collective bargaining is allowed for public employees.

CHART 2

Legality of Collective Wage Negotiation for Select Public-Sector Workers

	Firefighters	Police	Teachers
Illegal (Collective bargaining is also illegal in these states)	North Carolina South Carolina Tennessee Virginia	Georgia North Carolina South Carolina Tennessee Virginia	Georgia North Carolina South Carolina Texas Virginia
Legal	Alaska Arizona California Colorado Connecticut Delaware District of Columbia Florida Georgia Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Texas Utah Vermont Washington Wisconsin Wyoming	Alaska Arizona California Connecticut Delaware District of Columbia Florida Hawaii Illinois Indiana Iowa Kansas Kentucky Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Texas Utah Vermont Washington Wisconsin	Alaska Arkansas California Connecticut Delaware District of Columbia Florida Hawaii Idaho Illinois Indiana Iowa Kansas Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Tennessee Utah Vermont Washington West Virginia Wisconsin Wyoming
No Statute/ Case Law	Alabama Arkansas Louisiana Mississippi North Dakota West Virginia	Alabama Arkansas Colorado Idaho Louisiana Mississippi North Dakota West Virginia Wyoming	Alabama Arizona Colorado Kentucky Louisiana Mississippi North Dakota

Source: Authors' analysis. See Appendix for details.

A sizeable number of states have no state law or administrative code that addresses the issue of negotiations over wages and benefits. Where there is no regulation, the practice can be deemed "permissible," determined on a more case-by-case basis, or regulated at local levels.

Right to Strike

CHART 3

Legality of Striking for Select Public-Sector Workers

	Firefighters	Police	Teachers
Illegal	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin	Alabama, Alaska, Arizona, Vermont, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin	Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin
Legal	Hawaii, Ohio	Hawaii, Ohio	Alaska, California, Colorado, Hawaii, Illinois, Louisiana, Minnesota, Montana, Ohio, Oregon, Pennsylvania, Vermont
No Statute/ Case Law	South Carolina, West Virginia, Wyoming	Colorado, Idaho, South Carolina, Utah, West Virginia, Wyoming	South Carolina, Utah, Wyoming

Source: Authors' analysis. See Appendix for details.

While the majority of states allows collective bargaining and wage negotiations for public-sector workers, the opposite is the case when it comes to the right to strike (**Chart 3**). Only two states (Hawaii and Ohio) grant firefighters and police the right to strike, and only twelve states (Alaska, California, Colorado, Hawaii, Illinois, Louisiana, Minnesota, Montana, Ohio, Oregon, Pennsylvania, and Vermont) allow teachers to strike. Even in states that have statutes protecting the right to strike for public-sector workers in general, specific exceptions are created for public safety employees. In Ohio, while strikes are permissible, "the public employer may seek an injunction against the strike in the court of common pleas of the county in which the strike is located" (Ohio Rev. Code Ann. § 4117.15). In all of the states where teachers can strike, the right to strike has been extended to public-sector workers in general (with the exception of firefighters and police officers).

As with the right to bargain collectively over wages and benefits, a few states don't address the issue of strikes directly in state laws. Strictly speaking, South Carolina has no state statute that addresses public-sector workers' right to strike, but we have included South Carolina with those where strikes are illegal because the state prohibits collective bargaining. In other states without statutes speaking to strikes, the right to strike depends on local law or the terms of the collective-bargaining agreement itself.

Observations, Anomalies, and Ambiguities

The majority of states have clear legal statutes that lay out the rights of public-sector workers. Nevertheless, the legal framework in a number of states is less clear.

For example, the Arizona statute that governs public-safety employee rights, includes the ambiguous language: "shall not be construed to compel or prohibit in any manner any employee wage and benefit negotiations" (Arizona Revised Statutes: Chap 8, Art 6, § 23-1411). This type of language, neither requiring nor prohibiting collective bargaining or other areas of worker rights, occurs in several others states as well.

In recognition of this ambiguity, the National Council on Teacher Quality (NCTQ) classifies collective bargaining laws as falling into three categories:[6]

Collective bargaining required – Districts must collectively bargain if employees request to do so.
Collective bargaining permissible – Districts may choose whether or not to collectively bargain if employees request to do so.
Collective bargaining prohibited – It is illegal for districts to collectively bargain with employees.

