

**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 UNDISPUTED FACTS
IN SUPPORT OF THE MOTION OF RESPONDENT
LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL GOVERNMENT
TO DISMISS OR FOR SUMMARY JUDGMENT**

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STATEMENT OF SERVICE

The Little River Band of Ottawa Indians Tribal Government, *Gaá Ching Ziibi Daáwaa Aníshinaábek* (the “Band” or the “Tribe”), hereby sets forth the undisputed facts supporting its motion to dismiss or for summary judgment.¹

THE TRIBE, ITS RESTORATION, AND ITS GOVERNMENT

1. The Little River Band of Ottawa Indians is a federally recognized Indian tribe. 25 U.S.C. § 1300k-2(a).
2. The Tribe has nearly 4,000 enrolled members, who live within or near the Tribe’s aboriginal lands in the State of Michigan. Ogema Romanelli Affidavit ¶ 5.
3. Pursuant to Congress’ 1994 Act restoring the Band to federal recognition, 25 U.S.C. §§ 1300k to 1300k-7 (the “Restoration Act”), the Band has enacted 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. Ogema Romanelli Affidavit ¶ 8; *see* LRBO Const. Certificate of Approval (by Order of the Secretary of Interior); 25 U.S.C. § 1300k-6(a)(1).²
4. Article II, section 1 of the Tribe’s Constitution restricts Tribal membership to certain individuals who possess at least one-fourth (1/4) degree Indian blood, of which at least one-

¹ This statement of facts is based upon the affidavits of the Band’s Tribal Council Speaker, Stephen Parsons (“Speaker Parsons Affidavit”); the Band’s Tribal Ogema, Larry Romanelli (“Ogema Romanelli Affidavit”); the Band’s Neutral Election Official, David Peterson (“Peterson Affidavit”), and the Director of the Band’s Gaming Commission, Kelly Maser (“Maser Affidavit”), all of which are attached hereto, together with the exhibits referenced therein as Appendices I-IV, respectively.

² A copy of the Band’s Constitution is attached as Exhibit A to the Speaker Parsons Affidavit. It is accessible at <https://www.lrboi-nsn.gov/council/ordinances.html>. *See* Speaker Parsons Affidavit ¶ 7; Ogema Romanelli Affidavit ¶ 10. The Band’s Constitution will be referred to herein as “LROB Const.”

eighth (1/8) degree must be Grand River Ottawa or Michigan Ottawa. Ogema Romanelli Affidavit ¶ 5; LRBO Const. Art. II, § 1.

5. 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. LRBO Const. Articles IV-VI.
6. 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 th[e] Constitution, the sovereign powers of the Tribe, and federal law." LRBO Const. Article I, § 2.
7. 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." LRBO Const. Article IV, § 7(a)(1); Speaker Parsons Affidavit ¶ 6.
8. 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 Romanelli Affidavit ¶ 7.
9. The Band exercises governmental authority over the activities of tribal members and non-Indians on these trust lands. *See* Ogema Romanelli Affidavit ¶¶ 9, 32-52 (and Exhibits referenced therein); Speaker Parsons Affidavit ¶¶ 14-32 (and Exhibits referenced therein); Maser Affidavit ¶¶ 15-18 (and Exhibits referenced therein); Peterson Affidavit ¶¶ 10-14 (and Exhibits referenced therein).

10. The Band is successfully restoring its tribal community and lands, and the provision of governmental services to its tribal members pursuant to the Restoration Act. Ogema Romanelli Affidavit ¶¶ 6-17.

11. The Band's governmental services and programs for its members and community include: health services, including clinic and community health, and behavioral health and treatment programs provided through the Band's Health Clinic; educational services to support tribal members pursuing, or enrolled in, higher education programs through the Band's Department of Education; family services, including counseling and support for families and children, through the Band's Department of Family Services; housing services for tribal members and elders through the Band's Housing Department; the provision of police and other public safety services within the Tribe's territory through the Band's Department of Public Safety; conservation, restoration, and monitoring of natural resources within the Tribe's territories through the Band's Department of Natural Resources; reservation economic development and the provision of employment opportunities for the Band's members through the Band's Department of Commerce and its subordinate organizations, including its reservation gaming operations under the Indian Gaming Regulatory Act; the administration of justice through a prosecutor's office and Tribal Court system; the maintenance of the Band's legislative and executive branches of government; and infrastructure support for all of these activities. Ogema Romanelli Affidavit ¶ 11.

12. 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 members and their families. It is upgrading its clinic and building a pharmacy to better serve the tribal community. The

clinic's *Bedabin* services support tribal members in need of mental health counseling, including substance abuse counseling. Through its Department of Natural Resources, the Band is engaged in restoring sturgeon fish populations within the reservation. The Tribe is preserving its language through *Anishinaabemowin* language programs for tribal member youths and elders, and it recently completed construction of a new Community Center on the reservation to unify, and enhance services to, the tribal community. Ogema Romanelli Affidavit ¶ 12.

THE BAND'S GOVERNMENTAL REVENUES, PROGRAMS, AND EMPLOYMENT

13. Like many Indian tribes, the Band has no significant base within its jurisdiction upon which to levy taxes. Ogema Romanelli Affidavit ¶ 13.
14. The Band's governmental programs and services are jointly funded by (a) the Band's generation of revenues through its gaming operations 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 (known as "P.L. 638"), Indian Health Care Improvement Act of 1976 (known as "IHS"), and Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA"). 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 Romanelli Affidavit ¶ 14.
15. For example, under the Band's FY 2011 Government Services Budget, the Band combines federal funds with its IGRA gaming revenues to support the activities of its Department of Natural Resources, with about 60% of the budget funded from IGRA gaming revenues and

40% from P.L. 638 funds; its Department of Public Safety, with 64% of the budget funded from IGRA gaming revenues and 46% from P.L. 638 funds; its behavioral health (*Bedabin*) services at its Health Clinic, with about 80% of that budget funded from IGRA gaming revenues and 20% from IHS funds; maintenance and overhead for its Health Clinic building, with about 80% of those costs covered by IGRA gaming revenues and 20% from P.L. 638 funds; its Department of Family Services, with 77% of the budget funded from IGRA gaming revenues and 23% from P.L. 638 funds; its Housing Department, with 60% of the budget funded from IGRA gaming revenues and 40% from NAHASDA (apart from 2011 “stimulus” funds). In that same budget, the Band’s IGRA gaming revenues provide 100% of the funds to support the Band’s fitness center affiliated with its Health Department, the Tribal Prosecutor’s office, and the Tribal Court. All of these percentages of funding sources for the Band’s governmental services have remained the same, on average, from year to year since 2007. Ogema Romanelli Affidavit ¶¶ 2, 15.

16. The Band’s current funding agreement with the IHS is a good example of the method by which the Band supports its services to tribal members with both federal funds and IGRA gaming revenues. Under that agreement, which covers a host of health services, ranging from clinical services to behavioral, family, and home care services, the Band is required by to merge its own revenues sources with those provided by IHS in order to supplement funds provided by IHS. Ogema Romanelli Affidavit ¶ 16.

17. 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 enrolled members of the Tribe are given preferences over non-Indians for

employment positions within the Tribe’s governmental departments, agencies, commissions, and subordinate organizations. Ninety-nine tribal members currently work at the Band’s IGRA gaming operations; twelve tribal members work at the Band’s Health Clinic, with two providing *Bedabin* services; five tribal members work for the Band’s Tribal Court; four work for its Family Services Department; and four work for its Public Safety Department. Ogema Romanelli Affidavit ¶¶ 12, 17.

THE BAND’S LEGISLATIVE PROCESS AND GOVERNANCE OF LABOR AND EMPLOYMENT RELATIONS

Legislative Process

18. The Legislative powers of the Band are exercised through its elected Tribal Council, which establishes laws to “govern the conduct of members of the Little River Band and other persons within its jurisdiction,” and to “promote, protect and provide for the public health, peace, morals, education, and general welfare” of the Tribe and its members. Speaker Parsons Affidavit ¶¶ 6, 9; LRBO Const. Art. IV, § 7.
19. The process by which the Tribal Council enacts legislation is governed by the Band’s Constitution, the Tribal Council Meeting Procedures Ordinance, Chapter 100, Title 2 of the Tribal Code (“TCMPO”), and the Band’s Administrative Procedures Act – Ordinances, Chapter 100, Title 7 of the Tribal Code (“APA”).³ Speaker Parsons Affidavit ¶¶ 8-12; *see* LRBO Const. Art. IV § 6.
20. The process is designed to maximize input from the community and tribal members affected by the development of ordinances of the Tribe. It includes: the posting of all ordinances for public comment, review of public comments by the Tribal Council, open working sessions of

³ The TCMPO and APA are accessible at <https://www.lrboi-nsn.gov/council/ordinances.html>. *See* Speaker Parsons Affidavit ¶ 7; Ogema Romanelli Affidavit ¶ 10.

the Tribal Council as needed to address policy considerations, and formal adoption of any ordinance by Tribal Council Resolution in open session. APA § 1.01; TCMPO § 6.03; Speaker Parsons Affidavit ¶¶ 10-13.

***Fair Employment Practices Code,
Initial Enactment of Labor Relations Law, and Union Licensing***

21. In 2005, following the above-referenced legislative processes, the Tribal Council permanently enacted the Band’s Fair Employment Practices Code, Chapter 700, Title 3 of the Tribal Code to govern a variety of employment and labor matters within its jurisdiction, including rights and remedies for employment discrimination, minimum wages, and other matters. Speaker Parsons Affidavit ¶¶ 14, 27; *see* Fair Employment Practice Code, Chapter 700, Title 3 of the Tribal Code, Art. I.⁴
22. In 2007, following the above-referenced legislative processes, the Tribal Council permanently enacted Article XVI of the FEP Code (“Article XVI”) to govern labor organizations and collective bargaining within public employers. The purpose of said Article is to protect the health and welfare of the Tribe by regulating the terms and conditions under which labor organizations (or “unions”) might operate within the Band’s governmental operations (or “public sector”), including its gaming operations conducted pursuant to the Indian Gaming Regulatory Act (“IGRA”). Speaker Parsons Affidavit ¶¶ 15, 27; *see* FEP Code § 16.01.
23. In furtherance of that purpose, the Tribal Council determined that it was in the best interest of the Band to allow collective bargaining by employees within its public sector, subject to

⁴ A copy of the Band’s Fair Employment Practices Code is attached to the Speaker Parsons Affidavit as Exhibit D. It is accessible at <https://www.lrbai-nbn.gov/council/ordinances.html>. *See* Speaker Parsons Affidavit ¶ 7; Ogema Romanelli Affidavit ¶ 10. The Band’s Fair Employment Practices Code will be referred to herein as the “FEP Code.”

regulations that would protect the integrity of its governmental operations, the Band's governmental revenues, and the economic welfare of its members. Speaker Parsons Affidavit ¶ 15.

24. To this end, the Tribal Council considered examples of public sector labor laws of the state and federal governments and enacted provisions to, amongst other things, prohibit strikes against its governmental operations; require labor organizations operating within its jurisdiction to register with the Band's office of General Counsel; ensure that if a labor organization was elected to represent a bargaining unit of employees within the Band's governmental operations, no employee would be required to join the union or to pay union dues; and establish jurisdiction within the Band's Tribal Court to enforce certain provisions of Article XVI. Speaker Parsons Affidavit ¶ 15; *see* FEP Code §§ 16.05, 16.06, 16.24.

25. 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," and "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 . . . 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.

FEP Code § 16.03.

26. In early 2008, following the above-referenced legislative processes, the Tribal Council adopted permanent amendments to Article XVI to, amongst other things, require labor

organizations doing business within the jurisdiction of the Band to apply for and obtain a license; prohibit lock-outs by the Band's public employers; and expand the enforcement powers of the Band's Tribal Court with respect to said licensing requirement and prohibition against lock-outs and strikes. Speaker Parsons Affidavit ¶ 16; FEP Code §§ 16.07, 16.08, 16.24.

27. In enacting these amendments, the Tribal Council determined that it was in the best interest of the Band, and would promote fairer labor relations, if public employers were prohibited from engaging in lock-outs in the same manner that public employees are prohibited from engaging in strikes under the labor organization laws of most states. Speaker Parsons Affidavit ¶ 16.

28. In enacting these amendments, the Tribal Council also decided to delegate authority to the Band's Gaming Commission (the "Gaming Commission" or "Commission") to license labor organizations operating within any of the governmental operations of the Band, given the Commission's licensing experience and capability. Speaker Parsons Affidavit ¶ 16; *see* Maser Affidavit ¶ 9; FEP Code § 16.08(b).

29. The Gaming Commission is a regulatory body, established under authority of the Band's Constitution, and governed by the Band's Gaming Commission Ordinance, Chapter 400, Title 4 of the Tribal Code of the Band, and the Commissions Ordinance, Chapter 150, Title 01 of said Code.⁵ Maser Affidavit ¶ 2.

30. It is made up of between three and five Commissioners, each of whom is appointed by the Band's Tribal Ogema with approval by the Band's Tribal Council for four year terms. Each

⁵ The Band's Gaming Commission Ordinance and Commissions Ordinance are accessible at <https://www.lrboi-nsn.gov/council/ordinances.html>. *See* Speaker Parsons Affidavit ¶ 7; Ogema Romanelli Affidavit ¶ 10.

Commissioner is an enrolled member of the Band and is subject to rigorous background checks and regulatory training in order to qualify to serve as Commissioner. Maser Affidavit ¶ 5.

31. The Commission is charged with licensing outside entities that conduct business within the territorial jurisdiction of the Band to protect the health, safety and welfare of the Band and its community; it has significant experience in carrying out investigations and related licensing activities for the issuance of licenses to entities or individuals who engage in economic activity within the territorial jurisdiction of the Band; and no other commission or body of the Band has such licensing experience or authority. Maser Affidavit ¶¶ 6, 8-9.
32. Pursuant to the FEP Code, the Commission has authority to enact regulations to investigate and license labor organizations engaged in organizing employees working for public employers within the jurisdiction of the Band. *See* FEP Code § 16.08(a); Maser Affidavit ¶ 10.
33. In 2008, the Commission drafted regulations to govern labor organizations operating within the Band's IGRA gaming operations, and, in so doing, studied examples of licensing procedures from other jurisdictions, including Michigan. Maser Affidavit ¶ 11.
34. On June 3, 2008, after several drafting sessions and meetings, the Commission completed its first draft regulations to govern labor organizations within the Band's gaming operations and posted them for public comment. Thereafter, the Commission enacted those regulations and later amended them to better delineate information about background checks and related authorizations from applicants. The Tribal Council approved the initial regulations and the amendments. *See* Gaming Commission Regulations Chapter 13 Labor Organization

Licensing Regulations; Maser Affidavit ¶¶ 13-14; Speaker Parsons Affidavit ¶ 16 & Exhibit B; Maser Affidavit, Exhibits A-D.⁶

35. Since 2008, the Commission has issued three annual licenses to the United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (“USW”). Maser Affidavit ¶¶ 15-17 & Exhibits E-G.
36. In April of 2008, the Tribal Council voted unanimously in favor of a resolution directing all elected officials to remain impartial with respect to union activity within the Band’s jurisdiction and prohibiting said officials from commenting, discussing or announcing their personal opinions on union activity. Speaker Parsons Affidavit ¶ 17.

Union Election Procedures and Neutral Election Official

37. Later in 2008, pursuant to Article V, Sec. 5 of the Band’s Constitution, the Band entered into an Agreement with the USW to establish procedures for employees within the security department of the Band’s IGRA gaming operations, the Little River Casino Resort (“LRCR”), to identify themselves as an appropriate bargaining unit for collective bargaining and to make a showing that 30% or more of the employees within the unit supported union representation so as to trigger a union election; to establish “civility” rules for union and management to follow during any election campaign; to set forth secret ballot voting procedures for employees to vote for union representation; and to establish processes for resolving disputes arising out of any campaign or vote. Speaker Parsons Affidavit ¶ 18; Ogema Romanelli Affidavit ¶ 33.

⁶ Copies of the Commission’s resolutions approving the labor organization licensing regulations and the regulations, both as first promulgated and later amended, are attached to the Maser Affidavit as Exhibits A-D. A copy of the Tribal Council resolution approving the regulations, as amended, and those regulations, are attached to the Speaker Parsons Affidavit as Exhibit B. The Commission’s regulations are accessible at <https://www.lrboi-nsn.gov/council/regulations.html>.

38. The Ogema’s office negotiated and entered into said Agreement (the “security officers bargaining unit Agreement”) with a goal to minimize disruptions to the Band by establishing fair and orderly procedures for a union campaign, and it became a template for a “Model Band-Union Election Procedures Agreement,” later adopted by the Tribal Council, which contains provisions that are substantially the same as the security officers’ bargaining unit Agreement. Ogema Romanelli Affidavit ¶¶ 34-35; Speaker Parsons Affidavit ¶ 22.

39. Pursuant to amendments to Article XVI, the Model Band-Union Election Procedures Agreement, may serve as the basis for other Agreements entered into by the Band and labor organizations to establish procedures for determining appropriate bargaining units for collective bargaining within the governmental operations of the Band and elections by such units of public employees for exclusive bargaining representatives. Ogema Romanelli Affidavit ¶ 35; Speaker Parsons Affidavit ¶ 22.

40. The Model Band-Union Election Procedures Agreement provides as follows:

This Agreement reflects the mutual interests of the parties to respect the sovereign right of the Tribe to govern its own affairs. This Agreement equally reflects the mutual interests of the parties to respect the rights of individuals employed in non-confidential and non-supervisory positions at *[name of agency, authority, commission, or subordinate economic organization]* to have the opportunity to determine, free of intimidation and coercion, if they would like to select the Union as their collective bargaining representative.

