

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LITTLE RIVER BAND OF OTTAWA
INDIANS,

Case No. 1:09-cv-141

Plaintiff,

v.

NATIONAL LABOR RELATIONS
BOARD,

Defendant.

STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF THE LITTLE RIVER BAND OF OTTAWA INDIANS’
MOTION FOR SUMMARY JUDGMENT

The Little River Band of Ottawa Indians (*Gaá Čhíng Zilbi Daáwaa Aníshinaábek*) hereby sets forth its Statement of Undisputed Material Facts in support of its Motion for Summary Judgment.

1. The Little River Band of Ottawa Indians (the “Band” or the “Tribe”) is a federally recognized Indian tribe. 25 U.S.C. § 1300k-2(a); Amended Verified Complaint (“AVC”) ¶ 1. *See also* Affidavit of Kimberly Alexander.¹

¹ The Band’s Statement of Undisputed Material Facts is based upon its Amended Verified Complaint, executed by Tribal Council Recorder, Kimberly Alexander; the separate Affidavit of Kimberly Alexander (“Alexander Affidavit”), filed herewith, setting forth the basis for her personal knowledge of the facts and Exhibits to the Amended Verified Complaint; and the Affidavit of Tribal Ogema Larry Romanelli (“Ogema Affidavit”), filed herewith. The Band does not repeatedly reference the Alexander Affidavit, but cites directly to the individual paragraphs of the Amended Verified Complaint, to the Exhibits thereto, and to the Ogema Affidavit.

2. The Tribe has nearly 4,000 enrolled members, who live within or near the Band's aboriginal lands in and near Manistee and Mason Counties in the State of Michigan. Ogema Affidavit ¶ 5.
3. Pursuant Congress' 1994 Act restoring the Band to federal recognition (the "Restoration Act"), the Band has promulgated a Constitution, and amendments thereto, in accordance the Indian Reorganization Act, 25 U.S.C. § 476 (the "IRA"), which have been approved by the Secretary of the Interior. AVC ¶ 7; AVC Exhibit A;² Ogema Affidavit ¶ 8; *see* 25 U.S.C. § 1300k-6(a)(1).
4. Pursuant to the Band's Constitution, the Band is governed by an Executive Branch, through the office of the Tribal Ogema; a legislative branch, through the office of the Tribal Council; and a judicial branch, through the Tribal Court. AVC ¶ 8; AVC Exhibit A, Articles IV-VI.
5. Pursuant to the Band's Constitution, "[t]he Tribe's jurisdiction over its members and territory shall be exercised to the fullest extent consistent with this Constitution, the sovereign powers of the Tribe, and federal law." AVC Exhibit A, Article I, § 2.
6. The Band's Constitution empowers the Tribal Council "[t]o exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with the Constitution . . . to govern the conduct of members of the Little River Band and other persons within its jurisdiction." AVC Exhibit A, Article IV, § 7(a)(1).

² The Exhibits to the Amended Verified Complaint are referred to herein as "AVC ____." These exhibits were previously electronically filed with the Court. Pursuant to the *Information and Guidelines for Civil Practice before Honorable Janet T. Neff* and *Administrative Order 07-026*, a full set of the Exhibits have been served upon the Defendant and are provided to Chambers as part of the Alexander Affidavit.