In our analysis, we only distinguish between legal frameworks where collective bargaining, negotiations over wages and benefits, and public-sector strikes are "legal" or "illegal." Some states

6 See NCTQ.

classified here as having a legal right to bargain collectively, would be categorized as only "permissible" by NCTQ.

A separate issue involves barriers put in place in some states to prevent union organizing or to make it more difficult. This report looks only at the legality of collective bargaining, wage negotiation, and striking; there are many other issues surrounding public-sector employees' ability to negotiate and organize that are affected by state and local regulations that are not discussed here. For example, earlier we mentioned specific cases of Idaho, Tennessee, and Wisconsin. In addition, some states are applying "right-to-work" laws specifically to public employees as well (Alabama, Florida, Idaho, Iowa, Kansas, Michigan, Nebraska, Nevada, North Dakota, Oklahoma, South Dakota, Tennessee, and Utah).

In some cases, employee associations represent the interests of employees even when collective bargaining is illegal. For example the Fraternal Order of Police (FOP) has "lodges" in all states, including Virginia, North Carolina, and South Carolina where collective bargaining is prohibited. While the FOP is the umbrella for many bargaining units in states that allow collective bargaining, in states where collective bargaining is illegal, the organization provides other services (that a union might) without being able to represent police officers in negotiations over employment conditions. Similar associations exist for teachers and firefighters in other states The presence of a "union" is not indicative of collective bargaining rights in these localities. These non-union employee associations may negotiate on behalf of workers in some circumstances where formal collective bargaining is illegal.

While about one-third of all state-and-local public-sector workers fall under the three main categories discussed above – firefighters, police, and teachers – over 11 million employees work in other state- and local-government jobs. There are fewer clear statutes that cover these other public-sector workers. Some states are like Vermont, which has both a State Employees Labor Relations Act and a Vermont Municipal Labor Relations Act that govern public employees and their collective bargaining from the state level. North Carolina, South Carolina, and Virginia have state laws that ban all collective bargaining. In others, such as Arizona, the legality of collective bargaining is determined for other public-sector workers through a range of executive orders, state law, and case law.

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Appendix

The following table draws on data compiled by American Federation of State, County & Municipal Employees (AFSCME); International Association of Fire Fighters (1998); National Council on Teacher Quality; National Right to Work Legal Defense Foundation; Winkler, Scull, and Zeehandelaar (2012); and Valletta, and Freeman (1988).

Alabama	Collective Bargaining	Wage Negotiation	Striking
All/Other			
Police	Collective bargaining is not addressed No state statute regarding collective bargaining. Collective bargaining rights for police are determined on the local level.	Wage negotiation not addressed No state statute regarding collective bargaining	Striking is illegal Case Law: Cherokee County Hosp. Bd. v. Retail, Wholesale, & Dept. Store Union, AFL-CIO, 294 Ala. 151, 153, 313 So. 2d 514, 516 (1975) "Public strikes are illegal and public lockouts are improper, if not illegal."
Firefighters	Collective bargaining is not addressed No state statute regarding collective bargaining. Collective bargaining rights for firefighters are determined on the local level.	Wage negotiation not addressed No state statute regarding collective bargaining	Striking is illegal Case Law: Cherokee County Hosp. Bd. v. Retail, Wholesale, & Dept. Store Union, AFL-CIO, 294 Ala. 151, 153, 313 So. 2d 514, 516 (1975) "Public strikes are illegal and public lockouts are improper, if not illegal."
Teachers	Collective bargaining is legal Statute: Ala. Code § 16-1-30 "Before adopting the written policies, the board shall, directly or indirectly through the chief executive officer, consult with the applicable local employees' professional organization." Case Law: Walker County Bd. of Educ. v. Walker County Educ. Ass'n, 431 So. 2d 948, 954 (Ala. 1983) "Section 16-8-10 only obligates the Board to meet and consult with those persons set out in the statute; it does not obligate the Board to reach any agreement, accept any proposals or negotiate any matter if it does not wish to do so."	Wage negotiation not addressed No state statute regarding collective bargaining	Striking is illegal Case Law: Cherokee County Hosp. Bd. v. Retail, Wholesale, & Dept. Store Union, AFL-CIO, 294 Ala. 151, 153, 313 So. 2d 514, 516 (1975) "Public strikes are illegal and public lockouts are improper, if not illegal."