It then goes on to address, amongst other things, procedures for determining appropriate bargaining units and the resolution of disputes related thereto; preliminary conditions for scheduling an election, the process and timing for an election, “rules to ensure civility of campaigning and communications,” election procedures, form of ballots, and ballot counting procedures; and dispute resolution processes for alleged violations of civility and other rules. Under the rules addressing the civility of campaigning, the Mode Agreement provides:

The Parties agree that the employees covered by this Agreement shall be allowed to self-organize, to form, join, or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, except to the extent that such activities may be limited or affected by Tribal Law. The Parties further agree that such employees shall also have the right to refrain from any or all such activities. To preserve employee freedom of choice, the Parties agree that all communications will be informational, truthful, and non-threatening, and that there will be no discriminatory conduct - either favoring or punishing employees, for their stance on the organization effort.

Speaker Parsons Affidavit, Exhibit C.

41. In 2008, the Tribal Council appointed Attorney David M. Peterson to serve as the Band's Neutral Election Official to oversee the processes established by the security officers' bargaining unit Agreement (or any future similar Agreement based on the "Model Band-Union Election Procedures Agreement") for determining (amongst other things): an appropriate bargaining unit within a public employer for union representation, when employees within such a bargaining unit could trigger a secret ballot election for union representation, and the outcome of any such secret ballot election. Ogema Romanelli Affidavit ¶ 35; Speaker Parsons Affidavit ¶ 19; Peterson Affidavit ¶ 5.
42. Neutral Election Official Peterson previously served as Chief Judge for the 5th District Court in the State of Michigan and as Presiding Judge of the Criminal Division of the Berrien County Trial Court. Peterson Affidavit ¶ 3 & Exhibit A.
43. Neutral Election Official Peterson's duties are set forth in a memorandum approved by the Tribal Council, which provides that his responsibilities "should be undertaken in a manner which best ensures: (1) the proper enfranchisement of eligible participants; (2) a voting environment free of coercion or intimidation; and (3) the accurate reflection of employee choice concerning union representation"; and goes on to delineate procedures for "card check," including signature verification, the voting process, the counting of ballots and to

provide a form for the Official Tally of Votes. Peterson Affidavit ¶ 9 & Exhibit B; Speaker Parsons Affidavit ¶ 19.

Expanded Provisions of, and Amendments to, Article XVI

44. In October, 2008, the Tribal Council enacted additions to Article XVI. New section 16.02 sets forth the public policy of Article XVI and has remained unchanged to date. It provides as follows:

The Tribal Council declares that it is the policy of the Tribe to promote harmonious and cooperative relationships between tribal government and its employees by permitting employees within the Governmental Operations of the Band to organize and bargain collectively; to protect orderly Governmental Operations of the Band to provide for the health, safety, and welfare of the Band and its members; to prohibit and prevent all strikes by employees within the Governmental Operations of the Band; to protect the rights of employees within the jurisdiction of the Band to join or refuse to join, and to participate in or refuse to participate in, labor organizations; to protect the rights of tribal members to employment preferences; and to ensure the integrity of any labor organization doing business within the jurisdiction of the Band by requiring any such labor organization to obtain a license.

Speaker Parsons Affidavit ¶ 20; FEP Code §16.02.

45. In furtherance of this policy, in enacting the additions to Article XVI, the Tribal Council drew from the public sector labor laws of states to: (a) define the rights and duties of employers, employees, and labor organizations within the Band's public sector with respect to collective bargaining, including the duty to bargain in good faith, which excepts from such duty any requirement to bargain over any matter that would conflict with the laws of the Band (all as reflected in FEP Code §§16.12, 16.14, 16.21, and 16.24(d) today); (b) provide procedures for resolving alleged violations of those rights and duties, including unfair labor practice procedures (as reflected in FEP Code §§16.15 and 16.16 today); (c) design processes for management of public employers and exclusive bargaining representatives to resolve bargaining impasses through mediation, fact finding and arbitration and setting the standards

for consideration by arbitrators (all as reflected in FEP Code §§16.17 today); (d) establish that management and exclusive bargaining representatives may bargain over “fair share” contributions by public employees within a bargaining unit who do not join the union, and setting procedures for employees to vote to rescind any such “fair share” provision (all as reflected in FEP Code §16.13 today); (e) limit the duration of public sector collective bargaining agreements (as reflected in FEP Code §16.18 today); and (f) provide a process for a bargaining unit of public employees to vote to decertify an exclusive bargaining representative with oversight by the Band’s Neutral Election Official (as reflected in FEP Code §16.19 today). Speaker Parsons Affidavit ¶ 21.

46. Also in furtherance of the public policy set forth in FEP Code §16.02, in enacting additions to Article XVI in October, 2008, the Tribal Council provided that the terms and conditions under which the Band’s public employers may test employees for alcohol or drug use shall not be subject to collective bargaining with any labor organization (as reflected in FEP Code §16.20 today). It also waived the sovereign immunity the Band’s public employers from suit for the purpose of the enforcement of any collective bargaining agreement in the Tribal Court and for limited review of certain arbitrator decisions related to unfair labor practices (as reflected in FEP Code §16.26 today) and provided for the use of the “Model Band-Union Election Procedures Agreement” as referenced above. Speaker Parsons Affidavit ¶ 22.

47. In March, 2009, the Tribal Council enacted additional amendments to the FEP Code in furtherance of the public policy set forth in section 16.02 to, amongst other things: (a) establish a Charge of Discrimination form for public employees to use to assert rights and remedies under the Band’s law for alleged employment discrimination on the basis of union affiliation (as reflected in FEP Code §§6.02 and 16.16(b) of the FEP Code today); (b) clarify

limits on the duty of public employers to bargain in good faith with regard to management prerogatives, consistent with other public sector labor laws (as reflected in FEP Code §16.12(a)(1) today); (c) clarify procedures for resolving different categories of unfair labor practice charges to ensure that those involving management or elected bargaining representatives, if not settled, are resolved by arbitration with limited judicial review, that those involving alleged discrimination against an individual employee by employer or union go through discrimination procedures provided in Article VI of the FEP Code, and that claims of breach of duty of fair representation by an employee against an exclusive bargaining representative proceed to the Band's Tribal Court (all as reflected in FEP Code §16.16 today); (d) clarify and further streamline bargaining impasse procedures (reflected, in part, in FEP Code §§16.17(c) and 16.17(d) today); and (e) provide for limited judicial review of an arbitrator's award resolving a bargaining impasse (as reflected in FEP Code §16.17(e) today). Speaker Parsons Affidavit ¶ 23.

48. In January, 2010, the Tribal Council again amended the FEP Code by enacting Title XVII to that Code in order to protect the integrity of the procedures, rights and remedies provided by the Code. As set forth in section 17.1 of that Title, the Tribal Council found:

In providing for procedures, rights, and remedies for employers, employees, and labor organizations under this Code, including those afforded through actions in the Little River Band of Ottawa Indians Tribal Court, the Tribal Council has carefully considered (and continues to consider) the values and interests of the Band in order to establish fair processes, rights, and remedies for the parties and interests at stake. This has included careful consideration of, amongst other things, (i) the time, costs, and inconvenience of parties and witnesses involved in proceedings to resolve controversies or to establish rights and remedies under this Code; (ii) the need to protect the governmental operations of the Band from undue burdens from litigation, while according fair treatment to employees within those operations; and (iii) methods to resolve disputes through early settlement, including mediation.

The integrity of this Code is threatened if parties bypass the procedures, rights, and remedies established herein and seek, instead, to invoke procedures or remedies outside

of this Code for controversies that this Code is designed to address and resolve in accordance with the unique public policies of the Band. Investigations or proceedings directed at employers, apart from those provided for by this Code, which seek to address controversies or rights covered by this Code, require the expenditure of time and resources to the detriment of those involved and, in many instances, to the governmental operations of the Band. Such investigations or proceedings also threaten duplicative witness testimony and production of documents already available, or undertaken, pursuant to the provisions of this Code.

Speaker Parsons Affidavit ¶ 24; FEP Code §17.1.

49. In order to ensure that the Tribal Council can protect the integrity of the FEP Code and ensure that the rights and remedies provided by said Code are followed before outside authorities interfere with labor and employment matters addressed by said Code, the Tribal Council enacted sections 17.4 and 17.5 of Article XVII to prohibit public employers from producing documents or giving testimony under subpoena from such outside authorities without the approval of the Tribal Council in circumstances where the employee initiating proceedings by external authorities has failed to exhaust his or her remedies provided by the FEP Code. Speaker Parsons Affidavit ¶ 25; FEP Code §§17.4-17.5.
50. In July, 2010, the Tribal Council adopted permanent amendments to Article XVI, in furtherance of the public policy set forth in section 16.02 to, amongst other things: (a) correct perceived unfairness in the allocation of costs between parties in paying for the arbitration of unfair labor practices by allowing the arbitrator to allocate costs consistent with the parties' relative successes on issues (as reflected in FEP Code §16.16(a)(2)(D) today); (b) clarify that no complaint for employment discrimination based on union affiliation may be brought in the Band's Tribal Court unless a charge of discrimination is filed within 180 days for the alleged discrimination (as reflected in FEP Code §16.16(b) today); and (c) correct perceived unfairness in the process for resolving collective bargaining impasses, which had allowed public employers to reject the award of an interest arbitrator with respect to economic terms

of a collective bargaining agreement (i.e. wages, salaries, bonuses, insurance premiums, and pension or retirement contributions) by requiring any public employer seeking to reject such an award to show cause to the Tribal Council for the rejection, providing opportunity to both the public employer and the exclusive bargaining representative to be heard on the matter, and providing for the Tribal Council to resolve the impasse either by accepting the arbitrator's award or the public employer's final offer on such economic terms (all as reflected in FEP Code §16.17(e) today). Speaker Parsons Affidavit ¶ 26.

51. All of the above-referenced enactments and amendments of provisions to the FEP Code proceeded in accordance with the legislative processes described in paragraphs 17 through 19 above. The Tribal Council conducted ten (10) work sessions between 2007 and 2010 to address public policy considerations relative to the above-referenced enactments and amendments of provisions to the FEP Code. Speaker Parsons Affidavit ¶¶ 27-28.

52. In the work sessions and open session meetings at which the Tribal Council addressed said enactments and amendments to the FEP Code, the Tribal Council deliberated over a number of public policy considerations. The following are examples.

- In deciding whether or not to prohibit strikes within the governmental operations of the Band, the Tribal Council considered whether bargaining impasses could be resolved through mandatory mediation, fact finding, and arbitration with less disruption to the ordinary operations of the Band's departments, agencies, commissions and subordinate organizations, and it concluded that such impasse resolution methods would better serve the Band's interests and the welfare of its community than allowing strikes.
- In designing said mandatory bargaining impasse procedures – mediation, fact finding, and interest arbitration, with limited review of continuing impasses over economic terms before the Tribal Council – the Tribal Council sought to provide an efficient, non-disruptive procedure for the parties to come to agreement, and left Tribal Council with the ultimate role to resolve any ongoing impasse with respect to the economic terms of a collective bargaining agreement because such terms affect the treasury of the Band, its governmental revenues, and therefore its ability to provide governmental services.

- In requiring parties to attempt to resolve alleged unfair labor practices before commencing arbitration and then limiting judicial review of arbitration decisions on unfair labor practice charges to review for legal error or inconsistencies with the laws of the Band, the Tribal Council determined that it was in the best interests of the Band and its governmental operations to promote early resolution of such disputes by mandating early, good faith settlement discussions and to streamline any post-arbitration judicial review.
- In excluding from the mandatory subjects of bargaining between management of a public employer and an exclusive bargaining representative any provisions that would conflict with the laws of the Band, the Tribal Council ensured that the public policies reflected in the body of the Band's laws would not be placed in conflict with the terms of a collective bargaining agreement entered into under Article XVI. This would cover such things as the requirements of the Band's Indian Preference in Employment Ordinance, Chapter 600, Title 2 of the Tribal Code.
- In deciding whether or not to allow management and exclusive bargaining representatives within the Band's governmental operations to bargain over fair share contributions from employees who decide not to join a union, the Tribal Council considered whether or not workplace harmony would be better promoted by allowing such bargaining to occur or whether the choice of individual employees should be given more value. The Tribal Council concluded, on balance, that allowing bargaining over fair share contributions would be in the best interests of the Band and its community by furthering workplace equity. The Tribal Council then limited the time frame for employees to petition for a vote to deauthorize a fair share provision in a collective bargaining agreement to ninety (90) days after the execution of the collective bargaining agreement in order to foster workplace stability.
- In considering whether to eliminate from the mandatory subjects of bargaining any drug or alcohol testing policy of a public employer that comports with the laws of the Band, the Tribal Council considered the devastating impact that drug and alcohol abuse has had upon its tribal members and Native American communities generally and decided that it was in the best interests of the Band and its community to eliminate such policies from the mandatory subjects of bargaining, provided that such policies are consistent with the Band's law, which includes civil rights under the Band's Constitution.

Speaker Parsons Affidavit ¶ 30.

53. The Tribal Council continues to assess the provisions of the FEP Code and Article XVI to consider improvements in light of the experience of ongoing collective bargaining within certain bargaining units at its IGRA gaming operations. In making such assessments, the Tribal Council regularly looks for lessons to be drawn from other public sector labor laws of state governments, including those of the State of Michigan. Speaker Parsons Affidavit ¶ 31.

**LABOR ORGANIZING AND COLLECTIVE BARGAINING AT LRCR
UNDER THE LAWS OF THE BAND**

54. Since the execution of the security officers bargaining unit Agreement, referred to in paragraphs 37 and 38 above, the Band has entered into three Band-Union Election Procedures Agreements to govern elections procedures for bargaining units at LRCR, all containing the requisite provisions of the Model Agreement, referred to in paragraph 39 above. Ogema Romanelli Affidavit ¶ 36.
55. Union elections, the initiation and resolution of election disputes, collective bargaining, the initiation and resolution of alleged unfair labor practices, and the initiation and resolution of bargaining impasse procedures have all proceeded apace for nearly three years pursuant to Article XVI of the FEP Code and the terms of the above-referenced Band-Union Election Procedures Agreements. Ogema Romanelli Affidavit ¶ 37.
56. Since his appointment in 2008, Neutral Election Official Peterson has overseen (and issued sworn declarations in reference to) the count of signatures of employees to verify the requisite support for union elections with respect to four separate bargaining units of employees at LRCR and subsequently overseen (and issued Official Tallies of Votes in reference to) four elections with respect to four separate bargaining units employees at LRCR. Peterson Affidavit ¶¶ 11-12 & Exhibit C. Over 320 employees casted votes in said elections. Peterson Affidavit ¶ 12 & Exhibit C.
57. Over the course of the last three years, at least four unfair labor practices have been asserted and resolved under Article XVI of the FEP Code or the provisions of an executed Band-Union Election Procedures Agreement, including one by written decision of an arbitrator. Ogema Romanelli Affidavit ¶ 38.

58. Collective bargaining agreement negotiations have proceeded for four separate bargaining units of employees at LRCR, made up of over 250 employees, and have involved, in the aggregate, over 40 full days of negotiation sessions to date. Ogema Romanelli Affidavit ¶¶ 39-40. Each of said four bargaining units of employees is made up of enrolled members of the Band as well as nonmembers. Ogema Romanelli Affidavit ¶ 40.
59. Enrolled members of the Band have served on the management's negotiating team with respect to collective bargaining for each of said four bargaining units; enrolled members of the Band continue to serve on management's negotiating team with respect to collective bargaining for two of the four said bargaining units of employees at LRCR; and enrolled members of the Band serve on management's team with respect to meetings under the collective bargaining agreement (referred to in paragraph 64 below), which has been executed to govern the security employees' bargaining unit at LRCR. Ogema Romanelli Affidavit ¶ 41. An enrolled member of the Band served on the union's negotiating team with respect to collective bargaining for the security employees' bargaining unit. Ogema Romanelli Affidavit ¶ 42.
60. A decertification petition and related union decertification vote resulted in the decertification of the exclusive bargaining representative by one bargaining unit of employees at LRCR in August, 2010. The petition and vote for said decertification proceeded in accordance with Article XVI of the FEP Code and was overseen by Neutral Election Official Peterson, who issued an Official Tally of Votes to certify the results. One hundred and thirty four (134) employees casted votes in that election. Ogema Romanelli Affidavit ¶ 43; Peterson Affidavit ¶ 13.

61. A separate decertification petition and related union decertification vote by a separate unit of employees at LRCR, held in February, 2011, did not result in the decertification of the exclusive bargaining representative for that separate unit. The petition and vote for this decertification also proceeded in accordance with Article XVI of the FEP Code and was overseen by Neutral Election Official Peterson, who issued an Official Tally of Votes to certify the results. Sixty-eight employees casted votes in that election. Ogema Romanelli Affidavit ¶ 44; Peterson Affidavit ¶ 13.

**THE FIRST COLLECTIVE BARGAINING AGREEMENT
UNDER ARTICLE XVI OF THE FEP CODE**

62. After over a year of negotiations between the management negotiating team and the union negotiating team regarding the terms for a collective bargaining agreement to govern the security employees' bargaining unit at LRCR, the parties reached an impasse over certain terms and invoked the three step impasse resolution process provided by Article XVI of the FEP Code: mediation, fact finding, and interest arbitration. Ogema Romanelli Affidavit ¶ 45.

63. Hearing was held on or about June 24, 2010, by a fact finder, chosen by the parties -- Attorney Anne T. Patton, Esq. -- and, in accordance with Article XVI of the FEP Code, she issued a thirty-two (32) page *Findings of Fact and Recommendations*, dated August 8, 2010. As a result of said *Findings of Fact and Recommendations*, the parties narrowed the issues left for negotiation and then proceeded to interest arbitration. Ogema Romanelli Affidavit ¶¶ 46-47.