7. Since the Restoration Act, the United States, through the Secretary of Interior, has taken over 1,200 acres of the Tribe's ancestral lands in and near Manistee and Mason Counties into trust on behalf of the Tribe (hereinafter said lands are referred to as "trust lands" or "reservation"). Ogema Affidavit ¶ 7.
8. The Band exercises governmental authority over the activities of tribal members and non-Indians on these trust lands. AVC ¶¶ 12-25; Ogema Affidavit ¶¶ 9-18, 20.
9. The Band is successfully restoring its tribal community and lands, and the provision of governmental services to tribal members pursuant to the Restoration Act. Ogema Affidavit ¶¶ 6-12.
10. The Band's Housing Department, for example, has built, and is continuing to build, reservation homes for low income and elderly tribal members. The Band's Health Department provides direct health care services to many tribal member and their families. It is upgrading its clinic and building a pharmacy to better serve the tribal community. The Band's Department of Natural Resources is engaged in restoring sturgeon fish populations within the reservation. The Tribe is maintaining and restoring its language through Anishinaabemowin language programs for tribal member youths and elders, and plans are under way for the construction of a new Community Center and Government Building complex on the reservation to unify, and enhance services to, the tribal community. Ogema Affidavit ¶ 11.
11. Lacking a tax base, the Band's governmental programs and services are jointly funded by (a) the Band's generation of revenues pursuant to the Indian Gaming Regulatory Act ("IGRA") and (b) federal support, principally through contracts entered into by the Tribe with federal agencies through Congress' Indian Self-

Determination and Education Assistance Act of 1975, Indian Health Care Improvement Act of 1976, and Native American Housing Assistance and Self-Determination Act of 1996. The Band's IGRA gaming revenues generally provide in the order of \$20 million per year in support of tribal government, which is over 50% of the Band's total budget. The remainder is covered primarily through a combination of the above-referenced federal programs. Ogema Affidavit ¶ 12.

12. Over 1,000 employees work for the Tribe's governmental departments, agencies, commissions, and subordinate organizations. This includes tribal members and members of their immediate family, members of other Indian tribes, and non-Indians. Under the Band's laws, qualified tribal members, their immediate family members, and members of other Indian tribes are given employment preferences within tribal government operations over non-Indians. Ogema Affidavit ¶ 13.
13. Pursuant to its Constitution, the Tribe has enacted a Fair Employment Practices Code (the "Band's FEP Code") to govern employment and labor relations within its jurisdiction. AVC ¶ 12; AVC Exhibit B; Ogema Affidavit ¶ 20.
14. The Band's FEP Code governs a variety of rights and remedies for employers and employees within the jurisdiction of the Band, including rights and remedies for employment discrimination and collective bargaining. AVC Exhibit B, Article IV and Article XVI.
15. Pursuant to Article XVI of the Band's FEP Code ("Article XVI"), the Band governs labor relations and collective bargaining within public employers within its jurisdiction. *See* AVC Exhibit B, Article XVI & § 16.03 (definitions); AVC ¶¶ 14, 22-25; Ogema Affidavit ¶ 20.

16. Pursuant to Article XVI, a “Public Employer” is defined as “a subordinate economic organization, department, commission, agency, or authority of the Band engaged in any Governmental Operation of the Band.” AVC Exhibit B, Article XVI, § 16.03.

17. Pursuant to Article XVI, “Governmental Operations of the Band” are defined as:

the operations of the Little River Band of Ottawa Indians exercised pursuant to its inherent self-governing authority as a federally recognized Indian tribe or pursuant to its governmental activities expressly recognized or supported by Congress, whether through a subordinate economic organization of the Band or through a department, commission, agency, or authority of the Band including, but not limited to (1) the provision of health, housing, education, and other governmental services and programs to its members; (2) the generation of revenue to support the Band’s governmental services and programs, including the operation of “Class II” and “Class III” gaming through the Little River Casino Resort; and (3) the exercise and operation of its administrative, regulatory, and police power authorities within the Band’s jurisdiction.

Id.

18. Pursuant to its Constitution and Article XVI, the Band is regulating labor relations and collective bargaining matters, involving both tribal member employees and non-Indian employees within its reservation gaming operations conducted pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.* (“IGRA”). AVC ¶¶ 19, 21-26. Ogema Affidavit ¶¶ 14-18, 20.

19. On or about March 28, 2008, the International Brotherhood of Teamsters (the “Teamsters”) filed a “Charge Against Employer” (the “Teamsters’ Charge”) before the National Labor Relations Board (the “NLRB” or the “Board”), naming the “Little River Band of Ottawa Indians Tribal Government” as the “employer against whom the charge is brought.” AVC Exhibits E, H (subpoena with Teamsters’ Charge), and J (letter and subpoenas with Teamsters’ Charge).