Alaska	Collective Bargaining	Wage Negotiation	Striking

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California Tribal-State Gambling Compacts, 1999-2006

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February 2007

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LABOR STANDARDS

RATIFIED COMPACTS

1999 Tribal-State Compact

- The tribe agrees to adopt standards no less stringent than federal workplace and occupational health and safety standards. The state may inspect for compliance unless a federal agency regularly inspects for compliance with the federal standards. Violations of the applicable standards are violations of the compact.
- The tribe agrees to adopt and comply with state and federal anti-discrimination laws. However the tribe may provide employment preference to Native Americans.
- The tribe may create its own workers compensation system provided there is specified coverage including the right to notice, an independent medical examination, a hearing before an independent tribunal, a means of enforcement, and benefits comparable to those afforded under state law. Independent contractors doing business with the tribe must comply with state workers' compensation laws.
- The tribe agrees to participate in state unemployment compensation and disability programs for employees of the gaming facility, and consents to the jurisdiction of state agencies and courts charged with enforcement.

Model Tribal Labor Relations Ordinance (Optional Addendum B)

The 1999 tribal-state compact requires a tribe to adopt an agreement or other procedure acceptable to the state for addressing the organization and representational rights of Class III gaming employees and employees in related enterprises, or the compact is null and void. Attached to the compact, as "Optional Addendum B" is a ***Model Tribal Labor Relations Ordinance.*** Tribes with 250 or more casino-related employees are required to adopt an identical ordinance. (The tribal ordinances were reviewed for conformity by the governor's legal affairs advisor.)

- Under the ***Model Tribal Labor Relations Ordinance*** ("Ordinance"), employees have the right to engage in employee organizations, bargain collectively, and join in concerted activities for the purpose of collective bargaining. The Ordinance defines unfair labor practices on the part of a tribe or a union, guarantees the right to free speech, and provides for union access to employees for bargaining purposes. (Excluded employees include supervisors, employees of the tribal gaming commission, employees of the security or surveillance departments, cash operations employees or any dealer.)

Key Issues: Certification of union representation and dispute resolution

- Upon a showing of interest by 30 percent of the applicable employees, the tribe is to provide the union an election eligibility list of employee names and addresses. A secret ballot is to follow. An elections officer chosen by the tribe is to verify the authorization cards and conduct the election. If the labor organization receives a majority of votes, the election officer is to certify it as the exclusive collective bargaining representative for the unit of employees. Decisions may be appealed to a tribal labor panel.

- The Ordinance establishes procedures to address an impasse in collective bargaining, including the union's right to strike outside of Indian lands, and to decertify a certified union. It also creates three levels of binding dispute resolution mechanisms, beginning with a tribal forum, followed by an arbitration panel, and finally tribal court and federal court. Collective bargaining impasses may only proceed to the first level of binding dispute resolution, in which a designated tribal forum makes the decision.

2003 Tribal-State Compacts

The three new compacts negotiated by Governor Davis in 2003 are similar to the 1999 tribal-state compact. They were with the Torres-Martinez Desert Cahuilla Indians, the La Posta Band of Mission Indians and the Santa Ysabel Band of Diegueño Indians.

- No apparent change from the 1999 compact's ***Model Tribal Labor Relations Ordinance.***

2004 Tribal-State Compacts

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria). The Lytton compact was not ratified by the legislature; the Coyote Valley and Fort Mojave compacts were ratified. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. Key changes are summarized below.

Coyote Valley Band of Pomo Indians and Fort Mojave Indian Tribe

- The tribes agree to adopt and comply with federal and state workplace and occupational health and safety standards. State inspectors may assess compliance unless regular inspections are made by a federal agency with the federal standards. Violations of the applicable standards are violations of the compact and may be the basis to prohibit employee entry into the gaming facility.
- The tribes agree to participate in the state's workers' compensation program for employees of the gaming facility and consent to the jurisdiction of the Worker's Compensation Appeals Board and state courts for purposes of enforcement. The tribes also agree to participate in the state unemployment compensation benefits

program and withhold the appropriate taxes, and consent to state agency jurisdiction and the jurisdiction of state courts for enforcement.

Model labor relations ordinance

The tribes agree to repeal their existing tribal labor relations ordinances and adopt the labor relations ordinance appended to the compact, which differs in important respects from the model ordinance appended to the 1999 and 2003 compacts.

- As in the 1999 compact, a labor organization is granted access in order to organize eligible employees in non-work areas on non-work time. The tribe agrees to provide the labor organization with a list of eligible employees and their last known addresses upon a showing of interest from 30 percent of the employees. The tribe also agrees to facilitate the dissemination of information from the labor organization to eligible employees.