64. Hearing was held on or about October 11, 2010, by the arbitrator chosen by the parties, Attorney Richard N. Block, Esq., and, in accordance with Article XVI of the FEP Code, he issued a thirty-nine page *Opinion and Award in the matter of Interest Arbitration under*

Article 16.17(d) of the Fair Employment Practice Code of the Little River Band of Ottawa Indians between Little River Resort and Casino and United Steelworkers, dated November 22, 2010 (“Arbitration Award”). Ogema Romanelli Affidavit ¶¶ 48-49 & Exhibit D.

65. A collective bargaining agreement covering employees within the security employees’ bargaining unit under the exclusive representation of the USW is now in effect. Ogema Romanelli Affidavit ¶ 50 & Exhibit E. It is over 40 pages in length and contains 39 articles addressing employment terms and conditions. Ogema Romanelli Affidavit ¶ 51.
66. Collective bargaining negotiations continue pursuant to Article XVI of the FEP Code with respect to the two other bargaining units of employees at LRRCR that previously voted for union representation pursuant to the Band-Union Election Procedures Agreements described above.

**THE BAND’S GENERATION OF GOVERNMENTAL REVENUE
UNDER THE INDIAN GAMING REGULATORY ACT: THE LITTLE RIVER CASINO RESORT**

67. The LRRCR is a tribally chartered instrumentality of the Band established by the Tribal Council pursuant to Article IV, section 7 of the Band’s Constitution and overseen by a Board of Directors (described below) established by the Tribal Council as a subordinate organization of the Band. Ogema Romanelli Affidavit ¶ 19 & Exhibit B.
68. As mandated by IGRA, the Band’s gaming operations are located on its trust lands. Further, as mandated by IGRA and the Band’s Gaming Ordinance (Chapter 400, Title 1 of the Tribal Code of the Band), (a) the Band has the sole proprietary interest in, and responsibility for, LRRCR, and (b) the net revenues generated from LRRCR are the governmental revenues of the Band, which may be used only for the Band’s governmental services, the general welfare of the Band and its members, tribal economic development, to support local governmental

organizations, or to donate to charitable organizations. Ogema Romanelli Affidavit ¶ 20. *See* 25 U.S.C. §§ 2703(4), 2710.

69. Pursuant to its authority to create regulatory commissions and subordinate organizations under Article V, Section 7(f) of the Band’s Constitution, the Tribal Council has delegated authority to a Board of Directors (the “Board” or “Board of Directors”) to oversee the operations of the LRCR pursuant to the Gaming Enterprise(s) Board of Directors Act of 2010, Chapter 800, Title 3 of the Tribal Code of the Band. Ogema Romanelli Affidavit ¶ 21 & Exhibit C; GEBDA §§ 1.02, 4.01.⁷

70. The Board is comprised of five Directors, all of whom must be enrolled members of the Band. Two are elected officials of the Band and three are “at large” (not elected officials). The first seat for an elected official may be held by the Ogema or by a member of the Tribal Council appointed by the Ogema with approval of the Tribal Council. The second seat for an elected official is held by a sitting member of the Tribal Council, appointed by the Ogema and approved by the Tribal Council. The three at large members are appointed by the Ogema and approved by the Tribal Council. Ogema Romanelli Affidavit ¶ 22 & Exhibit C; GEBDA § 4.02. The Board may vote to remove a Director for cause, and the Tribal Council may likewise remove a Director for cause in the event that the Board fails to bring a charge for removal. Ogema Romanelli Affidavit ¶ 23 & Exhibit C; GEBDA §§ 5.01-5.03.

71. The Board is charged with responsibility “[t]o ensure compliance with the laws and resolutions enacted by the Tribal Council”; to ensure that the Band’s IGRA gaming complies

⁷ A copy of the Band’s Gaming Enterprise(s) Board of Directors Act of 2010 is attached to the Affidavit of Ogema Romanelli as Exhibit C. It is accessible at <https://www.lrboinnsn.gov/council/ordinances.html>. *See* Speaker Parsons Affidavit ¶ 7; Ogema Romanelli Affidavit ¶ 10. The Band’s Gaming Enterprise(s) Board of Directors Act of 2010 will be referred to herein as the “GEBDA.”

with the provisions of the IGRA, the Band's gaming compact with the State of Michigan, entered into pursuant to the IGRA and the laws of the Band; and to ensure that all revenues from the Band's IGRA gaming are accounted for and transferred to the accounts of the Tribal Council as directed by the laws of the Band and procedures approved by the Tribal Council. Ogema Romanelli Affidavit ¶ 24 & Exhibit C; GEBDA § 9.01(a)-(c).

72. In accordance with the Band's Constitution and the GEBDA, the Board produces an annual budget for the LRCR, which must be presented to, and approved or amended by, the Tribal Council by September 1. The budget must be accompanied by an operating plan for LRCR and a human resources report addressing hiring and compensation plans. Ogema Romanelli Affidavit ¶ 28 & Exhibit C; GEBDA §§ 12.02(a), (c), (e). *See* LRBO Const. Articles IV, § 9(i)(2).

73. The Board accounts to the Band's Tribal Council for all revenues generated by LRCR and transfers those funds to the accounts of the Tribal Council, excluding authorized operating funds. Ogema Romanelli Affidavit ¶ 29 & Exhibit C; GEBDA § 9.01(c).

74. The Board has authority to approve and amend the Personnel Manual for the LRCR, subject to overriding authority of the Tribal Council. Ogema Romanelli Affidavit ¶ 30 & Exhibit C; GEBDA § 9.03(b).

75. The Band's Tribal Council has delegated to the Board authority to execute collective bargaining agreements for LRCR and to execute a waiver of sovereign immunity on behalf of the Tribe in such an agreement, but only to the extent that such a waiver is consistent with the waiver of sovereign immunity provided by Article XVI. Ogema Romanelli Affidavit ¶ 26 & Exhibit C; GEBDA §§ 9.03(d), 10.02(a), 10.03.

76. The Band's Tribal Council has delegated to the Board additional limited authority to waive the sovereign immunity of LRCR only in contracts for "essential daily operational needs," and any such waiver must be by Board resolution. Ogema Romanelli Affidavit ¶ 27 & Exhibit C; GEBDA § 10.02(b).

Dated: March 4, 2011

/s/ Kaighn Smith, Jr.

Kaighn Smith, Jr.
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APPENDIX I

AFFIDAVIT OF SPEAKER STEPHEN PARSONS

**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

AFFIDAVIT OF SPEAKER STEPHEN PARSONS

Now comes Stephen Parsons, who deposes and states, under oath, as follows:

1. My name is Stephen Parsons. I am an enrolled member of *Gaá Čhíng Ziibi Daáwaa Aníshinaábek*, the Little River Band of Ottawa Indians (the "Band" or the "Tribe").
2. I serve as a member of the Band's Tribal Council (the Legislative Branch) and currently as its Speaker. I previously served as Tribal Council member from June 10, 1996 to January 10, 1999, and have now served as Tribal Council member from June 6, 2001 to the present. I served as Speaker for the Tribal Council from June 6, 2001 to May 16, 2007, and have now served as Speaker from June 10, 2009 to the present.
3. Pursuant to Article IV of the Band's Constitution, the legislative powers of the Band are vested in its Tribal Council (or "Council"), which is made up of nine (9) enrolled members of the Tribe, all of whom are elected to serve by enrolled members of the Tribe.
4. Pursuant to Article IV, section 5 of the Band's Constitution, my duties as Speaker of the Tribal Council, include presiding over all meetings of the Tribal Council, calling special meetings of the Council when appropriate, receiving reports from committees or commissions of the Band and delivering them to the Council, and performing the duties of the Tribal Ogema (the Executive Branch) in the absence of or due to the inability of the Ogema to perform those duties.
5. The exhibits attached hereto set forth the regular activities of the office of the Tribal Council, and they are generated as part of, and kept in the ordinary course of, the Tribal Council's official business.

The Band's Legislative Process

6. Article IV, section 7 of the Band's Constitution authorizes the Council to "exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions" to "govern the conduct of members of the Little River Band and other persons within its jurisdiction," and to "promote, protect and provide for the public health, peace, morals, education, and general welfare" of the Tribe and its members.
7. The Constitution and laws of the Band are accessible to the public and maintained fully up-to-date at the official website of the Band, <https://www.lrboidnsn.gov/council/ordinances.html>, pursuant to the requirements of section 6.01 of the Band's Administrative Procedures Act – Ordinance, Chapter 100, Title 7 of the Tribal Code ("APA"). A true copy of the Band's Constitution, as amended and approved by the United States Secretary of the Interior, is attached hereto as Exhibit A.
8. The process by which the Tribal Council enacts legislation governing its members and territory is governed by the Band's Constitution; the Tribal Council Meeting Procedures Ordinance, Chapter 100, Title 2 of the Tribal Code ("TCMP"); and by the APA.
9. Pursuant to Article VII of the TCMP, the Tribal Council acts by ordinance "[w]hen adopting or establishing rules governing the conduct of members of the Tribe or other persons within the territorial jurisdiction of the Tribe; . . . [w]hen adopting procedures prescribing standards of conduct or performance applicable to the Ogema, or any subdivision of the Tribe; and . . . [w]hen creating regulatory commissions or subordinate organizations."
10. The purpose of the Band's APA is to "manage the process of the development of ordinances of the Tribe; and to allow for the greatest amount of input from members and community affected by the development of ordinances of the Tribe." (Section 1.01 APA).
11. Article IV of the APA sets forth the procedures for the Band's enactment and amendment of non-emergency ordinances as follows: Prior to adoption or amendment of ordinances, the Tribal Council must post the draft ordinance to the public and request comments for no less than thirty (30) days. All comments are then included as annotations to the draft ordinance and made available to any interested parties. The Tribal Council must review the annotated draft ordinance in a final work session, at which the Council approves final revisions, additions, or deletions to the ordinance. Adoption of the ordinance must then be made by formal resolution of the Tribal Council. Amendments to the Band's ordinances follow the same process.
12. Article V of the APA provides for the enactment of ordinances on an emergency basis "when it is necessary to protect the health, safety, or welfare of the Tribe." Such ordinances are limited to an initial six month duration, during which time the ordinance must be posted for public comments and further reviewed by the Council, in the same

manner as non-emergency ordinances, to determine the effect of the action and whether to adopt the ordinance on a permanent basis. Emergency amendments to ordinances must follow this same procedure. The adoption of any such emergency ordinances or amendments, and their permanent adoption thereafter, must be made by formal resolution of the Tribal Council.

13. Tribal Council holds work sessions as part of its legislative process. Pursuant to the TCMP, such work sessions are scheduled “on an as-needed basis to permit detailed discussion of ordinances, policies, or other matters under consideration and, if appropriate, to obtain public comment/input concerning such matters.” (Section 5.03 TCMP).

The Band’s Legislation Addressing Labor Organizations and Collective Bargaining

14. In 2005, the Tribal Council permanently enacted the Band’s Fair Employment Practices Code, Chapter 700, Title 3 of the Tribal Code (“FEP Code”) to govern a variety of employment and labor matters within its jurisdiction, including rights and remedies for employment discrimination, minimum wages, and other matters.
15. In 2007, the Tribal Council permanently enacted Article XVI of the FEP Code (“Article XVI”) to govern labor organizations and collective bargaining within its jurisdiction. The purpose of said Article is to protect the health and welfare of the Tribe by regulating the terms and conditions under which labor organizations (or “unions”) might operate within the governmental operations of the Band (or “public sector”), including its gaming operations conducted pursuant to the Indian Gaming Regulatory Act (“IGRA”). In furtherance of that purpose, the Tribal Council determined that it was in the best interest of the Band to allow collective bargaining by employees within its public sector, subject to regulations that would protect the integrity of said operations, the Band’s governmental revenues, and the economic welfare of its members. To this end, the Tribal Council considered examples of public sector labor laws of the state and federal governments and enacted provisions to, amongst other things:
 - (a) prohibit strikes against its governmental operations (as reflected in section 16.06 of Article XVI, as amended, today);
 - (b) require labor organizations operating within its jurisdiction to register with the Band’s office of General Counsel;
 - (c) ensure that if a labor organization was elected to represent a bargaining unit of employees within the Band’s governmental operations, no employee would be required to join the union or to pay union dues (as reflected in section 16.05 of Article XVI, as amended, today); and
 - (d) establish jurisdiction within the Band’s Tribal Court to enforce certain provisions of Article XVI (as reflected, in section 16.24, as amended, today).
16. In early 2008, the Tribal Council adopted permanent amendments to Article XVI to, amongst other things:

- (a) require labor organizations doing business within the jurisdiction of the Band to apply for and obtain a license (as reflected in section 16.08 of Article XVI, as amended, today);
- (b) prohibit lock-outs by the Band's public employers (as reflected in section 16.07 of Article XVI, as amended, today); and
- (c) expand the enforcement powers of the Band's Tribal Court with respect to said licensing requirement and prohibition against lock-outs and strikes (as reflected in section 16.24, as amended, today).

In enacting these amendments, the Tribal Council determined that it was in the best interest of the Band, and would promote fairer labor relations if public employers were prohibited from engaging in lock-outs in the same manner that public employees are prohibited from engaging in strikes under the labor organization laws of most states. Further, in making these amendments, the Tribal Council decided to delegate authority to the Band's Gaming Commission to license labor organizations operating within any of the governmental operations of the Band because said Commission is the only governmental body of the Band with licensing experience and capability. The Tribal Council subsequently ratified regulations promulgated by the Band's Gaming Commission that set forth the procedures and requirements for the licensing of labor organizations operating within the Band's IGRA gaming operations. A copy of the Tribal Council Resolution approving the Commission's current labor organization licensing regulations is attached hereto as Exhibit B.

17. In April of 2008, the Tribal Council voted unanimously in favor of a resolution directing all elected officials to remain impartial with respect to union activity within the Band's jurisdiction and prohibiting said officials from commenting, discussing or announcing their personal opinions on union activity.
18. Later in 2008, a union election campaign, involving security officers at the Band's IGRA gaming operations, proceeded in accordance with an Agreement entered into by the Band and the United Steel Workers United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the "USW").
19. Also in 2008, the Tribal Council appointed Attorney David M. Peterson to serve as the Band's Neutral Election Official to oversee the processes established by said Agreement (or any future similar Agreement) for determining (amongst other things): an appropriate bargaining unit within a public employer for union representation, when employees within such a bargaining unit could trigger a secret ballot election for union representation, and the outcome of any such secret ballot election.
20. In October, 2008, the Tribal Council enacted additions to Article XVI on an emergency basis, which were later adopted on a permanent basis. New section 16.02 set forth the public policy underlying Article XVI and has remained unchanged to date. As section 16.02 states, the public policy underlying Article XVI is:

to promote harmonious and cooperative relationships between tribal government and its employees by permitting employees within the Governmental Operations of the Band to organize and bargain collectively; to protect orderly Governmental Operations of the Band to provide for the health, safety, and welfare of the Band and its members; to prohibit and prevent all strikes by employees within the Governmental Operations of the Band; to protect the rights of employees within the jurisdiction of the Band to join or refuse to join, and to participate in or refuse to participate in, labor organizations; to protect the rights of tribal members to employment preferences; and to ensure the integrity of any labor organization doing business within the jurisdiction of the Band by requiring any such labor organization to obtain a license.

21. To this end, in enacting said additions to Article XVI, the Tribal Council drew from the public sector labor laws of states to:

- (a) define the rights and duties of employers, employees, and labor organizations within the Band's public sector with respect to collective bargaining, including the duty to bargain in good faith, which excepts from such duty any requirement to bargain over any matter that would conflict with the laws of the Band (all as reflected in sections 16.12, 16.14, 16.21, and 16.24(d) of Article XVI, as amended, today);
- (b) provide procedures for resolving alleged violations of those rights and duties, including unfair labor practice procedures (as reflected in sections 16.15 and 16.16 of Article XVI, as amended, today);
- (c) design processes for management of public employers and exclusive bargaining representatives to resolve bargaining impasses through mediation, fact finding and arbitration and setting the standards for consideration by arbitrators (all as reflected in section 16.17 of Article XVI, as amended, today);
- (d) establish that management and exclusive bargaining representatives may bargain over "fair share" contributions by public employees within a bargaining unit who do not join the union, and setting procedures for employees to vote to rescind any such "fair share" provision (all as reflected in section 16.13 of Article XVI, as amended, today);
- (e) limit the duration of public sector collective bargaining agreements (as reflected in section 16.18 of Article XVI, as amended, today); and
- (f) provide a process for a bargaining unit of public employees to vote to decertify an exclusive bargaining representative with oversight by the Band's Neutral Election Official (as reflected in section 16.19 of Article XVI, as amended, today).

22. Also in furtherance of the public policy set forth in section 16.02, in enacting additions to Article XVI in October, 2008, the Tribal Council provided that:

- (a) the terms and conditions under which the Band's public employers may test employees for alcohol or drug use shall not be subject to collective bargaining

with any labor organization (as reflected in section 16.20 of Article XVI, as amended, today);

(b) the sovereign immunity of the Band's public employers from suit would be waived for the purpose of the enforcement of any collective bargaining agreement in the Tribal Court and for limited review of certain arbitrator decisions related to unfair labor practices (as reflected in section 16.26 of Article XVI, as amended, today); and

(c) future procedures for determining appropriate bargaining units for collective bargaining within the governmental operations of the Band and elections by such units for exclusive bargaining representatives could be governed by the terms of a model "Band-Union Election Procedures Agreement" substantially reflecting the terms of the Agreement described above in paragraph 18 (as reflected in sections 16.09, 16.10, and 16.11 of Article XVI, as amended, today). A copy of the Tribal Council's resolution approving said model Band-Union Election Procedures Agreement together with the Model Agreement are attached hereto as Exhibit C.