20. The Teamsters' Charge asserts that the Tribal Government "has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection[] (1) . . . of the National Labor Relations Act," and for the "facts constituting the alleged unfair labor practice" the Charge states, in pertinent part that,

the Little River Band of Ottawa Indians Tribal Government has promulgated the Constitution of the Little River Band of Ottawa Indians which on its face preempts the National Labor Relations Act jurisdiction. Said Constitution of the Little River Band of Ottawa Indians among it [sic] articles reserves authority to govern labor relations including but not limited to regulating terms and conditions under which collective bargaining agreements may or may not occur. The Constitution of the Little River Band of Ottawa Indians among other illegal articles denies employees the right to strike. By this and other conduct the respondent has intimidated [sic] employees and utilized the Constitution of the Little River Band of Ottawa Indians as a means to deny employees the right to organize as protected by Section 7 of the Act.

AVC Exhibits E, H (subpoena with Teamsters' Charge), and J (letter and subpoenas with Teamsters' Charge).

21. By a form letter dated March 28, 2008, NLRB Regional Director, Stephen M.

Glasser, wrote to the Band's Tribal Council Speaker, Donald Koon, stating, *inter alia*, that the Teamsters' Charge had been filed against the Little River Band of Ottawa Indians Tribal Government and that the case had been assigned to Board agent, Craig Sizer. AVC Exhibit F.

22. By letter dated May 2, 2008, counsel for the Tribe wrote to Mr. Glasser, stating that

The basis for the charge appears to be that the constitution of the Band is unlawful.

It is the Band's position that such a claim is not properly adjudicated by the Board. Should the International Brotherhood of Teamsters or the Board seek to challenge the constitution or laws of the Little River Band of Ottawa Indians, such a case should be brought in the federal district court. *See, e.g., NLRB v. Pueblo of San Juan*, 276 F.3d 1186, 1188 (10th Cir. 2002).

AVC Exhibit G.

23. On or about May 14, 2008, the NLRB issued a subpoena to the Band's Tribal Council Speaker, Don Koon, demanding his appearance to provide signed affidavit testimony in reference to the Teamsters' Charge at the Grand Rapids office of the NLRB. AVC Exhibit H; AVC ¶ 31.

24. By letter dated May 21, 2008, the members of the Tribal Council of the Band wrote to NLRB Regional Director, Stephen M. Glasser, in response to the subpoena issued to Tribal Council Speaker Koon, stating:

The "Charge Against Employer," executed by the International Brotherhood of Teamsters, which gives rise to the subpoena, seeks to strike down the Constitution and laws of our Tribe. We do not believe the National Labor Relations Board ("NLRB") has jurisdiction to strike down our Constitution or laws. Outside of the Tribe's own legal institutions, such authority resides only with Congress, or, in rare instances, with the federal judiciary.

We will not subject our tribal government to the burdens of a subpoena issued in a matter over which we believe the NLRB plainly lacks jurisdiction. Thus, the Tribe will not be producing Tribal Council Speaker Koon pursuant to the subpoena.

AVC Exhibit I; AVC ¶ 32.

25. The NLRB did not respond to the May 21, 2008 letter from the Tribal Council to NLRB Regional Director Stephen M. Glasser. However, by letter dated November 5, 2008, NLRB Agent, Craig Sizer, wrote to the Band's counsel, enclosing subpoenas issued to Tribal Council Speaker Don Koon and to the "Little River Band of Ottawa Indians Tribal Government, Attn: Custodian of the Records" in reference to the Teamsters' Charge. AVC ¶¶ 33-34; AVC Exhibit J (subpoenas).