Key Issues: union certification and dispute resolution

- ***"Card check neutrality"***--A new Section 7 on "tribe and union neutrality" provides that if a labor organization offers in writing to not engage in strikes or disparage the tribe, and to resolve all issues through binding dispute mechanisms, the tribe agrees to recognize and certify the labor organization if it provides dated and signed authorization cards from at least 50 percent plus one of the eligible employees without a formal election. The tribe agrees to not express any opposition to that labor organization or preference for another labor organization.
- If a labor organization agrees to accept the conditions specified for "tribe and union neutrality" in Section 7(a), the labor organization is deemed to have accepted the entire Ordinance and waives any right to file any form of action or proceeding with the National Labor Relations Board.*
- If a labor organization has agreed in writing to accept the conditions for "tribe and union neutrality" specified in Section 7(a), and the union engages in a strike, boycott or other economic activity, the tribe may withdraw from its obligation to resolve the impasse through a binding dispute mechanism. If the labor organization has not agreed to the conditions in Section 7(a), it may engage in a strike in the event the impasse is not solved through binding dispute resolution mechanisms.
- The model ordinance creates three levels of binding dispute resolution mechanisms in the event of an impasse: first, a designated tribal forum, and second, a Tribal Labor Panel composed of arbitrators. The panel is to serve all the tribes that have adopted this ordinance and its decisions are binding. Finally, either party may seek to compel

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* The National Labor Relations Board has asserted jurisdiction over labor relations in tribal casinos, finding in a 2004 *Decision and Order* that operating a commercial business such as a casino "...is not an expression of sovereignty in the same way that running a tribal court system is." The San Manuel Band of Mission Indians has appealed the decision to the U.S. Supreme Court. See Charlene Wear Simmons, *Gambling in the Golden State*, California Research Bureau, May 2006, pp. 76-77 for a brief discussion of this issue.

arbitration or confirm an arbitration award in Tribal Court, and the decision may be appealed to federal court. Unlike the 1999 compact, a collective bargaining impasse may proceed through all levels of dispute resolution, not just the first level.

- The model ordinance specifies factors for an arbitrator to consider if collective bargaining negotiations result in an impasse. These include wages, hours and other terms and conditions of employment at other Indian gaming operations in Mendocino County, the cost of living, regional and local market conditions, the tribe's financial capacity (if the issues is raised by the tribe), the size and type of casino or related facility, and the competitive nature of the business environment.

Rumsey Band of Wintun Indians--amended 1999 compact

- The section on labor relations in the 1999 compact is repealed, replaced by the tribe's labor relations ordinance since the tribe has recognized a union as the exclusive collective bargaining representative for its employees and entered into a collective bargaining agreement. As in the Coyote Valley compact, the tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards.

Buena Vista Rancheria of Me-Wuk Indians of California, Ewiiaapaayp Band of Kumeyaay Indians, Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, United Auburn Community –amended 1999 compacts

- Within 30 days of the effective date of the amendment, the tribes are to amend their labor relations ordinances (described in the 1999 tribal-state compact) to incorporate a revised tribal labor relations ordinance similar to the ordinance described in the Coyote Valley compact, including card check neutrality. The local labor market is to be considered in case of an impasse. Buena Vista and Ewiiaapaayp agree to adopt and comply with federal and state workplace and occupational health and safety standards.

Viejas Band of Kumeyaay Indians—amended 1999 compact

- Since the tribe entered into a collective bargaining agreement with a labor organization before the enactment of its tribal labor relations ordinance, and that agreement has since been renewed, no change in the ordinance is necessary to address employee rights. The tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards.

Pala Band of Mission Indians—amended 1999 compact

- The tribe has entered into a Memorandum of Understanding with a labor union providing for employer neutrality, arbitrator-verified authorizations that a majority of eligible employees have authorized the union, a no strike clause and binding arbitration. The tribe has recognized the union as its exclusive bargaining representative. For this reason, the parties agree that no change in the tribal labor relations ordinance is necessary. The tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards.

2006 Tribal-State Compact

The governor negotiated an amended 1999 tribal-state compact with the Quechan Tribe in 2005. The amended compact was ratified by the legislature in August 2006 and signed by the governor on September 28, 2006.

