

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

NATIONAL LABOR RELATIONS
BOARD

Applicant

and

FORTUNE BAY RESORT CASINO

Respondent

Case No. 08-mc-65 JRT-JJG

**RESPONSE TO BOIS FORTE BAND OF CHIPPEWA
INDIANS' OBJECTION TO MAGISTRATE'S
REPORT AND RECOMMENDATION**

United States Magistrate Judge Jeanne J. Graham issued a Report and Recommendation on May 29, 2009, in which she recommended that the Court grant the National Labor Relations Board (the NLRB or the Board)'s Application for an Order Requiring Obedience to Subpoena Duces Tecum, which was filed on December 12, 2008. The Bois Forte Band of Chippewa Indians d/b/a Fortune Bay Resort Casino (Respondent) filed its Objection on June 12, 2009. This Memorandum is submitted in Response to that Objection.

Contrary to Respondent's contention (Objection p. 1), the starting point for consideration of this case is not EEOC v. Fond du Lac Heavy Equip. Co., 986 F.2d 246 (8th Cir. 1993), but EEOC v. Peat, Marwick, Mitchell and Co., 775 F.2d 928, 930 (8th Cir. 1985) (standard for review of federal administrative agency subpoenas). The issue in

this case is solely whether to enforce a subpoena issued by the NLRB in pursuit of its investigation of an unfair labor practice charge. Enforcement is required if NLRB jurisdiction over Respondent is even debatable. The NLRB rests on its Memorandum in Support of Application for an Order Requiring Obedience to Subpoena Duces Tecum (Dec. 9, 2008) and its Reply Memorandum in Support of Application for an Order Requiring Obedience to Subpoena Duces Tecum (Feb. 26, 2009).¹

The NLRB also opposes Respondent's request for oral argument. Pursuant to Local Rule 72.2(b) of this Court, de novo review of the Magistrate's Report and Recommendation does not require any further development of the record. There is simply no reason to prolong this proceeding any further. The NLRB's standard for investigation of cases such as this one is to investigate it and dispose of it (by dismissal or issuance of a Complaint and Notice of Hearing) within seven weeks of filing. See NLRB ULP Casehandling Manual Sec. 11740.1, Priority of Case Processing (Category III cases)²; General Counsel Memo 02-02, Impact Analysis Program Modifications³. This application for enforcement of a subpoena was pending before the Magistrate for nearly six months, and the anniversary of the discharge in question is fast approaching.

This is by no means an attempt to rush the Respondent to judgment. On the contrary, if the NLRB asserts jurisdiction over Respondent and finds a violation on the

¹ These are items 2 and 9 on the electronic docket sheet for this case. The courtesy copy by mail to the District Court's chambers includes a copy of these memoranda.

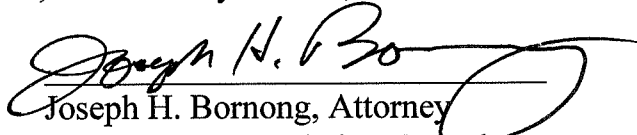
² Accessible at [http://www.nlr.gov/publications/manuals/ulp_casehandling_manual_\(l\).aspx](http://www.nlr.gov/publications/manuals/ulp_casehandling_manual_(l).aspx).

³ Accessible at http://www.nlr.gov/research/memos/general_counsel_memos.aspx.

merits, Respondent will have ample opportunity for review of that decision, based on a complete record, in the United States Court of Appeals. See 29 U.S.C. Sec. 160(e).

Accordingly, it is respectfully submitted that this Court should accept the Magistrate's Report and Recommendation and order enforcement of the subpoena forthwith.

Signed at Minneapolis, Minnesota, this 15th day of June, 2009.


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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2009, I caused the foregoing document:

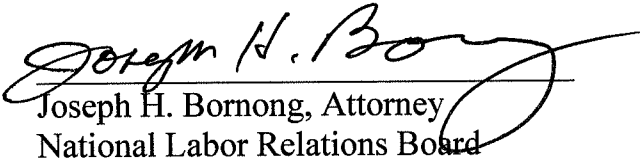
**Response To Bois Forte Band Of Chippewa Indians' Objection To Magistrate's
Report And Recommendation**

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

Henry M. Buffalo, Jr.
Mark A. Anderson
Joseph F. Halloran
Jessica Intermill
William Szotkowski

All with the firm of Jackson, Buffalo, Magnuson, Anderson & Hogen, P.C., 1360 Energy Park Drive, Suite 210, St. Paul, MN 55108.

I further certify that there are no non-ECF participants listed in the case that require service by U.S. mail.


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NATIONAL LABOR
RELATIONS BOARD

Applicant

v.

FORTUNE BAY RESORT
CASINO

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**LR 7.1(c) WORD COUNT
COMPLIANCE CERTIFICATE
REGARDING APPLICANT'S
RESPONSE TO BOIS FORTE
BAND OF CHIPPEWA INDIANS'
OBJECTION TO MAGISTRATE'S
REPORT AND
RECOMMENDATION**

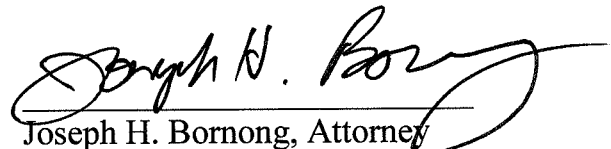
Case Number: 08-mc-00065 JRT-JJG

I, Joseph Bornong, certify that Applicant's Response to Bois Forte Band of Chippewa Indians' Objection to Magistrate's Report and Recommendation complies with Local Rule 7.1(c).

I further certify that, in preparation of this memorandum, I used Microsoft Office Word 2003, SP 2, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

I further certify that the above referenced memorandum contains 498 words.

Date: June 15, 2009



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ATTORNEY FOR APPLICANT