26. In the November 5, 2008 letter, Mr. Sizer stated:

I will mainly be seeking information from Mr. Koons [sic] relevant to the Board's jurisdiction in this matter and whether the Tribe and the Casino constitute a single employer. Regarding the jurisdiction issue, I will be soliciting information to determine whether the Casino is an exclusively commercial venture generating

income for the Tribe from the general public, whether the casino competes in the same commercial arena as other non-tribal casinos, whether it employs a significant number of non-tribal members, and whether it actively markets its operations to the general public. Regarding the single employer issue, I will be soliciting information to determine whether the Tribe and the Casino constitute a single integrated enterprise by virtue of such factors as common ownership, common management, centralized control of labor relations, and interrelation of operations.

AVC Exhibit J (letter).

27. The subpoenas were served upon the Band by certified mail and demanded appearances of Tribal Council Speaker Koon and the Tribal Council's Custodian of the Records to provide affidavit testimony and/or documents at the NLRB's Grand Rapids office. AVC ¶ 34; AVC Exhibit J (subpoenas).

28. By letter dated December 11, 2008, counsel for the Band wrote to NLRB Regional Director Stephen M. Glasser, stating:

We understand from correspondence and communications with Board Agent, Craig Sizer, that the NLRB has issued the subpoenas in an attempt to establish its jurisdiction to proceed with this Charge. In particular, we understand that the NLRB asserts that it has authority to proceed with this Charge against the Tribal Government if it can establish:

(1) that the Band's gaming operations, through the LRCR [Little River Casino Resort], meet the standards for an "employer" set forth in the NLRB's decision in *NLRB v. San Manuel Bingo & Casino*, 341 NLRB 1055 (2004) (as applied in the Decision and Direction of Election in *In re: Soaring Eagle Casino and Resort* (GR-7-RC-23147), and

(2) that the relationship between the Tribal Government and the Band's IGRA gaming operations can be viewed "as a single integrated enterprise" under standards applied by the NLRB to assert authority over two or more private businesses. *See NLRB v. Palmer Donavin Mfg. Co.*, 369 F.3d 954, 957 (6th Cir. 2004).

With respect to the first issue, it is our position that the standards applied by the NLRB in *San Manuel* and *Soaring Eagle* are contrary to principles of federal Indian law. But even if the NLRB could successfully apply those standards to establish that the LRCR should be treated as an "employer" under the NLRA, the Band's promulgation of a Constitution and laws, in accordance with the IRA and

federal Indian law principles, could never be deemed the conduct of an “employer” under the NLRA, rendering it subject to an unfair labor practice charge.

Thus, with respect to the second issue, it is the Tribal Government’s position that the NLRB is seeking to exercise authority that is patently beyond the scope of its jurisdiction, that its right to do so is a pure question of law, that the NLRB has no expertise with respect this question because it turns on principles of federal Indian law, and that the Tribal Government would be irreparably harmed if it were forced to endure and exhaust NLRB unfair labor practice proceedings. . . .

The letter continued:

The NLRB has a ready avenue to seek to establish that the Band’s laws are preempted by the NLRA: an original action in the federal court. *See, e.g., NLRB v. Pueblo of San Juan*, 276 F.3d 1186 (10th Cir. 2002); *NLRB v. State of Illinois Dept. of Emp. Security*, 988 F.2d 735 (7th Cir. 1993) But the same cannot be accomplished under a notion that the Tribal Government’s promulgation of a Constitution or laws can be deemed to be the conduct of an “employer” and thereby subject to an NLRB unfair labor practice proceeding. The NLRB can no more charge a tribal government with an unfair labor practice for promulgating a constitution or law than it could charge a state government with an unfair labor practice for the same.

Finally, the letter informed the NLRB that the Band was governing labor relations within its jurisdiction and attached copies of its Constitution the Band’s FEP Code, and stated:

The Little River Band of Ottawa Indians Tribal Government is concerned that the NLRB’s willingness to move forward with this Charge signals that it will continue to exert coercive measures against the Band in order to adjudicate what is, in reality, a preemption claim in the guise of an unfair labor practices proceeding. For the reasons already stated, it is the Tribal Government’s position that the NLRB is far outside the bounds of its authority in doing so. Thus, it will not be producing Speaker Koon or a Custodian of its Records to respond to the subpoenas. Further, to alleviate the continuing threat of the NLRB’s coercive assertion of authority in this matter, the Tribal Government asks that you inform it (through Speaker Koon) that the NLRB has withdrawn the subpoenas and the Charge.