Quechan Tribe of the Fort Yuma Indian Reservation—amended 1999 compact

- The tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards and consents to the state's jurisdiction to inspect and enforce those standards.
- The model labor relations ordinance is similar to that in the 1999 tribal-state compact, with some changes. These include deletion of the provision that tribal law, ordinances, customs, and traditions prevail over the model labor relations ordinance in the event of conflict. The provison that strike-related picketing shall not be conducted on Indian lands is also deleted.
- Notably, this compact does not provide for card check neutrality. The selection of a collective bargaining agency is by secret ballot in an election conducted by the tribe.

UNRATIFIED COMPACTS

2004 Unratified Tribal-State Compact

Lytton Rancheria of California

- The tribe agrees to withhold earnings of persons employed at the gaming facility to comply with child and spousal support orders.
- The initial provisions of the model labor relations ordinance are somewhat similar to those in the Coyote Valley tribal-state compact. A major difference is the lack of "card check neutrality." The union is not afforded the option of presenting authorization cards signed by 50 percent of the eligible employees, requiring the tribe to enter into an agreement to certify and authorize the union as the employees' bargaining agent without a secret ballot. The provisions of the 1999 tribal-state compact requiring a secret ballot election apply, although the tribe and the union may agree to a different arrangement.
- Provisions regarding dispute resolution mechanisms and requiring binding arbitration are similar to those in the Coyote Valley tribal-state compact.

2005 Unratified Tribal-State Compacts

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians that were not ratified by the legislature.

Yurok Tribe of the Yurok Reservation

- The model labor relations ordinance appended to the compact (Exhibit B) is similar to that in the Lytton Rancheria compact and, as in other 1999 compacts, the tribe agrees to adopt it. There is no provision for "card check neutrality" as in six of the 2004 compacts. The union is not afforded the option of presenting authorization cards signed by 50 percent of the eligible employees, thereby requiring the tribe to enter into an agreement to certify and authorize the union as the employees' collective bargaining agent. Instead the provisions of the 1999 compact requiring a secret ballot election apply, although the tribe and the union may agree to a different arrangement.
- An employment preference for members of the tribe is not explicitly stated as in the previous compacts.

Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria

- The tribes agree to adopt and comply with federal and state workplace and occupational health and safety standards, allow inspection by state inspectors, and consent to the jurisdiction of state enforcement agencies including the Division of Occupational Safety and Health, the Occupational Safety and Health Standards Board and the Occupational Safety and Health Appeals Board, and of state courts.
- The tribes may elect to finance their liability for unemployment compensation benefits, instead of participating in the California Unemployment Fund, by any method specified in California Unemployment Insurance Code § 803.
- The tribes agree to participate in the state's workers' compensation program.
- The tribes agree to adopt the Model Tribal Labor Relations Ordinance appended to the compact. This model ordinance contains a section on "Tribe and union neutrality" similar to that in the Coyote Valley compact.
- ***Card check neutrality:*** If a labor organization offers in writing to not engage in strikes or disparage the tribe, and to resolve all issues through binding dispute mechanisms, the tribes agree to recognize and certify the labor organization if it provides dated and signed authorization cards from at least 50 percent plus one of the eligible employees, without a formal election.
- Although similar in other respects to the Coyote Valley tribal-state compact, the appended model labor relations ordinance does not explicitly mention the union's right to strike, providing instead that the tribe and labor organization will negotiate in good faith for a collective bargaining agreement.

2006 Unratified Tribal-State Compacts

In August 2006, the governor submitted six tribal-state compacts to the legislature for ratification. An amended compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. Five newly negotiated amended 1999 compacts were not ratified. These were with the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, the San Manuel Band of

Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Sycuan Band of the Kumeyaay Nation.

Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, Agua Caliente Band of Cahuilla Indians, San Manuel Band of Mission Indians, Sycuan Band of the Kumeyaay Nation—amended 1999 compacts

- The tribes agree to comply with standards no less stringent than those in the federal Fair Labor Standards Act and implementing regulations.
- The tribes agree to participate in the state's workers' compensation program for their employees and to ensure that independent contractors doing business with the tribe comply with state workers' compensation laws. Alternatively, the tribe may establish its own system of insuring gaming facility employees' work-related injuries, with specified standards.
- The ***Model Tribal Labor Relations Ordinance*** appended to the 1999 tribal-state compact remains in force. Notably, it does not contain the provision for card check neutrality found in eight of the 2004 –2005 compacts (six of which have been ratified), or the revised dispute resolution process found in those compacts.