UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LITTLE RIVER BAND OF OTTAWA
INDIANS TRIBAL GOVERNMENT
Respondent

CASE 7-CA-51156

LOCAL 406, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
Charging Union

STATEMENT OF RESPONDENT
THE LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL GOVERNMENT
ON THE ISSUES SUBMITTED TO THE BOARD FOR DECISION ON
STIPULATED RECORD

The Little River Band of Ottawa Indians Tribal Government (the "Band") hereby sets forth its statement on the issues submitted to the Board for decision on the parties' stipulated record.

It is the Band's position (as fully set forth in its earlier filed Motion to Dismiss or for Summary Judgment) that the National Labor Relations Board (the "Board") lacks jurisdiction to entertain this proceeding, which seeks to invoke the National Labor Relations Act (the "NLRA") to strike down the Band's duly enacted laws governing labor relations within the Band's jurisdiction. The Board has no authority to address the merits of the Complaint in this matter by which the Acting General Counsel seeks to destroy the sovereign authority of the Band.

1. Whether the Board has jurisdiction over the Respondent Little River Band of Ottawa Indians Tribal Government and the authority to proceed on the Complaint in this matter against it with respect to the application of its Fair Employment Practices Code and related regulations to the Little River Casino Resort.

Under unequivocal decisions of the Supreme Court, in the absence of a clear directive from Congress, a federal statute may not be used to undermine an Indian nation's exercise of inherent sovereign authority. *See Iowa Mut. Ins. Co. v. LaPlante,* 480 U.S. 9, 18 (1987); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 59-60, 72 (1976). The Band has enacted and is fully implementing its Fair Employment Practices Code within its public sector, including its gaming operations under the Indian Gaming Regulatory Act ("IGRA"). This carefully considered labor relations regime, reflecting the unique values and policy priorities of the Band, has been enacted and is being enforced in full accord with the Band's inherent sovereign authority as a federally recognized Indian tribe. *See Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 144-145 (1982); *Plains Commerce Bank v. Long Family & Cattle Co., Inc.*, 554 U.S. 316, 335 (2008). Thus, it cannot be stricken under authority of the NLRA in the absence of a clear directive from Congress.

Nothing in the NLRA empowers the Board to interfere with the Band's exercise of its inherent sovereign authority to enact and implement its Fair Employment Practices Code with respect to the Little River Casino Resort or any other governmental operation of the Band. This case must therefore be dismissed for lack of jurisdiction.

2. Whether, if the Board has such jurisdiction, the Respondent has violated Section 8(a)(1) of Act by applying the provisions of its Fair Employment Practices Code and related regulations to the Little River Casino Resort.

The Board has no authority to entertain this issue. The Acting General Counsel seeks to invoke the NLRA to destroy the Band's exercise of its inherent sovereign authority. Under established Supreme Court and other federal court decisions, Congress is presumed to protect the inherent sovereignty of Indian nations, not to destroy it. *See, e.g., Iowa Mut. Ins. Co.*, 480 U.S. at 14 & n.5; *Santa Clara Pueblo*, 436 U.S. at 60, 72; *N.L.R.B. v. Pueblo of San Juan*, 276 F.3d 1186, 1194 -1195 (10th Cir. 2002) (en banc). *EEOC v. Fond du Lac Heavy Equip. and Constr. Co., Inc.*, 986 F.2d 246, 250-51 (8th Cir. 1993). Absent a clear directive from Congress in the NLRA (and there is none), the Board has no authority to entertain a proceeding, or to issue an order, that would undermine the Band's inherent sovereign authority in applying its Fair Employment Practices Code and related regulations to its IGRA gaming operations at the Little River Casino Resort.

Respectfully submitted, this 3th day of August, 2011,

/s/ Kaighn Smith, Jr.
Kaighn Smith, Jr.

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STATEMENT OF SERVICE

Copies of this *Statement of Respondent the Little River Band of Ottawa Indians Tribal Government on the Issues Submitted to the Board for Decision on Stipulated Record* have this day been served upon the following by electronic mail to the email addresses shown:

- A. Bradley Howell, Esq., National Labor Relations Board (brad.howell@nlrb.gov)
- Local 406, International Brotherhood of Teamsters c/o its counsel Ted M. Iorio, Esq. (titorchmi@aol.com)
- Ted M. Iorio, Esq. (titorchmi@aol.com)

This *Statement of Respondent the Little River Band of Ottawa Indians Tribal Government on the Issues Submitted to the Board for Decision on Stipulated Record* has this day been electronically filed with the Executive Secretary of the National Labor Relations Board.

Dated: August 3, 2011

/s/ Kaighn Smith, Jr.

Kaighn Smith, Jr.

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