AVC Exhibit K; AVC ¶ 35.

29. By letter dated January 15, 2009, the United States Department of the Interior, through its Office of the Solicitor (“DOI”), wrote to Ronald Meisburg, General Counsel for the NLRB, and John E. Higgins, Jr., Deputy General Counsel for the Board, stating that “DOI takes the position that, as a matter of Federal Indian law, the NLRB cannot charge the Band with an unfair labor practice for its exercise of its sovereign authority in adopting a constitution and enacting tribal labor laws.” DOI further urged the Board “to put an end to this enforcement action as soon as possible.” AVC Exhibit L.

30. By letter dated January 30, 2009, the NLRB, through its Associate General Counsel, responded to the DOI’s letter of January 15, 2009, stating that it disagreed with the views of the DOI. AVC Exhibit M.

31. In said January 30, 2009 letter, the NLRB claimed authority to proceed with the Teamsters’ Charge against the Band if (a) the Band and its IGRA gaming operations at the LRCR could be considered a “single employer” or a “joint employer” of employees who work at the LRCR, and (b) “Board jurisdiction is appropriate under the principles of *San Manuel Indian Bingo & Casino*, 341 N.L.R.B. 1055 (2004),” and further stated that:

If there is reasonable cause to believe that the Band’s promulgation and maintenance of the Ordinance tends to interfere with Casino employee’s exercise of Section 7 rights under the NLRA, 29 U.S.C. § 157, then the Regional Director, in the name of the General Counsel, would likely issue an unfair labor practice complaint against the Band.

AVC Exhibit M.

32. The NLRB has provided no assurances that it will not proceed against the Band on the Teamsters’ Charge. AVC ¶ 38.

33. The Band's letter to the NLRB, through counsel, dated December 11, 2008 conceded that Article XVI prohibits employee strikes against the Band's IGRA gaming operations at the LRCR. AVC Exhibit K n.1.
34. Article XVI prohibits concerted action by public employees against the governmental operations of the Band in the form of strikes, work stoppages or slow downs. AVC Exhibit B, §§ 16.03 (definitions of "strikes" and "Governmental Operations of the Band"), 16.06 (strikes prohibited). It also prohibits lock-outs by public employers. AVC Exhibit B §§ 16.03 (definition of "lock-outs"), 16.07 (lock-outs prohibited).
35. Article XVI provides that collective bargaining impasses between public employees and public employers must be resolved through alternative dispute resolution processes. AVC Exhibit B § 16.17.
36. The Band's Constitution empowers the Tribal Council "[t]o create by ordinance regulatory commissions or subordinate organizations and to delegate to such organizations the power to manage the affairs and enterprises of the Little River Band, provided that no such commission or subordinate organization shall exercise powers of the Tribal Council unless they are expressly delegated by the Tribal Council." AVC Exhibit A, §7(f).
37. The Band conducts IGRA gaming operations on its reservation through a subordinate organization of the Band, known as the Little River Casino Resort ("LRCR"), which is established by the Tribal Council pursuant to the Band's Constitution. AVC ¶ 26; Ogema Affidavit ¶¶ 14-15; Exhibit D.