23. In March, 2009, the Tribal Council enacted additional amendments to the FEP Code in furtherance of the public policy set forth in section 16.02 to, amongst other things:

(a) establish a Charge of Discrimination form for public employees to use to assert rights and remedies under the Band's law for alleged employment discrimination on the basis of union affiliation (as reflected in sections 6.02 and 16.16(b) of the FEP Code, as amended, today);

(b) clarify limits on the duty of public employers to bargain in good faith with regard to management prerogatives, consistent with other public sector labor laws (as reflected in section 16.12(a)(1) of Article XVI, as amended, today);

(c) clarify procedures for resolving different categories of unfair labor practice charges to ensure that those involving management or elected bargaining representatives, if not settled, are resolved by arbitration with limited judicial review, that those involving alleged discrimination against an individual employee by employer or union go through discrimination procedures provided in Article VI of the FEP Code, and that claims of breach of duty of fair representation by an employee against an exclusive bargaining representative proceed to the Band's Tribal Court (all as reflected in section 16.16 of Article XVI, as amended, today);

(d) clarify and further streamline bargaining impasse procedures (reflected, in part, in sections 16.17(c) and 16.17(d) of Article XVI, as amended, today); and

(e) provide for limited judicial review of an arbitrator's award resolving a bargaining impasse (as reflected in section 16.17(e) of Article XVI, as amended, today).

24. In January, 2010, the Tribal Council again amended the FEP Code by permanently enacting Title XVII to that Code in order to protect the integrity of the procedures, rights and remedies provided by the Code. As set forth in section 17.01 of that Title, the Tribal Council found as follows:

In providing for procedures, rights, and remedies for employers, employees, and labor organizations under this Code, including those afforded through actions in the Little River Band of Ottawa Indians Tribal Court, the Tribal Council has carefully considered (and continues to consider) the values and interests of the Band in order to establish fair processes, rights, and remedies for the parties and interests at stake. This has included careful consideration of, amongst other things, (i) the time, costs, and inconvenience of parties and witnesses involved in proceedings to resolve controversies or to establish rights and remedies under this Code; (ii) the need to protect the governmental operations of the Band from undue burdens from litigation, while according fair treatment to employees within those operations; and (iii) methods to resolve disputes through early settlement, including mediation.

The integrity of this Code is threatened if parties bypass the procedures, rights, and remedies established herein and seek, instead, to invoke procedures or remedies outside of this Code for controversies that this Code is designed to address and resolve in accordance with the unique public policies of the Band. Investigations or proceedings directed at employers, apart from those provided for by this Code, which seek to address controversies or rights covered by this Code, require the expenditure of time and resources to the detriment of those involved and, in many instances, to the governmental operations of the Band. Such investigations or proceedings also threaten duplicative witness testimony and production of documents already available, or undertaken, pursuant to the provisions of this Code.

25. In order to ensure that the Tribal Council can protect the integrity of the FEP Code and ensure that the rights and remedies provided by said Code are followed before outside authorities interfere with labor and employment matters addressed by said Code, the Tribal Council enacted sections 17.4 and 17.5 of Article XVII to prohibit public employers from producing documents or giving testimony under subpoena from such outside authorities without the approval of the Tribal Council in circumstances where the employee initiating proceedings by external authorities has failed to exhaust his or her remedies provided by the FEP Code.
26. In July, 2010, the Tribal Council adopted permanent amendments to Article XVI, in furtherance of the public policy set forth in section 16.02 to, amongst other things:
 - (a) correct perceived unfairness in the allocation of costs between parties in paying for the arbitration of unfair labor practices by allowing the arbitrator to allocate costs consistent with the the parties' relative successes on issues (as reflected in section 16.16(a)(2)(D) of Article XVI, as amended, today);
 - (b) clarify that no complaint for employment discrimination based on union affiliation may be brought in the Band's Tribal Court unless a charge of discrimination is filed within 180 days for the alleged discrimination (as reflected in section 16.16(b) of Article XVI, as amended, today); and

(c) correct perceived unfairness in the process for resolving collective bargaining impasses, which had allowed public employers to reject the award of an interest arbitrator with respect to economic terms of a collective bargaining agreement (i.e. wages, salaries, bonuses, insurance premiums, and pension or retirement contributions) by requiring any public employer seeking to reject such an award to show cause to the Tribal Council for the rejection, providing opportunity to both the public employer and the exclusive bargaining representative to be heard on the matter, and providing for the Tribal Council to resolve the impasse either by accepting the arbitrator's award or the public employer's final offer on such economic terms (all as reflected in section 16.17(e) of Article XVI, as amended, today).

27. All of the above-reference enactments and amendments of provisions to the FEP Code proceeded in accordance with the legislative processes described in paragraphs 6 through 13 above.
28. The Tribal Council conducted ten (10) work sessions between 2007 and 2010 to address public policy considerations relative to the above-referenced enactments and amendments of provisions to the FEP Code.
29. I served on the Tribal Council, either as a member of the Tribal Council or as both a member and as Tribal Council Speaker, during all of the enactments and amendments to the FEP Code referenced herein.
30. In the work sessions and open session meetings at which the Tribal Council addressed said enactments and amendments to the FEP Code, the Tribal Council deliberated over a number of public policy considerations. The following are examples.
 - In deciding whether or not to prohibit strikes within the governmental operations of the Band, the Tribal Council considered whether bargaining impasses could be resolved through mandatory mediation, fact finding, and arbitration with less disruption to the ordinary operations of the Band's departments, agencies, commissions and subordinate organizations, and it concluded that such impasse resolution methods would better serve the Band's interests and the welfare of its community than allowing strikes.
 - In designing said mandatory bargaining impasse procedures – mediation, fact finding, and interest arbitration, with limited review of continuing impasses over economic terms before the Tribal Council – the Tribal Council sought to provide an efficient, non-disruptive procedure for the parties to come to agreement, and left Tribal Council with the ultimate role to resolve any ongoing impasse with respect to the economic terms of a collective bargaining agreement because such terms affect the treasury of the Band, its governmental revenues, and therefore its ability to provide governmental services.

- In requiring parties to attempt to resolve alleged unfair labor practices before commencing arbitration and then limiting judicial review of arbitration decisions on unfair labor practice charges to review for legal error or inconsistencies with the laws of the Band, the Tribal Council determined that it was in the best interests of the Band and its governmental operations to promote early resolution of such disputes by mandating early, good faith settlement discussions and to streamline any post-arbitration judicial review.
 - In excluding from the mandatory subjects of bargaining between management of a public employer and an exclusive bargaining representative any provisions that would conflict with the laws of the Band, the Tribal Council ensured that the public policies reflected in the body of the Band's laws would not be placed in conflict with the terms of a collective bargaining agreement entered into under Article XVI. This would cover such things as the requirements of the Band's Indian Preference in Employment Ordinance, Chapter 600, Title 2 of the Tribal Code.
 - In deciding whether or not to allow management and exclusive bargaining representatives within the Band's governmental operations to bargain over fair share contributions from employees who decide not to join a union, the Tribal Council considered whether or not workplace harmony would be better promoted by allowing such bargaining to occur or whether the choice of individual employees should be given more value. The Tribal Council concluded, on balance, that allowing bargaining over fair share contributions would be in the best interests of the Band and its community by furthering workplace equity. The Tribal Council then limited the time frame for employees to petition for a vote to deauthorize a fair share provision in a collective bargaining agreement to ninety (90) days after the execution of the collective bargaining agreement in order to foster workplace stability.
 - In considering whether to eliminate from the mandatory subjects of bargaining any drug or alcohol testing policy of a public employer that comports with the laws of the Band, the Tribal Council considered the devastating impact that drug and alcohol abuse has had upon its tribal members and Native American communities generally and decided that it was in the best interests of the Band and its community to eliminate such policies from the mandatory subjects of bargaining, provided that such policies are consistent with the Band's law, which includes civil rights under the Band's Constitution.
31. The Tribal Council continues to assess the provisions of the FEP Code and Article XVI to consider improvements in light of the experience of ongoing collective bargaining within certain bargaining units at its IGRA gaming operations. In making such assessments, the Tribal Council regularly looks for lessons to be drawn from other public sector labor laws of state governments, including those of the State of Michigan.

32. A true copy of the Band's current FEP Code, with all amendments to date, is attached hereto as Exhibit D.

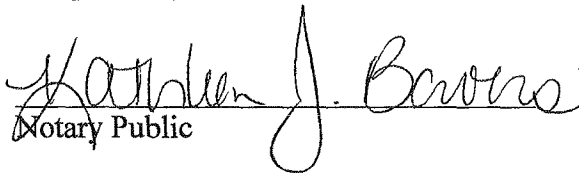
Dated: March 3, 2011



Stephen Parsons, Tribal Council Speaker,
Little River Band of Ottawa Indians

Personally appeared the above-named, Stephen Parsons, known to me to be the elected Tribal Council member and Tribal Council Speaker of the Little River Band of Ottawa Indians, and stated, under oath, that the foregoing facts are true, upon his personal knowledge, before me,

Dated: March 3, 2011


Notary Public

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



EXHIBIT A

to

AFFIDAVIT OF SPEAKER STEPHEN PARSONS

Constitution of the Little River Band of Ottawa

(Approved July 10, 1998)

**CONSTITUTION
OF THE
LITTLE RIVER BAND OF OTTAWA**

PREAMBLE

We, the Little River Ottawa people have asserted our sovereignty throughout history including in the Treaty of Chicago [August 29, 1821; 7 Stat 218], the Treaty of Washington [March 28, 1836; 7 Stat 491], and the Treaty of Detroit [July 31, 1855; 11 Stat 621].

Between the last treaty and the present day, the Grand River Ottawa people who became the Little River Band of Ottawa Indians were known and organized under several names, including members of "Indian Village" on the Manistee River, residents of the Pere Marquette Village or "Indian Town", Unit No. 7 of the Northern Michigan Ottawa Association, the Thornapple River Band, and finally the Little River Band of Ottawa Indians.

On September 21, 1994, Public Law 103-324 (108 Stat 2156) was enacted, reaffirming federal recognition of and confirming the sovereignty of the Grand River Bands comprising the Little River Band of Ottawa Indians (referred to as the Tribe or Little River Band).

As an exercise of our sovereign powers, in order to organize for our common good, to govern ourselves under our own laws, to maintain and foster our tribal culture, provide for the welfare and prosperity of our people, and to protect our homeland we adopt this constitution, in accordance with the Indian Reorganization Act of June 18, 1934, as amended, as the Little River Band of Ottawa Indians.

ARTICLE I. TERRITORY

Section 1 – Territory. The territory of the Little River Band of Ottawa Indians shall encompass all lands which are now or hereinafter owned by or reserved for the Tribe, including the Manistee Reservation in Manistee County (Michigan), Custer and Eden Townships in Mason County (Michigan) and all lands which are now or at a later date owned by the Tribe or held in trust for the Tribe or any member of the Tribe by the United States of America.

Section 2 - Jurisdiction Distinguished From Territory. The 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.

ARTICLE II – MEMBERSHIP

Section 1 - Eligibility for Membership. An individual is eligible for membership in the Tribe, if he/she possesses at least one-fourth (1/4) degree Indian blood, of which at least one-eighth (1/8) degree must be Grand River Ottawa or Michigan Ottawa blood and:

(a) Is a lineal descendant of a member of the historic Grand River Bands who resided in Manistee, Mason, Wexford or Lake Counties in the State of Michigan, who was listed on the schedule of Grand River Ottawa in the Durant Roll of 1908 as approved by the Secretary of the Interior on February 18, 1910; or,

(b) Is a lineal descendant of individuals listed on the 1870 Annuity Payrolls of Chippewas and Ottawas of Michigan listed under the following Ottawa Chiefs:

Kewacushkum	Pay-quo-tush	Me-tay-wis
Shaw-be-quo-ung	Penayse	Kaw-gay-gaw-bowe
Maw-gaw-ne-quong	Ching-gawa-she	Aken Bell; and,

(c) Is not currently enrolled in any other federally recognized Indian Tribe, band, or group.

Section 2 – Membership Rights of Children Who Have Been Adopted. Any child who is less than 18 years of age, who meets the membership criteria in Section 1, shall be eligible for membership, notwithstanding such adoption.

Section 3 - Dual Membership Prohibition. Any member of the Little River Band who applies for and is accepted as a member of another federally recognized Indian Tribe or band shall be subject to disenrollment in accordance with Section 4 of this Article.

Section 4 - Membership Procedure. The Tribal Council shall establish ordinances governing membership, including but not limited to enrollment and disenrollment; Provided that the Tribal Council shall not have the power to change or establish substantive requirements for membership in addition to those established in this Article.

Section 5 - Right of Appeal. Any person whose application for membership has been denied, or any member who has been disenrolled, shall have the right to appeal to the Tribal Court.

ARTICLE III - CONSTITUTIONAL RIGHTS

Section 1 - Civil Rights. The Little River Band in exercising the powers of self-government shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble and to petition for a redress of grievances;
- (b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself;
- (e) Take any private property for a public use without just compensation;
- (f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of five thousand dollars (\$5000.00), or both, or the maximum penalty allowed under Federal law;
- (h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (i) Pass any legislation, directed against a designated person, pronouncing him/her guilty of an alleged crime, without trial or conviction or ex post facto law, which retroactively changes the legality or consequences of a fact or action after the occurrence of that fact or commission of the act;
- (j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons;
- (k) Make or enforce any law unreasonably infringing the right of tribal members to keep and bear arms; or
- (l) The enumeration of rights in this Constitution shall not be construed to deny or disparage other rights retained by tribal members.

Section 2 - Access to Tribal Records. Subject to any express limitations contained in this Constitution, the laws of the United States, and individual Tribal members' and Tribal employees' rights to privacy, members of the Tribe shall be provided access to review the records of Tribe including, but not limited to: minutes of all meetings of the Tribal Council or other subdivisions of the Tribal government, Tribal budgets and financial reports of Tribal expenditures; provided that such review shall be conducted during normal office hours.

ARTICLE IV - TRIBAL COUNCIL

Section 1 - The legislative powers of the Little River Band shall be invested in the Tribal Council.

Section 2 - Composition of the Tribal Council.

(a) The Tribal Council shall consist of nine (9) persons, elected by popular vote of the registered voters of the Tribe in the manner described in this Section and Article IX.

(b) Tribal Council positions shall be elected by the membership from the following districts:

1. Six (6) of the nine (9) members of the Tribal Council shall be elected by the registered voters of the Tribe who reside in the following Counties in the State of Michigan: Kent, Lake, Manistee, Mason, Muskegon, Newago, Oceana, Ottawa and Wexford;
2. Two (2) of the nine (9) members of the Tribal Council shall be elected by all of the registered voters of the Tribe;
3. One (1) of the nine (9) members of the Tribal Council shall be elected by those registered voters of the Tribe residing outside the nine (9) county district defined in subsection 2(b)(1) of this Section.

(c) The Council shall select two (2) Council members, by majority vote of the Council, to serve as Council Officers: Speaker and Recorder. Officers terms shall be two years. A single Council member may not hold both Officer positions.

Section 3 - Qualifications. Any member of the Tribe who is twenty-one (21) years of age or older who has resided within the State of Michigan for at least six (6) months prior to the date of the next scheduled election may serve on the Tribal Council.

Section 4 - Terms of Office.

(a) Except as provided for in Section 1 of Article IX in this Constitution each Tribal Council member's term of office shall be four (4) years.

(b) Tribal Council members shall continue in office until their successors are sworn in by the Tribal Court, their office is deemed vacant, or they are removed from the Tribal Council.

(c) If any Tribal Council member ceases to be a member of the Tribe, he or she shall automatically forfeit his or her Council position.

(d) If any Tribal Council member ceases to be a resident of the State of Michigan, he or she shall automatically forfeit his or her Council position.

(e) There shall be no prohibition against continuous service.

Section 5 - Council Officers Duties.

(a) *Speaker.* The Speaker of the Council shall:

1. Preside at all meetings of the Tribal Council.
2. Call special meetings of the Council, when appropriate.
3. Receive reports from the committees or commissions and deliver such reports to the Council.
4. Perform the duties of the Tribal Ogema in the absence of or due to the inability of the Ogema to perform those duties.

(b) *Recorder.* The Recorder of the Council shall:

1. Submit a record of the minutes of all Tribal Council meetings, and make such reports available to the membership of the Tribe.
2. Keep the Members informed as to the status of the activities of the Council and all other matters affecting the Tribe and its members.
3. Maintain and protect the Tribal Seal.
4. Perform the duties of the Speaker if the Speaker is absent or unable to fulfill those duties.

Section 6 - Meetings of the Tribal Council.

(a) *Regular Meetings.* The Tribal Council shall meet in regular session at least once every month at a time and place to be set by the Tribal Council. The schedule of meetings for regular sessions of the Tribal Council for the next calendar year shall be set by resolution of the Tribal Council at the last regular session of each calendar year. The meeting schedule for each calendar year shall be published and made available to the General Membership.

(b) *Special Meetings.* A special meeting of the Tribal Council may be held under the following conditions:

1. A special meeting shall be called (i) upon written request of the Tribal Ogema submitted to the Council Recorder, (ii) upon written request, submitted to the Tribal Ogema or Council Recorder, by two (2) members of the Tribal Council, (iii) upon written request, submitted to the Tribal Ogema or Council Recorder, signed by at least ten percent (10%) of the Tribal Elders, fifty-five (55) years or older; or (iv) upon a petition of ten percent (10%) of the registered Tribal voters requesting a meeting submitted to the Tribal Ogema or Council Recorder.
2. There shall be at least seventy-two (72) hours written notice sent to the Council members at each member's designated regular mailing address. Notice shall also be posted in the Tribal Office or Governmental Center. No business may be transacted if proper notices have not been mailed and posted. The notice shall specify all business to be addressed, and no matter which is not included in the notice may be addressed at the meeting.

