



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
1099 14th Street NW  
Washington, DC 20570

July 8, 2010

Re: Cherokee Indian Hospital  
Case No. 11-CA-22469

Diana K. Barton  
382 Spirit Mountain  
Sylva, NC 28779

Dear Ms. Barton:

Your appeal from the Regional Director's refusal to issue complaint in the above-captioned case has been carefully considered. The appeal is denied.

Contrary to your assertions on appeal, the evidence from the Regional Office's investigation disclosed that the Employer's mission, operation, patient composition, and employee composition are all factors that weigh in favor of the Board's declining to assert jurisdiction over the Employer. In this connection, the Board has a lower interest in asserting jurisdiction when the tribe is fulfilling a traditional tribal or governmental function unique to its status than when the tribe is acting in a typically commercial manner. *Yukon Kuskokwim Health Corp.*, 341 NLRB 1075, 1076 (2004). Here, the evidence established that the Employer is a component arm of the Eastern Band of Cherokee Indians (EBCI) that fulfills a traditionally tribal or government function that is unique to its status as a Native American tribe in that it is the primary health care provider operating an acute care hospital for Native Americans living in the Qualla Boundary, tribal land held in trust by the U.S. Government. Though the Employer treats all patients regardless of ethnicity, approximately 96% of the patients treated by the Employer in the last year were members or descendants of EBCI. Further, more than half of the Employer's employees are members or descendants of EBCI. Thus, this case is analogous to *Yukon Kuskokwim Health Corp.*, cited above, where the Board declined to assert jurisdiction for policy reasons. Accordingly, further proceedings were deemed unwarranted.

Sincerely,

Lafe E. Solomon  
Acting General Counsel

By Yvonne T. Dixon  
Yvonne T. Dixon, Director  
Office of Appeals

cc: Willie L. Clark, Jr., Regional Director  
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