38. LRCR is wholly owned by the Band and organized pursuant to the Tribe's Resort Board of Directors Act of 2005 ("RBDA"). AVC ¶ 26; AVC Exhibit D; Ogema Affidavit ¶¶ 15, 17.
39. The Tribal Council retains sole authority to waive or limit the sovereign immunity of the LRCR, to approve legal counsel for the LRCR, and to approve contracts for part-time or full-time personnel; and all obligations, liabilities and property related to or concerning the LRCR are those of the Tribe. AVC ¶ 26; Ogema Affidavit ¶ 16.
40. The LRCR is managed by a Board of Directors, who, by the terms of the Band's Constitution and the RBDA, are nominated by the Ogema, subject to confirmation by the Tribal Council. AVC Exhibit A, Article IV, § 7(h), Article V, § 5(a)(4); AVC Exhibit D, § 4.02(a)-(b). Board members must be enrolled members of the Tribe. AVC Exhibit D, § 4.04(a). The Ogema has the power to remove a Board member for cause, unless overruled by a two-thirds majority vote of the Tribal Council. AVC Exhibit D, § 4.02(c).
41. Pursuant to the RBDA, the annual budget of the LRCR must be presented by the Ogema to the Tribal Council for approval or amendment in accordance with the Constitution of the Band. AVC Exhibit D, §§ 5.02(a) and 5.03(a).
42. Pursuant to the RBDA, the LRCR's annual operating plan "shall be subject to approval by the Tribal Council by law or resolution." *Id.* § 5.03(b).
43. Pursuant to the RBDA, the LRCR Board must account for, and transfer to the accounts of the Tribal Council, all revenues generated by LRCR in accordance with LRCR Board procedures, which "shall be subject to modification by the Tribal Council by law or resolution." *Id.* § 5.01(c).

44. Pursuant to the RBDA, the LRCR Board has authority to approve and amend the Personnel Manual for the LRCR, “subject to the overriding authority of the Tribal Council to alter such Personnel Manual by law or resolution,” and the LRCR Board is required to “provide at least a 30-day advance notice to the Ogema and Tribal Council of all proposed amendments to the Personnel Manual. *Id.* § 5.03(d).
45. The LRCR Board may hire a General Manager for the LRCR “in accordance with the laws and resolutions of the Tribe” and enter into an employment contract with the General Manager, provided “that such contract shall be subject to ratification by the Tribal Council.” AVC Exhibit D § 5.03(c).
46. The Band’s IGRA gaming operations at LRCR employ tribal members, members of their immediate family, and members of other Indian tribes as well as several hundred non-Indians. Ogema Affidavit ¶18.
47. Many non-Indians (in the thousands per year) come from outside of the Band’s reservation, from Michigan and other states, to engage in gaming at the LRCR, and the opportunity for such gaming is advertised to non-Indians outside of the reservation. Ogema Affidavit ¶ 19.

Dated: June 22, 2009

s/Kaighn Smith Jr.
Kaighn Smith Jr.
Counsel for the Little River Band of
Ottawa Indians
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Email: ksmith@dwmlaw.com

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
Southern Division**

THE LITTLE RIVER BAND OF
OTTAWA INDIANS,

Plaintiff

V.

THE NATIONAL LABOR
RELATIONS BOARD,

Defendant

Docket Number: 1:09-cv-141

AFFIDAVIT OF KIMBERLY ALEXANDER

Now comes Kimberly Alexander, who deposes and states, under oath, as follows:

1. My name is Kimberly Alexander. I am a member of the Little River Band of Ottawa Indians (the “Tribe”).
2. I am an elected member of the Tribal Council of the Tribe and serve as the Tribal Council Recorder. I have held that position since May 16, 2007.
3. In my capacity as Tribal Council Recorder, I am responsible for maintaining the records and proceedings of the Tribal Council.
4. I am familiar with the Amended Verified Complaint filed in the above-captioned case, a copy of which is attached hereto, together with Exhibits A through M.
5. I have personal knowledge of the facts set forth in the Amended Verified Complaint.

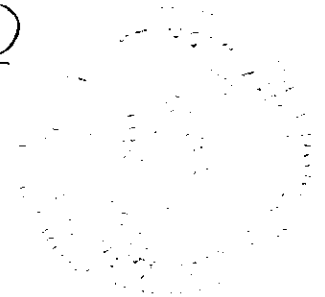
6. The documents attached to the Amended Verified Complaint as Exhibits A through M are true copies of documents maintained in the regular and ordinary course of the governmental operations of the Band.