(c) *Emergency Meetings.* Emergency meetings of the Tribal Council may be called by the Tribal Ogema or Speaker upon less than seventy-two (72) hours written notice, if such meetings are necessary for the preservation or protection of the health, welfare, peace, safety or property of the Tribe. Efforts shall be made to ensure that each Tribal Council member receives notice of such meetings. Where practical, notice shall be posted at the Tribal Office or Governmental Center. Notices shall state the purpose, time and place of the meeting. No business other than that stated in the notice shall be transacted at such meetings.

(d) *Open Meetings; Closed Sessions.* All meetings of the Tribal Council shall be open to the Tribal Membership. However, the Council may meet in closed session for the following purposes:

1. Personnel Matters, provided the employee in question did not request a public meeting, or
2. Business matters involving consideration of bids or contracts which are privileged or confidential, or
3. Claims by and against the Tribe.

Minutes shall be maintained relating to all business conducted in open or closed session. The general reason for a determination to meet in closed session shall be placed on the record in open

session. The minutes of business conducted in closed session shall be maintained in a closed file in perpetuity; however, such minutes of closed sessions may be opened to the public upon a vote of the majority of the Tribal Council, upon final disposition of the matter concerned or upon order of the Tribal Judiciary. Upon conclusion of a closed session, announcement of the resumption of open session shall be made before adjournment.

(e) *Rules of the Tribal Council.* The Tribal Council shall determine its own rules of procedure for meetings of the Tribal Council, subject to any limitations imposed in this Constitution. Such rules and procedures shall provide for an opportunity for the General Membership to be heard on any question under consideration by the Tribal Council.

(f) *Quorum required to conduct business.*

1. A quorum of the Tribal Council shall consist of six (6) members, provided at least four (4) of the six (6) members present represent the nine (9) county district defined in subsection 2(b)(1) of Article IV.

2. When a Council Member has a personal interest in an issue or matter to be voted on by the Council, other than those common to all Tribal Members, which would require balancing personal interest against interests of the Tribe, such member shall abstain from voting on that matter due to conflict of interest and shall disclose the nature of the conflict.

3. The fact that a member may not vote on an issue due to conflict of interest shall not prevent that member from voting on other matters or from determining a quorum's existence.

4. Failure to disclose a potential conflict of interest is cause for removal, and where a matter of potential conflict has been disclosed, the Council shall determine by majority vote whether a member shall abstain from voting, although no member shall be compelled to vote regarding an issue as to which he or she believes a conflict exists.

(g) *Action by the Tribal Council.*

1. The Tribal Council shall act only by ordinance, resolution or motion.

2. Tribal Council action shall be determined by a majority of the quorum present and voting at the meeting, unless otherwise specified in this Constitution, and minutes shall identify each Council Member's vote on every issue.

Section 7 - Powers of the Tribal Council. The legislative powers of the Little River Band of Ottawa Indians shall be vested in the Tribal Council, subject to any express limitations contained in this Constitution. The Tribal Council shall have the power, including by way of illustration, but not by limitation:

(a) To exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;

2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members;

3. to provide by ordinance for the jurisdiction of the Tribe over Indian Child Welfare matters, and all other domestic relations matters;

4. to provide for the manner of making, holding and revoking assignments of the Little River Band's land or interests therein;

- (b) To authorize and ratify agreements and contracts negotiated by the Tribal Ogema on behalf of the Little River Band with federal, state and local governments and other Indian tribes or their departments or political subdivisions, or with private persons on all matters within the authority of the Tribal Council;
- (c) To purchase, lease, take by gift, take by devise or bequest, or otherwise acquire land, interests in land, personal property or other assets which may be deemed beneficial to the Little River Band;
- (d) To approve or veto any sale, disposition, lease or encumbrance of Little River Band land, interests in land, personal property or other assets;
- (e) To employ legal counsel, subject to the approval of the Secretary of the Interior so long as such approval is required by Federal law;
- (f) To 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;
- (g) To establish rules and procedures to regulate all meetings of the Tribal Council, standing committees, special committees and such other regulatory commissions or subordinate organizations created by ordinance;
- (h) To approve appointments to the Tribal Court, regulatory commissions and heads of subordinate organizations created by ordinance;
- (i) To exercise the following fiscal powers:
 1. Subject to the veto of the Tribal Ogema, to adopt, approve or amend the annual budget presented by the Tribal Ogema and to authorize the expenditure of funds in accordance with such budgets;
 2. To manage any funds within the exclusive control of the Little River Band and to appropriate these funds for the benefit of the Tribe and its members. All expenditures of funds shall be pursuant to appropriations or budgets authorized by resolution or in accordance with ordinances of the Tribal Council;
 3. To levy duties, fees, taxes and assessments on any person, natural or corporate, residing or doing business within the territorial jurisdiction of the Little River Band;
 4. To borrow money or to issue temporary or long term evidence of indebtedness for public purposes and to secure the repayment thereof;
- (j) To take action, not inconsistent with this Constitution or Federal law, which shall be necessary and proper to carry out the sovereign legislative powers of the Tribe.

Section 10 - Tribal Powers and Rights Not Limited.

- (a) Any rights and powers heretofore vested in the Little River Band but not expressly referred to in this Constitution shall not be diminished, abridged, or divested by this Article.
- (b) The Tribal Council may exercise such additional powers as may be conferred upon the Tribe in the future by law, by the Secretary of the Interior, or by any other duly authorized official or agency of the federal government, state or local government, or by another Indian tribe.

ARTICLE V - TRIBAL OGEMA

Section 1 - The Executive powers of the Little River Band shall be invested in the Tribal Ogema.

Section 2 - *Qualifications.* Any member of the Tribe who is twenty-five (25) years of age or older, who has resided within the nine (9) county district defined in subsection 2(b)(1) of Article IV, for

at least six (6) months prior to the date of the next scheduled election may serve as Tribal Ogema.

Section 3 - Term of Office.

- (a) The Tribal Ogema's term of office shall be four (4) years.
- (b) The Tribal Ogema will continue in office until his/her successor is sworn in by the Tribal Court, the office is deemed vacant, or he/she is removed as the Tribal Ogema.
- (c) If the Ogema ceases to be a member of the Tribe, he/she will automatically forfeit the Ogema position.
- (d) If the Ogema ceases to reside in the nine (9) county district defined in subsection 2(b)(1) of Article IV, he/she will automatically forfeit the Ogema position.
- (e) There shall be no prohibition against continuous service.

Section 4 - Election of the Tribal Ogema. The Tribal Ogema shall be the candidate seeking the office who receives a majority of the tribal vote cast for that position. If no one (1) candidate receives a majority of the votes cast, a run-off election shall be held between the two (2) highest vote recipients.

Section 5 - Powers of the Ogema.

(a) Subject to any limitations contained in this Constitution, the Tribal Ogema of the Little River Band shall be invested with the executive powers of its inherent sovereignty including, but not limited to:

1. To enforce and execute the laws, ordinances and resolutions of the Tribal Council, consistent with this Constitution.
2. To oversee the administration and management of the Tribal government in accordance with the laws, resolutions, and motions adopted by the Tribal Council.
3. To consult, negotiate, and execute agreements and contracts on behalf of the Little River Band with federal, state, and local governments and other tribal governments, or with private persons or organizations. Agreements and contracts reached must be approved or ratified by Tribal Council to be effective.
4. With the approval of the Tribal Council, to appoint members to the Tribal Court, members of all regulatory commissions, and heads of subordinate organizations created by ordinance (Art. IV, Sec. 9(h)).
5. Timely prepare and present the annual Tribal Budget to the Tribal Council for approval or other action and to keep the Tribal Council fully advised as to the financial condition and needs of the Tribe, preparing monthly reports for the Council, and making quarterly reports available to the membership.
6. To have veto power over actions of the Tribal Council modifying the Tribal Budget or appropriations items as provided in subsection (c) of this Section 5.
7. To collect taxes or assessments against members, non-members and businesses.
8. To manage the economic affairs, enterprises, property (both real and personal) and other interests of the Tribe, consistent with ordinances and resolutions enacted by the Tribal Council.
9. To exclude from the lands of the Tribe persons, or other entities, not legally entitled to be present thereon.

(b) The Tribal Ogema shall receive for his/her services a compensation to be established by the Tribal Council, which shall not be diminished during his/her continuance in office.

(c) Every action taken by the Tribal Council, whether by ordinance, resolution or appropriation, which modifies the Tribal Budget submitted for approval by the Tribal Ogema, shall be presented to the Tribal Ogema for his/her approval and signature before it

becomes effective. The Tribal Ogema shall approve or disapprove of the action taken by the Tribal Council within seven (7) days after the item is submitted to the Tribal Ogema by the Tribal Council. If he/she disapproves of the action taken by the Tribal Council, he shall return it to the Tribal Council within the seven (7) days provided, specifying his/her objections. If after re-consideration, it again passes the Tribal Council by an affirmative vote of six (6) of the nine (9) Tribal Council members, it shall become law and he/she shall sign it notwithstanding his/her objections.

ARTICLE VI - TRIBAL COURT

Section 1 - The judicial power of the Little River Band shall be invested in a Tribal judiciary, which shall consist of the Tribal Court, a Court of Appeals, and such inferior courts as the Tribal Council may from time to time ordain and establish.

Section 2 - *Qualifications.*

(a) *Member of the Tribe.* Any member of Tribe may serve as a Tribal Judge provided he/she is twenty-five (25) years of age or older, is not a member of the Tribal Council or running for a seat on the Tribal Council, and has not been convicted of any crime of dishonesty, or moral turpitude, nor been convicted of a felony under Tribal, or State law within the seven (7) year period immediately preceding the date of the election, or, in the event of a vacancy under Article X, Section 4(a), his/her appointment.

(b) *Non-Member Qualifications.* A non-member of the Tribe may be appointed to or elected to serve as a Tribal judge if such individual possesses a Law degree and has practiced in Federal Indian law or as a tribal judge, and has not been convicted of any crime involving dishonesty, moral turpitude, nor been convicted of a felony under Federal, Tribal or State law within the seven (7) year period immediately preceding the date of the election, or, in the event of a vacancy under Article X, Section 4(a), his/her appointment.

Section 3 - *Composition of the Tribal Court System.*

(a) *Tribal Court.* The Tribal Court shall be a court of general jurisdiction and shall consist of one (1) judge and one (1) associate judge who shall meet as often as circumstances require.

(b) *Court of Appeals.* The Tribal Court of Appeals shall consist of three (3) judges. At least one (1) of the three (3) judges shall be an elder (age 55 years or older) in the Tribe, and at least one (1) of the three (3) judges shall be an attorney licensed to practice before the courts of a state in the United States.

Section 4 - *Appointment and Compensation.*

(a) Judges of the Tribal Court, including the Court of Appeals, shall be elected by the registered voters.

1. *Current Judges.* The current tribal judges as of adoption of these amendments shall identify the following:

A. Tribal Court judges shall determine staggered terms from amongst themselves and new terms shall be set at either two year or four years. Each term thereafter shall be set as set forth in Section 5(a).

B. Court of Appeals judges shall determine staggered terms from amongst themselves and new terms shall be set at either two years or four years. Each term thereafter shall be as set forth in Section 5(a).

2. *Declaration of Tribal Court or Court of Appeals Candidacy.* Candidates shall declare their intention to run for a position on the Tribal Court or the Court of

Appeals. Provided that, the Election Board shall identify positions on the Court of Appeals requiring specific qualifications as identified in Section 3(b). Where no candidate, at the conclusion of any deadlines set by the Election Board, declares for a position on the Court of Appeals requiring specific qualifications, the Tribal Ogema shall appoint, and the Tribal Council shall approve a judge for that vacancy.

(b) *Compensation.* The Tribal Council shall have the power to establish the level of compensation for each judge; provided that the compensation due to each individual judge shall not be diminished during the term of his/her appointment.

(c) Tribal Judges shall be sworn in by the Speaker of the Tribal Council.

Section 5 - Term of Office.

(a) Except as provided for in Section 6 of this Article VI, the term of office for all Tribal Judges shall be six (6) years.

(b) Tribal Judges will continue in office until a successor is sworn in.

(c) There shall be no prohibition against continuous service.

Section 6 - Resignation or Removal.

(a) *Resignation.* A Tribal Judge may resign his/her office at any time. Resignation is immediate upon a Judge submitting written notice to the Tribal Council of his/her resignation.

(b) *Removal.* A Tribal Judge may only be removed by a vote of seven (7) of the nine (9) Council Members following a recommendation of removal by a majority of the remaining Tribal Judges for the following reasons:

1. Unethical conduct, as defined by the Michigan Indian Judicial Association Model Code of Tribal Judicial Conduct;
2. Gross misconduct or malfeasance in office that is clearly prejudicial to the administration of justice;
3. Ineligibility, under Section 2 of this Article, to serve as a member of the Tribal Court;
4. Inability to fulfill the duties of the office due to mental or physical disability, to the extent that he or she is incapable of exercising judgment about or attending to the duties of the Tribal Court. Such determination shall be based upon or supported by competent medical evidence or opinion.

If a member of the Tribal judiciary obtains information which indicates that grounds exist for removal of another judge, he/she shall provide written notice of the charge and specify the facts supporting such charge to all Tribal Judges, including the accused. The Judge so charged shall be notified so he/she may answer the charges at a public hearing of all members of the Tribal Court held for that purpose. Such hearing shall be noticed at least ten (10) days prior to the hearing at which the Judge's referral for removal is to be considered. If a majority of the remaining of the Tribal Court vote to refer the Judge to the Tribal Council for removal, the grounds for removal shall be set forth with specificity and the Tribal Judge shall be suspended from office until the Tribal Council acts on the referral at a public meeting of the Tribal Council held to consider that referral. At least ten (10) days before the meeting of the Tribal Council at which the vote for removal will be taken, the affected judge shall be provided with a written notice of that meeting. Before any vote for removal is taken, the affected judge shall be provided with a reasonable opportunity to answer the charges at the Tribal Council meeting. If the Tribal Council, by affirmative vote of seven (7) of the nine (9) Council members, finds that grounds for removal as stated by the Tribal Court exist, the Tribal Council shall remove the judge from office. If the Tribal Council find that the grounds

for removal do not exist, the suspended judge shall be fully reinstated to the Tribal Court.

Section 7 - Vacancy. A vacancy in any Judicial position resulting from a Judge's death, resignation, removal, or recall shall be filled in the same manner as set forth in Article X, Section 4. The term of office for any Tribal Judge appointed under this Section shall be for the remainder of the vacant term.

Section 8 - Powers of the Tribal Court

(a) The judicial powers of the Little River Band shall extend to all cases and matters in law and equity arising under this Constitution, the laws and ordinances of or applicable to the Little River Band including but not limited to:

1. To adjudicate all civil and criminal matters arising within the jurisdiction of the Tribe or to which the Tribe or an enrolled member of the Tribe is a party.
2. To review ordinances and resolutions of the Tribal Council or General Membership to ensure they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution.
3. Hear cases based on ordinances and laws of the Tribe for purpose of determining innocence or guilt where trial by jury has been waived.
4. Assign fines and penalties as allowed for violations of Tribal law, as allowed by Tribal and Federal Law.
5. Grant warrants for search to enforcement officers when just cause is shown.
6. Grant warrants, writs, injunctions and orders no inconsistent with this Constitution.
7. Swear in Tribal Council members and the Tribal Ogema by administering the oath of office;
8. Establish, by general rules, the practice and procedures for all courts of the Little River Band.

Section 9 - Judicial Independence. The Tribal Judiciary shall be independent from the legislative and executive functions of the tribal government and no person exercising powers of the legislative or executive functions of government shall exercise powers properly belonging to the judicial branch of government; provided that the Tribal Council shall be empowered to function as the Tribal Court of the Little River Band until the judges prescribed by this Article have been appointed; provided further that the first Tribal Council and Tribal Ogema elected under this Constitution shall make appointments to its courts within ninety (90) days after its members are elected.

ARTICLE VII - GENERAL MEMBERSHIP POWERS

Section 1. General Membership Meetings.

(a) Meetings of the General Membership of the Little River Band shall be held twice a year; once in the spring, once in the fall, at a site suitable for such a meeting.

1. The chairperson for these meetings shall be the Tribal Ogema, who will officiate at these meetings.
2. At these meetings the membership will be informed as to the affairs and "state of the Tribe".
3. Subject to the express limitations contained in this Constitution, motions and ordinances adopted by the General Membership shall have the status of law and be binding on the Tribal Council, Tribal Ogema and Judiciary; provided at least thirty (30%) percent of the registered voters of the Tribe are present at such Membership Meeting, as verified by the Election Board.

4. Notice of a General Membership Meeting shall be given thirty (30) days prior to the meeting by mail to the last known address of each adult member of the Tribe, and by posting in the Tribal Office or Governmental Center.

