

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

LITTLE RIVER BAND OF OTTAWA
INDIANS TRIBAL GOVERNMENT

Respondent

Case No. 07-CA-051156

And

LOCAL 406, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Charging Union

**MOTION OF RESPONDENT LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL GOVERNMENT TO EXPEDITE DISPOSITION**

The Respondent Little River Band of Ottawa Indians Tribal Government (the “Band” or “Tribal Government”) hereby moves for expedited disposition of this case. The reasons for this motion are set forth herein.

INTRODUCTION

This is an extraordinary case. It involves a request that the Board enjoin the laws of a federally recognized Indian tribal government. *See Complaint* (GC Exhibit 1(b) to *Joint Motion to Transfer Proceeding to Board on Stipulated Record* (“*Joint Motion to Transfer*”). The Board has never before been asked to issue an order that would compel a government to “rescind” its laws. *See Complaint* at 3-4. As such, this case casts a shadow upon the respondent Tribal Government as long as this case continues.

And the length of time this case has continued is as extraordinary as the substantive issue presented. The case began with the Charge filed against the respondent Tribal Government on March 28, 2008, *see Charge Against Employer* (GC Exhibit 1(a) to *Joint Motion to Transfer*), it

continued with the Complaint filed against the Tribal Government on December 12, 2010, and it has continued on from there through the parties' briefing, based on a stipulated record accepted by the Board, which was finally completed on May 15, 2012. In short, the present challenge to the respondent Tribal Government has lingered over four years and counting.

Nothing less than the dignity of the Tribal Government is at stake in this case. The case is fully ready for decision, and the Board should expedite this case on its docket.

1. THIS CASE CHALLENGES THE AUTHORITY OF AN INDIAN TRIBAL GOVERNMENT.

This case involves an effort to compel the rescission of the fully operational labor laws of the Tribal Government. *See Complaint*. The parties have stipulated to the facts, which show that the very laws that the Acting General Counsel and Charging Union seek to strike down are fully operational and continue to govern the rights and responsibilities of a management, a labor organization, and the employees at the gaming operations of Little River Band of Ottawa Indians. *See Statement of Stipulated Facts* at ¶¶ 67-79. Labor organizations and management have spent years negotiating collective bargaining agreements under this law; union election campaigns and elections have proceeded under it; unfair labor practice disputes have been resolved pursuant to it; bargaining impasses have been resolved under it; and collective bargaining agreements have been entered into in accordance with it. *See id.* Further, the Band's lawmakers and regulators have expended hours upon hours of time to develop the subject laws and make them operational. *See Statement of Stipulated Facts* at ¶¶ 20-22, 35-69.

Yet all of this work and effort (and all ongoing work related to it) is obscured by a shadow of uncertainty cast by the Complaint in this case, which seeks to substitute the National Labor Relations Act for fully operational tribal law and the National Labor Relations Board for the Band's governing bodies. *See Complaint* at 3-4. The very existence of this case, subjecting

the Band's laws and their effective operation to the scrutiny of this Board, affects the integrity of the Tribal Government. Indeed, every time the Band now contemplates an amendment to the operational laws under scrutiny in this case, it must spend time and effort to ensure that the record before this Board is amended to reflect its work.¹

2. EXPEDITED DISPOSITION OF THIS CASE IS CONSISTENT WITH PRESIDENT OBAMA'S RECONFIRMATION OF EXECUTIVE ORDER 13175. As emphasized in the President's November 5, 2009 *Memorandum for the Heads of Executive Departments and Agencies*, "[t]he United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions." 74 Fed. Reg. 57,881 (Nov. 9, 2009). The President further reconfirmed Executive Order 13175 of November 6, 2000. *Id.* That Order sets forth the following "fundamental principles":

Sec. 2. Fundamental Principles.

In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

- a. The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.
- b. Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-

¹ This predicament is exemplified by the pending *Joint Motion to Substitute Exhibit and Stipulations* filed on February 16, 2012, necessitated by a change to the Band's law that had previously been submitted as part of the Stipulated Record as of August 3, 2011.

government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

c. The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Exec. Order No. 13, 175, § 2 (a)-(c), 65 Fed. Reg. 67, 249 (Nov. 9, 2000).

Regardless of the merits of any party's position in this case, there can be no disagreement that it involves critical concerns of the named respondent, an Indian tribal government. Out of respect for the historic government-to-government relationship between the United States and Indian nations confirmed by Executive Order 13175 and President Obama's endorsement of that Order, this case should be given high priority for disposition on the docket before the Board. The longer this case lingers, the more harm is done to the spirit that undergirds the fundamental relationship between the United States and the Band.

3. EXPEDITED DISPOSITION IS CONSISTENT WITH CONGRESS'S PRONOUNCEMENTS WITH RESPECT TO FEDERAL-TRIBAL RELATIONS. Congress confirms that "[t]he United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government," and "through statutes, treaties, and the exercise of administrative authorities, [Congress] has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes." 25 U.S.C. § 2601(2)-(3) (2001). The Supreme Court consistently recognizes Congress's commitment to "a policy of supporting tribal self-government and self-determination." *E.g., National Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 856 (1985); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14 & n.5 (1987).

Again, regardless of any view of the merits, this case presents concerns for the respondent Tribal Government about tribal sovereignty and tribal government of the highest order. Nothing less than the dignity of the Band and the legitimacy of its operational laws, are at

stake in this case. The President's and Congress's pronouncements with regard to the federal government's trust responsibility to Indian nations warrants respect for these concerns. That respect should be reflected in the manner by which the Board treats a case that challenges the respondent Tribal Government's exercise of authority. Consistent with the federal government's relationship to Indian nations, this case, now continuing into its fifth year, should receive top priority for disposition.

CONCLUSION

For all of these reasons, the Band respectfully asks the Board to grant this motion and expedite decision in this case.

Dated: May 24, 2012

/s/ Kaighn Smith, Jr.
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STATEMENT OF SERVICE

Copies of this Motion have this day been served upon the following by electronic mail to the email addresses shown:

- Gary W. Saltzgeber, Esq., National Labor Relations Board (Gary.Saltzgeber@nlrb.gov)
- Dennis Boren, Esq., National Labor Relations Board (Dennis.Boren@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)
- Rebekah M. Krispinsky, Esq., Office of the Solicitor, U.S. Department of the Interior (Rebekah.Krispinsky@sol.doi.gov)

This Motion has this day been electronically filed with the Executive Secretary of the National Labor Relations Board.

Dated: May 24, 2012

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