Dated: 4/22/09 Kimberly Alexander
Kimberly Alexander

Personally appeared the above-named, Kimberly Alexander, who stated, under oath, that the foregoing facts are true, upon her personal knowledge, before me,

Dated: 4/22/09 Kathleen J. Block
Notary Public

Kathleen J. Block
Notary Public - State of Michigan
County of Manistee
My commission expires 10/28/2014
Acting in the County of Manistee



AMENDED VERIFIED COMPLAINT

(Document Already on File as Docket # 8 with Attachment #1)

EXHIBIT A to AMENDED VERIFIED COMPLAINT

(Document Already on File as Attachment #1 to Docket #1)

EXHIBIT B to AMENDED VERIFIED COMPLAINT

(Document Already on File as Attachment #3 to Docket #8)

EXHIBIT C to AMENDED VERIFIED COMPLAINT

(Document Already on File as Attachment #3 to Docket #1)

EXHIBIT D to AMENDED VERIFIED COMPLAINT

(Document Already on File as Attachment #5 to Docket #8)

EXHIBIT E to AMENDED VERIFIED COMPLAINT

(Document Already on File as Attachment #5 to Docket #1)

EXHIBIT F to AMENDED VERIFIED COMPLAINT

(Document Already on File as Docket #24)

EXHIBIT G to AMENDED VERIFIED COMPLAINT

(Document Already on File as Attachment #7 to Docket #1)

EXHIBIT H to AMENDED VERIFIED COMPLAINT

(Document Already on File as Docket #25)

EXHIBIT I to AMENDED VERIFIED COMPLAINT
(Document Already on File as Attachment #9 to Docket #1)

EXHIBIT J to AMENDED VERIFIED COMPLAINT
(Document Already on File as Attachment #10 to Docket #1)

EXHIBIT K to AMENDED VERIFIED COMPLAINT
(Document Already on File as Attachment #11 to Docket #1)

EXHIBIT L to AMENDED VERIFIED COMPLAINT

(Document Already on File as Attachment #12 to Docket #1)

EXHIBIT M to AMENDED VERIFIED COMPLAINT
(Document Already on File as Attachment #13 to Docket #1)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
Southern Division**

THE LITTLE RIVER BAND OF
OTTAWA INDIANS,

Plaintiff

V.

Docket Number: 1:09-cv-141

THE NATIONAL LABOR
RELATIONS BOARD,

Defendant

AFFIDAVIT OF OGEMA LARRY ROMANELLI

Now comes Larry Romanelli, who deposes and states, under oath, as follows:

1. My name is Larry Romanelli. I am a member of *Gaá Čhing Ziibi Daáwaa Aníshinaábek*, known as the Little River Band of Ottawa Indians (the “Tribe” or the “Band”).
2. I am the elected Ogema of the Tribe, and I have held the office of the Ogema since June 20, 2007.
3. As the elected Ogema, under Article V of the Tribe’s Constitution, I am vested with the executive powers of the Tribe, to (amongst other things) enforce and execute the laws, ordinances and resolutions of the Tribal Council, consistent with the Constitution, and to manage the economic affairs, enterprises, property and other interests of the Tribe, consistent with the ordinances and resolutions enacted by the Tribal Council.
4. I have personal knowledge of the facts stated herein.
5. The Tribe has nearly 4,000 enrolled members, who live within or near the aboriginal lands of the Tribe in and near Manistee and Mason Counties in the State of Michigan.

6. Pursuant to Congress' 1994 Act restoring the Band to federal recognition (the "Restoration Act"), the Tribe is successfully restoring its land base, its government, its community, and its provision of governmental services to its members.
7. Since the Restoration Act, the United States, through the Secretary of Interior, has taken over 1,200 acres of the Tribe's ancestral lands in and near Manistee and Mason Counties into trust on behalf of the Tribe (hereinafter said lands are referred to as "trust lands" or "reservation").
8. In accordance with the Restoration Act, the Band has promulgated a Constitution and later amendments thereto, which have been approved by the Secretary of Interior.
9. Pursuant to the Constitution and laws enacted by the Tribal Council of the Band, the Tribe is exercising governmental authority over its trust lands.
10. The Tribe's governmental services and programs for its members and community are wide-ranging and now include health, nutrition, and education services; reservation economic development and the provision of tribal employment opportunities through the Tribe's subordinate economic organizations; low income and elderly housing and energy assistance programs; natural resources conservation and restoration; law enforcement and regulatory functions; the operations of the judicial, legislative and executive branches of tribal government; and the maintenance and improvement of infrastructures for these activities.
11. The Band's Housing Department, for example, has built, and is continuing to build, reservation homes for low income and elderly tribal members. The Band's Health Department provides direct health care services to many tribal member and their families. It is upgrading its clinic and building a pharmacy to better serve the tribal community.