Section 2 - Initiative. Members of the Tribe shall have the power to initiate ordinances or repeal or amend existing ordinances in the following manner:

- a. Initiative petitions shall explain the ordinance to be acted upon in language understood by the signatories.
- b. Petitions signed by twenty-five percent (25%) of the registered voters and verified by the Election Board shall be presented to the Tribal Council for action.
- c. Upon receipt of a verified petition, the Tribal Council may, within thirty (30) days, adopt the initiative measure by a majority vote without alteration. If the Tribal Council fails to adopt the measure, the Election Board shall call a special election for the purpose of allowing the General Membership to vote on the initiative measure.
- d. Initiative elections will be held not less than forty-five (45) days after verification and not more than ninety (90) days in accordance with applicable provisions of this Constitution, any applicable tribal ordinance and any rules and regulations issued by the Election Board.
- e. The decision of a majority of the voters in such an initiative election vote shall be binding on the Tribal Council, provided that thirty percent (30%) of the registered voters cast ballots. If less than thirty percent (30%) of the registered voters of the Tribe cast ballots in such election, the initiative shall be deemed defeated.
- f. The right of initiative does not extend beyond the subject of Tribal ordinances and may not be utilized to abrogate any rights of the Tribal judiciary or abrogate any rights guaranteed to any person under Article III, Section 1 of this Constitution.

Section 3 - Limitations on Membership Powers. The General Membership shall not have the power to take any of the following action under this Article:

- (a) Propose, adopt or amend the Tribal Budget;
- (b) Appropriate or expend Tribal revenues or funds;
- (c) Reverse, overturn or otherwise influence any judicial action of the Tribal Court;
- (d) Take any action which is otherwise in violation of this Constitution or a usurpation of individual rights as defined herein.

Section 4 - Referendum.

- (a) The Tribal Council shall, upon an affirmative vote of seven (7) Council Members, schedule a referendum election on any proposed or previously enacted ordinance by the membership.
- (b) The referendum election shall be held no sooner than thirty (30) days and no later than ninety (90) days from the date the proposed or existing ordinance is referred to the voters in accordance with applicable provisions of this Constitution, any applicable tribal ordinance and any rules and regulations issued by the Election Board. The date of the referendum election shall be set by the Tribal Council.
- (c) The vote of a majority of those actually voting shall be binding upon the Tribal Council, provided at least thirty percent (30%) of the registered voters of the Tribe cast ballots in the referendum election.

Section 5 - Time of Effect or Repeal.

- (a) Any action taken under this Article VII shall take effect ten (10) days after certification of election or vote by the Election Board.
- (b) Actions taken by the General Membership under this Article VII may only be repealed

by subsequent action of the General Membership and may not be repealed by action of the Tribal Council.

ARTICLE VIII - POWERS OF THE TRIBE NOT DIMINISHED

Section 1 - Any rights and powers heretofore vested in the Tribe but not expressly referred to in this Constitution shall not be diminished by this Constitution.

Section 2 - This Constitution, Tribal ordinances, regulations and judicial decisions shall govern all people subject to the Tribe's jurisdiction.

ARTICLE IX – ELECTION

Section 1 - *First Election*. The first election under this Constitution of the nine (9) members of the Tribal Council and the Tribal Ogema shall be conducted in accordance with Article IV, Section 2, Article V, Section 6 and this Article and shall be conducted no later than one hundred eighty (180) days after this Constitution is adopted. The date for the election shall be set by the Election Board appointed under subsection (e) of this Section. This election shall be conducted to implement a system of staggered terms of service by Tribal Council members and the Tribal Ogema as follows:

(a) Six positions on the Tribal Council will be elected by members residing in the nine (9) county district consisting of the Michigan Counties of Kent, Lake, Manistee, Mason, Muskegon, Newaygo, Oceana, Ottawa and Wexford. The terms of office for such Council members will be decided in the following manner:

1. The three (3) candidates receiving the highest number of votes shall each serve an approximate four (4) year term of office.
2. The three (3) candidates receiving the next highest number of votes shall serve an approximate two (2) year term of office.

(b) Two positions on the Tribal Council shall be elected by all of the members of the Tribe regardless of residency. The terms of office for such Council members will be decided in the following manner:

1. The candidate receiving the highest number of votes shall serve an approximate four (4) year term of office.
2. The candidate receiving the next highest number of votes shall serve an approximate two (2) year term of office.

(c) One position on the Tribal Council shall be elected by those members residing outside the nine (9) county district and shall serve an approximate two (2) year term of office.

(d) The candidate for the office of Tribal Ogema who receives the majority of votes cast shall serve an approximate four (4) year term of office. If no one (1) candidate receives a majority of the votes cast, a run-off election shall be held between the two (2) candidates who received the highest number of votes.

(e) The Tribal Council in office when this Constitution is adopted shall appoint an Election Board consisting of five (5) adult members of the Tribe. Such appointments shall be made no later than thirty (30) days after this Constitution is adopted.

(f) The service of the Election Board members appointed to conduct the first election shall expire immediately upon completion of their duties, in order that the first-elected Tribal Ogema and Tribal Council may make appointments to the Election Board.

(g) The Election Board shall issue such rules and regulations, consistent with this Constitution, as it deems necessary to properly conduct the first election. Such rules and regulations shall be issued no later than ninety (90) days after appointments are made to the

Election Board.

(h) The Election Board shall register eligible voters of the Tribe and provide for conducting the first election.

Section 2 - Election Methods.

(a) *Regular Elections.* After the first election, members of the Tribal Council and the Tribal Ogema shall be elected in the month of April, the date to be set by the Election Board. The conduct for all tribal elections, including registration requirements, shall be prescribed and provided for by the Election Board.

(b) *Special Elections.* Special elections shall be called by the Election Board, when appropriate or when required under this Constitution, to remove, recall, and fill vacancies of elected officials, and to submit initiatives and referenda to the Tribal membership.

Section 3 - Voting.

(a) Any duly enrolled member of the Little River Band of Ottawa, who is at least eighteen (18) years old, and is registered to vote on the date of any given tribal election shall be eligible to vote in that tribal election.

(b) Voting in tribal elections shall be by secret ballot cast at polls established by the Election Board; Provided however, that the membership may make advisory recommendations at General Membership meetings by voice vote or show of hands concerning matters to be decided by the Tribal Council.

(c) Absentee voting shall be permitted in accordance with such rules and procedures as shall be established by the Election Board.

(d) Each registered voter shall be entitled to cast one (1) vote for each vacancy on the Tribal Council in the district(s) in which such voter resides. No more than one (1) vote per candidate may be cast. The candidate(s) receiving the highest number of votes shall be elected to fill each vacancy according to the rank order of votes received. Each registered voter shall be entitled to cast one (1) vote for a candidate for the office of Tribal Ogema.

(e) In all other elections, a majority of those voting in the election shall constitute action by the Tribe and such vote shall be conclusive on the Tribe.

Section 4 - Election Board.

(a) The Election Board shall consist of five members to be elected by the registered voters.

1. *First Election of Members.* The first election shall be conducted by the Election Board currently seated and their terms of office shall be concluded when the newly elected Election Board members are sworn into office.

2. *First Election Date.* The first such election shall be conducted during the next general election of the Tribe.

3. *Staggered Terms.* Election Board candidates elected to these positions shall serve as follows:

A. The three (3) candidates receiving the highest number of votes shall serve a four-year term of office.

B. The two (2) candidates receiving the next highest number of votes shall serve a two-year term of office, and the term shall thereafter be as set forth in subsection (b).

(b) The term of office for an Election Board member shall be four (4) years.

(c) Allegations of impropriety by the Election Board shall be settled by the Tribal Judiciary.

(d) Tribal members who are holding elected office, or running for office, shall not be eligible to serve as an Election Board member.

- (e) The Election Board shall be authorized to issue such rules and procedures as may be necessary to carry out tribal elections and to provide for ongoing voter registration.
- (f) Candidates for tribal office may choose a representative to be present when the election ballots are counted by the Election Board.
- (g) A Tribal member shall have five (5) business days from the date of the election to file an election challenge.
- (h) A vacancy in any Election Board position resulting from death, resignation, removal, or recall shall be filled in the manner as set forth in Article X. Section 4.

ARTICLE X - RESIGNATION, RECALL, OR REMOVAL OF ELECTED OFFICIALS

Section 1 - Resignation. The Tribal Ogema or any member of the Tribal Council may resign from his/her elected position by submitting written notice of resignation to the Tribal Council. Such resignation is effective upon receipt by the Tribal Council.

Section 2 – Recall. The registered voters of the Tribe shall have the right to recall the Tribal Ogema, any member of the Tribal Council, or a Tribal Judge or Appellate Judge by filing a recall petition with the Election Board. The petition must be signed by at least twenty-five percent (25%) of the registered voters of the Tribe. The Election Board shall verify and approved/deny the petition within thirty (30) days of receipt. At least fifty percent (50%) of the verified signatures on the petition must be registered voters who are eligible to vote in the election of the Tribal Council member now subject to recall.

The Election Board shall conduct a recall election within ninety (90) days of the Election Board's verification and approval of the petition and its signatures. If the term of office for the Tribal Ogema or Tribal Council member being recalled will end within six (6) months of the date the Election Board verifies and approves the recall petition the issue will be held until the next regularly scheduled session.

Section 3 - Removal. The Tribal Ogema or any member of the Tribal Council may be subject to removal by a resolution in favor of removal supported by seven (7) of the nine (9) members of the Tribal Council for any of the following reasons:

- (a) Gross misconduct or malfeasance in office.
- (b) Conviction, while in office, of a felony under Federal, Tribal, or State law, or conviction of any other crime involving dishonesty or moral turpitude.
- (c) Inability to fulfill the duties of the office due to mental or physical disability, to the extent that he/she is incapable of exercising judgment about or attending to the business of his/her office.

At least ten (10) days before the meeting of the Tribal Council at which the vote for removal will be taken, the Tribal Ogema or Tribal Council member, shall be provided with a written notice of Tribal Council's intent to vote to remove, which notice shall set forth, with specificity, the alleged grounds for removal. Before any vote for removal is taken, the Tribal Ogema or Tribal Council member, shall be provided with a reasonable opportunity to answer the charges at the public meeting of the Tribal Council, held for that purpose. The decision of the Tribal Council shall be final.

Section 4 - Vacancies. A vacancy in the office of an elected official resulting from death, resignation, forfeiture, removal, or recall shall be filled as follows:

- (a) If less than eighteen (18) months remain in the term of office of an elected official, an individual shall be appointed to fill such vacant position at the next regular Tribal Council meeting, provided such appointment is approved by a majority vote of the Tribal Council. The Speaker of the Tribal Council shall nominate an individual to fill the vacancy in the

Office of the Tribal Ogema. The Tribal Ogema shall nominate an individual to fill any other vacancy of an elected official.

(b) If more than eighteen months remain in the term of office of an elected official, a special election shall be held within three (3) months after the vacancy occurs. When calling a special election to fill the vacancy of a Tribal Council member, the qualifications for candidates and registered voters entitled to participate shall be consistent with those applicable to the District in which such vacant seat exists and in regards to any other office the individual must meet the qualifications required in the vacant position.

(c) Any special election required to be held under this Section shall be conducted in accordance with applicable provisions of this Constitution, any applicable tribal ordinance and any rules and regulations issued by the Election Board.

(d) The elected official taking office under the provisions of this Section shall only serve until the term of office for the vacant office he/she is filling expires.

A vacancy occurring in the position of Speaker or Recorder of the Tribal Council shall be filled by majority voter of the Tribal Council.

ARTICLE XI - SOVEREIGN IMMUNITY

Section 1 - The Tribal Council shall not waive or limit the right of the Little River Band to be immune from suit, except as authorized by tribal ordinance or resolution or in furtherance of tribal business enterprises. Except as authorized by tribal ordinance or resolution, the provisions of Article III of this Constitution shall not be construed to waive or limit the right of the Little River Band to be immune from suit for damages.

Section 2 - Suits against the Little River Band in Tribal Courts Authorized.

(a) The Little River Band, its Tribal Council members, Tribal Ogema, and other Tribal officials, acting in their official capacities, shall be subject to suit for declaratory or injunctive relief in the Tribal Court system for the purpose of enforcing rights and duties established by this Constitution and by the ordinances and resolutions of the Tribe.

(b) Notwithstanding the authorization provided in subsection (a) of this Section, persons shall not be entitled to an award of damages, as a form of relief, against the Tribe, its Tribal Council members, the Tribal Ogema, or other Tribal officials acting in their official capacities; provided that the Tribal Council may by ordinance waive the right of the Tribe or Tribal officials to be immune from damages in such suits only in specified instances when such waiver would promote the best interests of the Band or the interests of justice.

(c) The Tribe, however, by this Article does not waive or limit any rights which it may have to be immune from suit in the courts of the United States or of any state.

ARTICLE XII - CONFLICT OF INTEREST

In carrying out the duties of tribal office, no tribal official, elected or appointed, shall make or participate in making decisions which involve balancing a personal financial interest, other than interests held in common by all tribal members, against the interests of the Tribe.

ARTICLE XIII – SEVERABILITY

If for any reason any provision of this Constitution shall be held to be invalid or unconstitutional by the Tribal Court or any federal court of competent jurisdiction, the validity and effect of all other provisions shall not be affected thereby.

ARTICLE XIV. AMENDMENTS

Section 1 - This Constitution may be amended by a majority vote of the qualified voters of the Little River Band voting in an election called for that purpose by the Secretary of the Interior or his authorized representative; provided at least thirty percent (30%) of those entitled to vote participate in such election.

Section 2 - It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment at the request of the Tribal Council or upon receipt of a petition, which has been verified by the Tribe's Election Board, signed by at least thirty percent (30%) of the eligible voters of the Little River Band.

ARTICLE XV – ADOPTION

This Constitution, when adopted by a majority vote of the qualified voters of the Little River Band voting at a special election called for such purpose by the Secretary of the Interior or his authorized representative, in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and shall be effective from the date of his approval.

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial election authorized by the Deputy Commissioner of Indian Affairs on January 20, 1998, the attached Constitution of the Little River Band of Ottawa was submitted to the qualified voters of the Little River Band and on May 27, 1998, was duly adopted/~~rejected~~ by a vote of 553 for and 32 against and 3 cast ballots found spoiled or mutilated in an election in which at least 30 percent (30%) of the 833 members entitled to vote, cast their ballots in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

/s/ Anne E. Bolton
Chairman, Election Board

/s/ Diane S. Lonn
Member, Election Board

/s/ Robert E. Hardenburgh
Member, Election Board

/s/ Jonnie J. Sam II
Member, Election Board

Date: May 27, 1998

CERTIFICATE OF RESULTS OF ELECTION (2004 AMENDMENTS)

Pursuant to an order issued by Larry Morrin, Midwest Regional Director, on October 27, 2003, this Proposed Amendment "A" was submitted to the qualified voters of the Little River Band of Ottawa on April 26, 2004, and was duly adopted/~~rejected~~ by a vote of 379 for, and 92 against, and 5 cast ballots found spoiled or mutilated, in an election in which at least thirty percent (30%) of the 997 entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

Pursuant to an order issued by Larry Morrin, Midwest Regional Director, on October 27, 2003, this Proposed Amendment "B" was submitted to the qualified voters of the Little River Band of Ottawa on April 26, 2004, and was duly adopted/~~rejected~~ by a vote of 375 for, and 94 against, and 7 cast ballots found spoiled or mutilated, in an election in which at least thirty percent (30%) of the 997 entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

Pursuant to an order issued by Larry Morrin, Midwest Regional Director, on October 27, 2003, this Proposed Amendment "C" was submitted to the qualified voters of the Little River Band of Ottawa on April 26, 2004, and was duly adopted/~~rejected~~ by a vote of 378 for, and 90 against, and 8 cast ballots found spoiled or mutilated, in an election in which at least thirty percent (30%) of the 997 entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

Gerald F. Parrish
Chairman, Election Board

John Ross
David Lilliberg
Kathleen Bowen
Susan A. Schultz

Date: April 26, 2004

CERTIFICATE OF APPROVAL

I, Hilda A. Manuel, Deputy Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by Secretarial Order No. 3150 as extended by Secretarial Order No. 3177, as amended, do hereby approve the Constitution of the Little River Band of Ottawa. This Constitution is effective as of this date; PROVIDED, That nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

/s/ Hilda A. Manuel
Deputy Commissioner of Indian Affairs
Washington, D.C.

Date: Jul 10 1998

CERTIFICATE OF APPROVAL (2004 AMENDMENTS)

I, Terry L. Virden, Regional Director, Midwest Regional Office, Bureau of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and further delegated to me by 3 IAM 4.4, do hereby approve Proposed Amendment "A" now designated as Amendment Number I to the Constitution of the Little River Band of Ottawa Indians. This amendment is effective as of this date: PROVIDED, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

I, Terry L. Virden, Regional Director, Midwest Regional Office, Bureau of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and further delegated to me by 3 IAM 4.4, do hereby approve Proposed Amendment "B" now designated as Amendment Number II to the Constitution of the Little River Band of Ottawa Indians. This amendment is effective as of this date: PROVIDED, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

I, Terry L. Virden, Regional Director, Midwest Regional Office, Bureau of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and further delegated to me by 3 IAM 4.4, do hereby approve Proposed Amendment "C" now designated as Amendment Number III to the Constitution of the Little River Band of Ottawa Indians. This amendment is effective as of this date: PROVIDED, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

Terrance L. Virden
Regional Director

Date: May 13, 2004

EXHIBIT B

to

AFFIDAVIT OF SPEAKER STEPHEN PARSONS

Little River Band of Ottawa Indians

Resolution # 10-0317-86

*Approving Revised Gaming Commission Regulation
Chapter 13 –Labor Organization Licensing Regulation #R400-04:GC-13*

(Adopted March 17, 2010)



Little River Band of Ottawa Indians
375 River Street
Manistee, MI 49660
(231) 723-8288

Resolution # 10-0317-86

*Approving Revised Gaming Commission Regulation
Chapter 13 – Labor Organization Licensing Regulation #R400-04:GC-13*

WHEREAS, the status of the *Gaa' Čhíng Ziibi Daáwaa Aníshinaábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which, became effective upon approval by the Assistant Secretary-Indian Affairs on May 3, 2004; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) to provide for the public health, peace, morals, education and general welfare of the Little River Band and its members; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(I) to take action, not inconsistent with the Constitution or Federal law, which is necessary and proper to carry out the sovereign powers of the Tribe; and

WHEREAS, the Tribal Council has, pursuant to Gaming Commission Ordinance No. # 04-400-04, created a Gaming Commission and delegated to such Commission the authority to regulate all gaming activities authorized by the Tribe and to enforce all Tribal and federal laws governing the conduct of Tribally-licensed gaming activities; and

WHEREAS, the Gaming Commission, pursuant to Section 6.04(a) of the Gaming Commission Ordinance, shall promulgate regulations consistent with the ordinance and necessary to carry out the orderly performance of its duties and powers; and

WHEREAS, the Tribal Council adopted the Fair Practices Code #05-600-03 – Article XVI, Section 16.08 (a) which requires any and all labor organizations engaging in organizing employees working for any public employer to be licensed by the Little River Band of Ottawa Indians Gaming Commission; and

WHEREAS, the pursuant to the Fair Employment Practices Code #05-600-03 – Article XVI, Section 16.08 (b) the Gaming Commission enacted Chapter 13 – Labor Organization Licensing Regulation which sets forth the licensing requirements for labor organizations and this regulation was approved by the Gaming Commission on July 24, 2008 and by Tribal Council on August 6, 2008; and

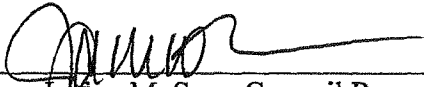
WHEREAS, revisions have been made to the regulation to provide applicants with full disclosure of what the process is for conducting background investigations and it also requires applicant to sign a Release of Authorization Form allowing the Gaming Commission to conduct the background investigation; and

WHEREAS, the Gaming Commission approved the revised Regulation #R400-04:GC-13 Chapter 13 with Resolution No.#GC10-0223-03 at its February 23, 2010 regular meeting and it is now being presented to the Tribal Council for approval in accordance with Section 6.04(b) of the Gaming Commission Ordinance.

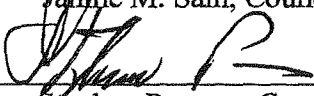
NOW THEREFORE IT IS RESOLVED THAT that Gaming Commission revised Regulation #R400-04:GC-13 Chapter 13 Labor Organization Licensing is hereby approved by the Little River Band of Ottawa Indians Tribal Council and is of full force and effect.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 8 FOR, 0 AGAINST, 0 ABSTAINING, 0 ABSENT, and 1 VACANT, at a Regular Session of the Little River Band of Ottawa Indians Tribal Council held on March 17, 2010 at the Little River Band's Downtown Offices in Manistee, Michigan, with a quorum being present for such vote.



Janine M. Sam, Council Recorder



Stephen Parsons, Council Speaker

Attest:

Distribution: Tribal Ogema
Council Records
Tribal Court
Gaming Commission

EXHIBIT C

to

AFFIDAVIT OF SPEAKER STEPHEN PARSONS

Little River Band of Ottawa Indians

Resolution # 08-1015-350

***Approving and Adopting the Model Band-Union Election
Procedures Agreement***

(Adopted October 15, 2008)

And the Model Band-Union Election Procedures Agreement



Little River Band of Ottawa Indians

375 River Street
Manistee, MI 49660
(231) 723-8288

Resolution # 08-1015-350

Approving and Adopting the Model Band-Union Election Procedures Agreement

WHEREAS, the status of the *Gaá Čhíng Ziibi Daáwaa Aníshinábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) to provide for the public health, peace, morals, education and general welfare of the Little River Band and its members; and

WHEREAS, the Tribe has adopted the Fair Employment Practices Code which has been amended from time to time; and

WHEREAS, the Fair Employment Practices Code refers to a Model Band-Union Election Procedures Agreement which may form the basis for future election procedures for a labor organization seeking to represent a bargaining unity within a public employer; and

WHEREAS, Tribal Council believes it is in the best interests of the Tribe to approve and adopt the attached Model Band-Union Election Procedures Agreement.

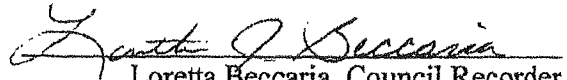
NOW THEREFORE IT IS RESOLVED THAT the Tribal Council hereby approves and adopts the attached Model Band-Union Election Procedures Agreement which may form the basis for future election procedures for a labor organization seeking to represent a bargaining unit within a public employer.

IT IS FURTHER RESOLVED THAT the Tribal Council Executive Assistant shall provide a copy of the Model Band-Union Election Procedures Agreement upon written request of any person, organization or entity.

IT IS FINALLY RESOLVED THAT any future Band-Union Election Procedures Agreement presented to the Ogema for signature shall require ratification by Tribal Council.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 7 FOR, 0 AGAINST, 0 ABSTAINING, and 2 ABSENT, at a Regular Session of the Little River Band of Ottawa Indians Tribal Council held on October 15, 2008, at the Little River Band's Dome Room in Manistee, Michigan, with a quorum being present for such vote.


Loretta Beccaria, Council Recorder


Don Koon, Council Speaker

Attest:

Distribution: Council Records
Tribal Ogema
Tribal Court

MODEL BAND-UNION ELECTION PROCEDURES AGREEMENT

This Agreement is between the Little River Band of Ottawa Indians (the "Tribe") and the [name of labor union] (the "Union"). The application of this Agreement shall be limited to the [name of agency, authority, commission, or subordinate economic organization]; and shall further apply to the conduct, actions, and statements of any official, agent, or representative of the Tribe, and any manager, supervisor, agent, representative and/or employee working for the [name of agency, authority, commission, or subordinate economic organization]; and the conduct, actions, and statements of any official, agent or representative of the Union. As used herein, "Management" shall mean those individuals in charge of managing the day-to-day operations of [name of agency, authority, commission, or subordinate economic organization].

This Agreement reflects the mutual interests of the parties to respect the sovereign right of the Tribe to govern its own affairs. This Agreement equally reflects the mutual interests of the parties to respect the rights of individuals employed in non-confidential and non-supervisory positions at [name of agency, authority, commission, or subordinate economic organization] to have the opportunity to determine, free of intimidation and coercion, if they would like to select the Union as their collective bargaining representative.

In order to best effectuate these mutual interests, the parties agree to the following:

I. SOVEREIGNTY

- A. The Union acknowledges that the Tribe is a federally recognized Indian Tribe, exercising governmental authority over its territory and affairs, including its gaming operations at the Resort pursuant to the Indian Gaming Regulatory Act. The Tribe's exercise of such governmental authority is essential to the welfare of its tribal members and the fulfillment its goals of tribal self-government and economic independence. The parties agree and affirm that the Tribe is a government and, therefore, distinctly different from employers who fall within the jurisdiction of the National Labor Relations Board.
- B. Except as otherwise provided herein, the Union agrees not to pursue any rights it has or may claim to have to file suit(s), petition(s), unfair labor practice charge(s), or other claims, or actions under the National Labor Relations Act (the "NLRA") or in, or of, any Federal or State court, agency or entity. Nor will the Tribe seek the involvement of any Federal or State court or government agency relative to any aspect of this process.
- C. The Union's commitment to not to pursue the rights described in Paragraph B of this Section of the Agreement shall cease if: (a) the Tribe fails or refuses to (i) participate in arbitration as outlined in Section VIII of this Agreement, or (ii) abide by an Arbitrator's decision issued in accordance with Section VIII, or (b) an Arbitrator issues a decision stating that there are no adequate remedial

measures available to the Union pursuant to and consistent with the spirit of this Agreement.

II. APPROPRIATE GROUP FOR BARGAINING

The parties agree to the following with respect to identification of bargaining units:

A. Generally

Employees must have a sufficient community of parallel interests to be an appropriate group for bargaining. "Parallel interests" is a broad term which contemplates a bargaining process involving employees who share significant conditions of employment. Employees with similar job duties, skills, and positions have parallel interests. Employees who are part of a functionally integrated work environment have parallel interests. Employees with common supervision have parallel interests.

B. Specific Employees

Certain employees serve in unique vocational roles and cannot be joined in an appropriate bargaining group with other employees. Security Guards necessarily can only be part of a single bargaining group exclusively comprised of guards. Other employees may have unique functions that warrant special consideration, given the nature or their particular line of work.

C. Exclusions

Supervisory, managerial, executive personnel, "confidential" employees cannot be part of any bargaining group. Nor can employees who are part-time (working less than four hours per week), temporary, seasonal, or casual employees be included in a bargaining unit. The terms in this paragraph to describe various employees (i.e., "supervisory, managerial, confidential employees"), shall be construed consistently with the definitions applied to such terms in under the National Labor Relations Act ("NLRA") if not inconsistent with the laws of the Tribe.

D. Union Notice to Management, Agreement or Arbitration

1. Should the Union claim that 30% or more of a unit of employees supports union representation, it shall so inform Management, in writing, and demonstrate that the following conditions are met:
 - a. That the group the Union seeks to represent is an appropriate one under the principles set forth in this Section II;
 - b. That there is reliable evidence of individual employee support for Union representation; and
 - c. That the number of employees expressing the desire to be represented by the Union within the proposed bargaining unit constitute 30% or more of the employees in that unit.

2. If, within 21 days after Management's receipt of the Union's written claim under subsection D(1), the parties are unable to agree about whether the identified unit of employees is an appropriate bargaining unit under the provisions of this Section II and that the conditions set forth in subsections D(1) (a) – (c) are met, the dispute shall be resolved by an Arbitrator chosen by Tribal Counsel provided that the Arbitrator shall be a member of the National Academy of Arbitrators. The Arbitrator shall apply the standards that would govern the identification of appropriate bargaining units under persuasive public sector labor relations laws or the NLRA if not inconsistent with the laws of the Tribe. The Arbitrator shall hold such hearing as the Arbitrator deems necessary to resolve the dispute and shall issue a decision in writing, setting forth the rationale for the decision. The Arbitrator's decision shall be final and binding on the parties, subject to the Little River Band of Ottawa Indians Arbitration Ordinance.

III. PRELIMINARY CONDITIONS FOR SCHEDULING AN ELECTION

Upon agreement of Management and the Union or an Arbitrator decision establishing that the conditions of subsection II(D)(1)(a)-(c) are met, the Union shall so inform the Tribe in writing. The Tribe shall then immediately arrange to have an independent, non-partisan third-party Election Official confirm within five (5) days (excluding weekends and holidays) that the following conditions are met:

- (1) That there is reliable evidence of individual employee support for Union representation; and
- (2) That the number of employees expressing the desire to be represented by the Union within *[the bargaining unit at issue]* constitute 30% or more of the employees in that unit.

provided, however, that the Tribe shall have no obligation arrange such action by the Election Official unless and until the Union provides the Tribe with a copy of a license (or provisional license) issued to the Union by the Gaming Commission which is in effect.

IV. SCHEDULING THE ELECTION

- A. In the absence of an unresolvable dispute over the composition of the bargaining unit, an election among eligible employees in the bargaining unit shall occur on the next regularly scheduled payday ____ months from the time the Union satisfies all of the conditions of Section III of this Agreement.
- B. Upon the Union's satisfaction of all of the conditions of Section III of this Agreement, a list of all eligible employees in *[description of bargaining unit established by agreement or Arbitration]* shall be prepared by Management in alphabetical order, along with each employee's address and title, with a copy supplied to the Union within five (5) days after the election is scheduled. "Eligible employees" shall include anyone hired and actually working as of the payroll period immediately preceding the Union's 30% minimum showing of interest submission to the Election Official. The Union will identify any disputes with the

list (omissions, incorrect inclusions), and the parties will try to resolve differences through agreement. Disagreements will be resolved by expedited arbitration provided for in Article VIII, and the ____ month pre-election period shall not commence until after resolution of all bargaining unit disputes. The Arbitrator may extend the eligibility hire date to ensure that no employee is improperly disenfranchised.

Management will provide the Union with timely updates of this list through to the date of the election to the extent there are any changes to the list.

C. Notice of Meeting and Ground Rules

Within 10 days (excluding weekends and holidays) after the scheduling of an election, Management will:

1. Post, as well as distribute, notices to those employees within [*description of bargaining unit established by agreement or Arbitration*] eligible to vote, setting forth information about the date, time, and place of the election, the purpose of the election, and the employees' rights to be educated on the benefits and deficits of union representation. These election notices will be facially neutral and not espouse a position for or against union representation. (See Attachment A Notice)
2. Hold a meeting with the bargaining unit employees. to cover ground rules. The meeting will not include any kind of campaigning or solicitation, but will inform employees as to the process, the employees' rights to truthful information, and rules against coercion, discrimination and harassment.

- D. A week before the election, Management will send Notices to those employees eligible to vote, setting forth information about the date, time, and place of the election, the purpose of the election. This reminder Notice will also be posted on the employee bulletin board. These election notices will be facially neutral and not espouse a position for or against union representation. (See Attachment____)

The substantive terms set forth in Attachments A, and ____ are hereby incorporated into the terms of this Agreement by reference.

V. RULES TO ENSURE CIVILITY OF CAMPAIGNING & COMMUNICATIONS

A. Mutual Goals

The Parties agree that the employees covered by this Agreement shall be allowed to self-organize, to form, join, or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, except to the extent that such activities may be limited or affected by Tribal Law. The Parties further agree that such employees shall also have the right to refrain from any or all such activities. To preserve employee freedom of choice, the Parties agree that all communications will be informational, truthful,

and non-threatening, and that there will be no discriminatory conduct - either favoring or punishing employees, for their stance on the organization effort.

B. Employees' Rights to Truthful Information

It is the mutual goal of the Tribe and the Union to make every reasonable effort to treat the pre-election time period as an opportunity to educate employees with accurate information about union representation in constructive ways which do not disrupt the smooth, orderly running of the *[name of agency, authority, commission, or subordinate economic organization]*.

Management and the Union shall adhere to the following rules for making sure that employees have access to complete, accurate information prior to voting:

1. Employees may be truthfully advised about the reasons employees vote for and against union representation in constructive ways that do not include personal attacks or "scapegoating" by either party.
2. Employees may be truthfully advised about the collective bargaining process and the obligation of each side to bargain in good faith.
3. Employees may be truthfully advised about typical labor agreement provisions and whether the administration of such provisions might add to, subtract from, or not substantially affect the quality of their working lives.
4. Employees may be truthfully advised about Tribal Laws governing employment and labor relations, including Article XVI of the Fair Employment Practices Law.
5. Employees may be truthfully advised about financial obligations and other requirements of union membership.
6. Employees shall not be subjected to distorted, exaggerated, or misrepresented factual information. Opinions involving speculation should be carefully identified as being conjecture rather than fact.

C. Meetings & Access

1. After the meeting on Ground Rules, Management will hold mandatory meetings with employees within *[description of bargaining unit established by agreement or Arbitration]* prior to the election
2. *[Union access to premises may be negotiated on a case-by-case basis]*

D. Misconduct by Employees

1. Employee Solicitation & Discussions

The *[name of agency, authority, commission, or subordinate economic*

organization]'s existing rules limiting solicitation shall be enforced.

Employee discussions about the union should not be held in public areas where the focus of employees is customer service. When a bargaining unit at the Little River Casino Resort is at issue, this includes gaming areas, reception areas, restaurants, bars, as well as aisles and corridors in proximity to such places; hotel hallways, restrooms, and parking areas do not fall within this prohibition.

Employee discussions about the union in non-restricted public areas during off duty time such as breaks, meal times, and before and after work are permissible.

Employee discussions about the union in non-public areas as well as hotel hallways, parking lots, and rest rooms by employees on duty are permissible so long as there is no interference with employees' work.

No unwelcome solicitation or discussion is permitted.

2. Unwelcome Conversations & Harassment

An employee's request for one or more co-workers to desist from soliciting them or talking to them about the union must be honored. Persistence by someone who ignores a clearly articulated request to stop talking about the union will constitute harassment. Such harassment may be subject to disciplinary rules of the *[name of agency, authority, commission, or subordinate economic organization]*.

3. Intentionally Misleading Other Employees

Employees who recklessly or consciously disseminate inaccurate, misleading, or false information may be subject to progressive discipline for such behavior. A pattern or recurrence of such behavior may delay the holding of a vote until ameliorative remedial measures have been taken. If discovered after the balloting, such conduct may taint the election results depending on the impact of such conduct on a sufficient number of employees eligible to vote in the election.

VI. THE ELECTION

A. Voting Time/Place.

The secret ballot election should be arranged so that eligible employees have ample time to participate. Due consideration will be given to employees' varied work schedules. Polling will occur in a convenient place for employees to vote.

B. No Solicitation on Election Day.

The pre-election interval is adequate for the Union, Management, and employees advocating for or against union representation to convey their information and

opinions about union representation. Last minute solicitation by anyone can generate confusion, and nullifies opportunities for response. There shall be no "campaigning" on election day. (This no campaigning rule shall not preclude reminding employees of their opportunity to vote).

C. Neutral Election Official

The Tribe will engage a neutral third party Election Official to manage the voting process and count the ballots.

D. Voter Eligibility List

The parties have entered into this Agreement with the intent of trying to resolve, through mutual accord, any and all disputes concerning which employees are eligible to vote. Management and the Union shall have an ongoing obligation throughout the ____ month pre-election interval to immediately raise and try to resolve through agreement questions about the eligibility of any voting employee prior to the election. On the day of the vote, if Management or the Union believes an individual on the list is not eligible to vote, so long as the basis for the challenge is not reasonably discernible prior to the time the challenge is raised, such individual's ballot shall be challenged by the Election Official.