The Band's Department of Natural Resources is engaged in restoring sturgeon fish populations within the reservation. The Tribe is maintaining and restoring its language through Anishinaabemowin language programs for tribal member youths and elders, and plans are under way for the construction of a new Community Center and Government Building complex on the reservation to unify, and enhance services to, the tribal community.

12. Lacking a tax base, Band's governmental programs and services are jointly funded by (a) the Band's generation of revenues pursuant to the Indian Gaming Regulatory Act ("IGRA") and (b) federal support, principally through contracts entered into by the Tribe with federal agencies through Congress' Indian Self-Determination and Education Assistance Act of 1975, Indian Health Care Improvement Act of 1976, and Native American Housing Assistance and Self-Determination Act of 1996. The Band's IGRA gaming revenues generally provide in the order of \$20 million per year in support of tribal government, which is over 50% of the Band's total budget. The remainder is covered primarily through a combination of the above-referenced federal programs.
13. Over 1,000 employees work for the Tribe's governmental departments, agencies, commissions, and subordinate organizations. This includes tribal members and members of their immediate family, members of other Indian tribes, and non-Indians. Under the Band's laws, qualified tribal members, their immediate family members, and members of other Indian tribes are given employment preferences within tribal government operations over non-Indians.

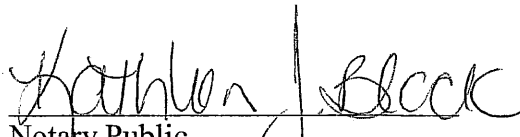
14. In my capacity as Ogema of the Tribe, I oversee the Tribe's subordinate economic organizations, including the Tribe's IGRA gaming operations, known as the Little River Casino Resort ("LRCR").
15. The LRCR is a subordinate economic organization of the Band, established by the Tribal Council pursuant to the Band's Constitution. In accordance with IGRA, the Band's gaming operations are located on its trust lands, and LRCR is wholly owned by the Tribe.
16. The Tribal Council retains sole authority to waive or limit the sovereign immunity of the LRCR, to approve legal counsel for the LRCR, and to approve contracts for part-time or full-time personnel; and all obligations, liabilities and property related to or concerning the LRCR are those of the Tribe.
17. The LRCR is governed in accordance with the Band's Constitution and the Band's Resort Board of Director's Act of 2005.
18. The Band's IGRA gaming operations at LRCR employ tribal members, members of their immediate family, and members of other Indian tribes as well as several hundred non-Indians.
19. Many non-Indians (in the thousands per year) come from outside of the Band's reservation, from Michigan and other states, to engage in gaming at the LRCR, and the opportunity for such gaming is advertised to non-Indians outside of the reservation.
20. Pursuant to its Constitution and Article XVI of its Fair Employment Practices Code, the Band is regulating labor relations and collective bargaining matters at LRCR, involving both tribal member employees, non-Indian employees, and a non-Indian labor organization, which is licensed to do business on the reservation in accordance with the Band's law.

Dated: 6-18-09


Larry Romanelli

Personally appeared the above-named, Larry Romanelli, who stated, under oath, that the foregoing facts are true, upon his personal knowledge, before me,

Dated: 6-18-09


Notary Public

Kathleen J. Block
Notary Public - State of Michigan
County of Manistee
My commission expires 10/28/2014
Acting in the County of Manistee