Anyone who is not on the list who attempts to vote will automatically have their ballot challenged by the Election Official.

E. Observers

Two non-supervisory employees who are part of the bargaining group that is the subject of the election will act as Observers, on a volunteer basis, to help the Election Official conduct the secret ballot voting process. Management and the Union will each select one Observer per shift (the same Observer may be assigned to one, two, or all three shifts). Such individuals should be familiar with the employees eligible to vote to assure the proper distribution of ballots to only eligible participating employees. There shall be no solicitation or "politicking" of any kind by observers. For an election involving employees at the Little River Casino Resort, observers shall have a current, official Resort identification card, allowing them to be present within the Resort.

F. Polling Place and Process

The voting process should be an orderly one, with limited talking in the balloting area. Managerial and Supervisory personnel will stay away from polling places.

In order to vote, eligible employees must vote in person. There shall be no absentee ballots.

Voting shall occur in an orderly and efficient fashion. There shall be no loitering or mingling at the polling location before or after voting.

G. Ballots

1. Form

Ballots will be simple and plainly worded. Employees will be told not to sign or mark ballots, but to check off their preferences relative to Union representation with a "√" or an "x" in the designated box next to their choice.

Illustrative Ballot Language

Do you want to be represented by the [*name of union*] for purposes of collective bargaining?

Please mark your choice in the appropriate box.

YES ☐

NO ☐

2. Challenged Ballots

A challenged ballot will be placed in a envelope and sealed, with the employee's name written on the outside of the envelope, and then placed in the ballot box by the Election Official.

H. Counting the Vote

After the final polling period ends, Management and the Union will confer with the Election Official to determine if there are any challenged ballots and whether any of the challenged ballots can be resolved. Any challenged ballot which remains challenged will be saved and set aside without being counted. The Election Official shall then proceed with counting the votes. The Election Official will open the ballot box and mingle the votes. The Election Official will open each individual ballot, read it aloud, and then place it into stacks of "Yes" and "No" ballots.

After each ballot is opened and properly stacked, the Election Official will count all properly marked ballots, keeping track of the tally. Election observers will be present throughout this process. Representatives of the parties may choose to attend.

If the number of the challenged ballots could affect the outcome of the vote, the eligibility of all challenged ballots will be determined through the Dispute Resolution procedures of this Agreement.

I. Official Tally

Upon the completion of the tally, the Election Official will supply Management and the Union with an official tally, certified under oath, indicating the number of votes for each choice.

J. Objections; Dispute Resolution

To ensure the integrity of this Agreement, the parties shall have seven (7) days following the completion of voting to file any objection or claim of violation under this Agreement in writing to the Election Official with copies to the other party and the basis for the objection or claim.

Should the Election Official receive such a written objection or claim, the parties shall proceed to dispute resolution under Section VIII(C).

VII. ELECTION RESULTS

- A. If the Union wins the election, the parties will follow Tribal law regarding negotiation.
- B. If the Union loses the election, the results shall be treated as a choice for no union representation for *[description of bargaining unit established by agreement or Arbitration]* for a period of twelve months. During this twelve month interval the Union shall not engage in "solicitation" or "organizing" relative to *[description of bargaining unit established by agreement or Arbitration]* as these terms would be defined under the NLRA.

VIII. DISPUTE RESOLUTION

A. Generally

Any alleged violation or dispute involving any aspect of this Agreement, including but not limited to the inclusion or exclusion of particular employees from *[description of bargaining unit established by agreement or Arbitration]* as well as violations of either Articles V or VI, will be brought before an Arbitrator, mutually agreed to from a pool of three arbitrators of the National Academy of Arbitrators chosen by the Tribe and paid for by the Union and Management within 15 days of the receipt of either party of a written demand for Arbitration or such later time as the Arbitrator may promptly schedule a hearing. If the parties are unable to agree upon one of the three pool arbitrators, the election official (referenced in Article III above) shall select one of the three chosen arbitrators. Allegations of wrongdoing, misconduct, and/or violations which took place prior to the date of this agreement are not subject to this dispute resolution process and are hereby deemed to be satisfactorily resolved by the parties.

B. Disputes Arising Under Section V Before Scheduled Vote; Notice; Good Faith Effort to Resolve

- 1. Should either Management or the Union become aware of perceived violative conduct prior to the election, they shall notify the other, in writing (which shall be transmitted electronically or telecopier as well as via hard copy), of the charge and the basis for the charge. Management and the Union shall then make a good faith effort to resolve the alleged violation. This good faith effort shall include providing one another with unprivileged information relevant to the charge that is requested by the other.

2. If such good faith efforts do not result in resolution of the charge, the objecting party may provide a copy of the charge to the Arbitrator, simultaneously serving the other party, and ask the Arbitrator to immediately convene a conference call to discuss the charge and (a) in what manner it can be promptly be resolved without disturbing the election timetable (e.g. mediation, expedited proceedings; hearing via telephonic conference call; hearing via written submission; in-person hearing; decision announced at conclusion of hearing; decision announced via telephone conference call within 24 hours of hearing) and (b) whether in the circumstances the charge merits postponing the election until such time as the charge is resolved by the Arbitrator or whether the election should proceed with the Arbitrator authorized to issue the appropriate remedy after the election has been conducted. The determination of the Arbitrator, as to how the charge will be addressed and whether it will delay the election, which shall be made within 24 hours of the conference, shall be final and binding.

The mutual requirement on Management and the Union to assert known allegations in the most timely manner is intended to: (a) reduce any adverse impact of a violation at the soonest time; (b) minimize the chances of the conduct being repeated; and (c) determine whether the election should take place as scheduled. Failure to raise an allegation in a timely manner will be regarded as a waiver.

C. Disputes Arising After Vote; Good Faith Resolution of Disputes

Should either Management or the Union assert an objection or claim under Section VI(J), the parties shall confer and attempt, in good faith, to resolve the objection or claim. Should the parties fail to resolve an alleged violation, the charging party may invoke Arbitration to resolve the party's claim.

D. Power and Discretion of Arbitrator; Written Decisions; Sanctions

1. Subject to the Section VIII(D)(2), and unless otherwise provided herein, the Arbitrator shall be empowered to impose such remedial measures as the Arbitrator deems would resolve any dispute or fully ameliorate the impact of any conduct in violation of this Agreement, ordering remedies typically available under persuasive public sector labor relations law or in the context of NLRA proceedings.

2. Standards for "Major" and "Minor" Violations

The distinction between a "major" and a "minor" violation shall be based upon the standards that would normally govern campaign activities and speech under the NLRA, but only to the extent that such standards are consistent with this Agreement and the Laws of the Tribe.

Violation by Management; Sanctions

- a. If the Arbitrator finds a "major violation" of Section V or Section VI by Management, the Arbitrator's remedy may include the Tribe's consent to recognize the Union as bargaining agent for the employees of the bargaining unit involved in the election, based on the percentage of cards that are signed by eligible employees (minimum of 50% of the employees eligible to vote plus 1). To the extent the Union has less than the required cards to justify recognition, the Union shall have twenty-one (21) days from the date of the Arbitrator's decision to attain sufficient additional cards to warrant recognition. Strict neutrality will be observed by Management with respect to this card-signing campaign. The Election Official shall conduct a supplemental card check by confirming the eligibility of each employee who signs a card, and, if a majority of valid cards are obtained, certify the results.
- b. If the Arbitrator finds a "minor violation" of Section V or Section VI by Management, the Arbitrator may reschedule the vote and order such other remedy as fairness and justice requires; provided however, that multiple "minor violations" may constitute grounds for the Arbitrator to find a "major violation."
- c. The Arbitrator shall only require the card check remedy set forth above if such remedy is consistent with persuasive public sector labor relations law or Gissel Packing and its progeny.

3. Violation by Union; Sanctions

- a. If the Arbitrator finds a "major violation" of Section V or Section VI by the Union, the Union shall abstain from all activities and actions of any kind to promote the organization of a union, or otherwise seek representation of any employees at [*name of agency, authority, commission, or subordinate economic organization*] for a period of twelve (12) months after the election. To the extent any improper "politicking" of any kind occurs, this representational bar may be extended by an additional six (6) months per violation upon a finding of such additional improper conduct by the Arbitrator.
- b. If the Arbitrator finds a "minor violation" of Section V or Section VI by the Union, the Arbitrator may reschedule the vote and order such other remedy as fairness and justice requires; provided however, that multiple "minor violations" may constitute grounds for the Arbitrator to find a "major violation".
- c. The Arbitrator's discretion in establishing a remedy for Union misconduct shall be guided by persuasive public sector labor relations law or principles followed by the NLRB.

4. The decision of the Arbitrator shall be in writing and issued as soon as

possible following the close of a hearing, and, in any event, no more than 14 days following such hearing.

5. Allegations shall be provable by a preponderance of the evidence, and the rules of evidence applicable to trials in the Little River Band of Ottawa Indians Tribal Court shall apply.
6. The Arbitrator's decision will be final and binding on the Parties.

Agreed to (date) _____

For the Tribe:

For the Union:

ATTACHMENT A

ANNOUNCEMENT OF UNION REPRESENTATION ELECTION FOR SECURITY PERSONNEL

Under Tribal Law employees have the right to organize and join a union. The laws of the Tribe recognize that, if at least thirty percent of the eligible workers in an appropriate bargaining unit reliably express interest in being represented by a Union, then everyone in the unit shall have the right to participate in a secret ballot election to vote on whether they want Union representation. The outcome of the election will be determined by a simple majority.

The [name of union] have met the thirty percent requirement in the [name of bargaining unit] and [describe eligible employees] will be eligible to vote in a secret ballot election scheduled for _____. Employees who are eligible to vote will be receiving individual notices of their right to participate.

Whether to have union representation or not is a question which should be studied carefully by employees prior to voting. The [name of agency, authority, commission, or subordinate economic organization] and the [name of union] will abide by the following rules to make sure that employees have access to complete, accurate information prior to the election. Employees will be truthfully advised about:

- What good faith collective bargaining means and what obligations it requires of the [name of agency, authority, commission, or subordinate economic organization] and the Union.
- Typical, current labor agreement provisions and how such provisions may or may not affect the quality of the working lives of employees.
- The reasons employees generally vote for and against union representation based on constructive, fair analysis of factual information.
- Typical requirements of union membership.

Neither the [name of agency, authority, commission, or subordinate economic organization] nor the Union will distort, exaggerate, or misrepresent factual information. Scapegoating will not occur, and there will be no personal attacks on [name of agency, authority, commission, or subordinate economic organization] leadership or Union representatives.

The Tribe has appointed an independent Election Official to conduct a fair election, and the Tribe and the Union have arranged for an independent arbitration process to resolve any disputes or issues that arise.

There will be a meeting on _____ to discuss Ground Rules covering the pre-election process. At this meeting, rules on employees' rights will be described in greater detail.

Employees have the right to either support or reject union representation without being subjected to any kind of harassment, intimidation or unwelcome solicitation. Employees cannot be punished or rewarded based on whether they are for or against having a union.

EXHIBIT D

to

AFFIDAVIT OF SPEAKER STEPHEN PARSONS

Fair Employment Practices Code

Ordinance # 05-600-03

FAIR EMPLOYMENT PRACTICES CODE
Ordinance # 05-600-03

Article I. Purpose; Findings

1.01. *Declaration and Policy.* As a sovereign Indian tribe, the Little River Band of Ottawa Indians has inherent authority to govern employment relations within its jurisdiction. It is the public policy of the Band to:

- a. ensure that members of the Band and other Indians gain and maintain employment opportunities within the Band's jurisdiction;
- b. prevent and remedy any discrimination in employment (other than to promote the employment of Band members and other Indians) on the basis of sex, race, color, national origin, religion, age, disability, veteran, marital status, or sexual orientation; and
- c. ensure that employees within the jurisdiction of the Band work in safe conditions, receive fair compensation, and otherwise have fair terms and conditions of employment.

1.02. *Purposes.* The purpose of this Code is to:

- a. prevent and remedy discrimination in employment, unless in furtherance of Indian employment preferences, on the basis of sex, race, color, national origin, religion, age, disability, veteran, marital status, or sexual orientation; and
- b. establish standards for fair and safe working conditions.

1.03. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

- a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]” *Article IV, Section 7(a).*

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted by Tribal Council resolution # 05-1102-564.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances. An emergency amendment to add Article XVI. Labor Organizations and Collective Bargaining was adopted by Resolution # 07-0620-334. Permanent adoption to add Article XVI Labor Organizations and Collective Bargaining was adopted by Resolution # 07-0801-427. Article XVI was revised and adopted on an emergency basis by Resolution #08-0206-32, and permanently adopted by Resolution #08-0319-76. Emergency amendments were again adopted to revise Article XVI, to add a new Article XII, Whistleblower Protection, to establish remedies for violations of new Article XII, and to correct minor typographical errors in the Code by Resolution # 08-1015-348. Further amendments were adopted by Resolution # 09-0304-60 to (1) require the posting of employee rights provided by this Code under Article XIII; (2) revise Article XII, Whistleblower Protection, to clarify investigation requirements; and (3) revise Article XVI to (a) more specifically describe public employer bargaining duties, (b) more specifically provide for Tribal Court review of certain disputes, (c) more specifically identify employee rights by separate article, (d) require good faith efforts by parties to resolve alleged unfair labor practices, (e) streamline procedures for the resolution of bargaining impasses, and (f) more specifically describe terms and conditions not subject to change during bargaining impasse. Amendments were made by Resolution # 09-0715-194 to (a)amend Article XVI, section 16.16(b) to correct a drafting error

regarding remedies available to public employees who suffer discrimination for exercising rights under section 16.14 and (b) amend section 16.25 to better clarify the scope of the limited waiver of sovereign immunity for the enforcement of rights and remedies against public employers. By Resolution 09-1202-334, emergency amendments were made to (a) add Article XVII to protect the integrity of this Code, (b) add an exception to the confidentiality rule stated in section 6.03 when employees fail to exhaust remedies provided for by this Code and to clarify the admissibility of FEPI reports in the Tribal Court under that section, (c) add new sections 6.09, 8.07, 10.07, 11.02, and 16.25 to provide for specific Tribal Court authority to resolve jurisdictional controversies, (d) to re-label prior sections 16.25 and 16.26 as current sections 16.26 and 16.27, respectively, and (e) to correct clerical errors, with permanent adoption by Resolution 10-0127-19. By Resolution 10-0728-268, amendments were made to (a) allocate the parties' responsibilities for paying for the services of arbitrators retained to resolve unfair labor practice charges under section 16.16(a)(2); (b) establish the 180 day time limitation for assertions of certain unfair labor practices under section 16.16(b); (c) protect potential confidential information from disclosure in the decisions of fact finders or arbitrators under sections 16.17(c) and 16.17(d); (d) eliminate from an arbitrator's mandatory consideration under section 16.17(d) items involving the public welfare of the Little River Band of Ottawa Indians; and (e) to provide an additional review process before Tribal Council for the resolution of bargaining impasses pursuant to new section 16.17(e).

2.03. *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.

2.04. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

2.05. *Title.* This law shall be referred to as the Fair Employment Practices Code.

2.06. *Waiver of Sovereign Immunity.* The sovereign immunity of the Band is hereby waived for any actions brought pursuant to this Code and for any process, including subpoenas.

2.07. *Persuasive Authority.* Decisions of the United States Supreme Court and the Court of Appeals for the Sixth Circuit, and the regulations and guidelines of the United States Equal Employment Opportunity Commission shall be persuasive authority in guiding the construction of the provisions of this Code to the extent that they are similar to federal enactments addressing employment discrimination.

Article III. Definitions.

3.01. *Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word "shall" is always mandatory and not merely advisory.

3.02. *Band* means the Little River Band of Ottawa Indians.

3.03. *Direct threat* means a significant risk to the health or safety of others that can not be eliminated by reasonable accommodation.

3.04. *Disability* means a physical or mental impairment of an individual which substantially limits one or more of such person's major life activities, the state of having a record of such impairment, or the state of being regarded as having such an impairment.

a. *Physical or mental impairment* means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, genitourinary; hemic and lymphatic; skin; and endocrine; cardiovascular; reproductive; any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; and includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy,

muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

b. *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

c. *Having a record of such an impairment* means having a history of, or having been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

d. *Being regarded as having an impairment* means having B

1. a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation,

2. a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. having none of the impairments defined in paragraph (a) of this section but being treated by an employer as having such an impairment and as being substantially limited by such impairment in one or more major life activities.

3.05. *Discriminate* means to segregate or separate, and, for purposes of section 4.02 as it relates to an individual with a disability, "discriminate" means:

a. Limiting, segregating or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;

b. Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

c. Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer;

d. Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of the employer to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

e. Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the employer, is shown to be job-related for the position in question and is consistent with business necessity; and

f. Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude or any other factor of the applicant or employee that the test is designed to measure, rather than reflecting the impaired sensory, manual or speaking skills of the employee or applicant (except when such skills are the factors that the test is designed to measure).

"Discriminate" shall not mean treating Indians differently than non-Indians or Band members differently than other Indians in order to promote employment preferences for members of the Band or other Indians.

3.06. *Employee* means an individual employed by an employer. "Employee" does not include any individual employed by that individual's parents, spouse or child.

3.07. *Employee benefits*, for the purposes of Article VIII, addressing family and medical leave protection, "employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability

insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

3.08. *Employer* means any type of organization, including tribal or foreign corporations and partnerships; the Band; any political subdivision, agency, or department of the Band; and any tribally chartered enterprise of the Band doing business on lands within the jurisdiction of the Band and employing any number of employees.

3.09. *Family medical leave*, for the purposes of Article VIII, addressing family medical leave protection, "family medical leave" means leave requested by an employee:

- a. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee;
- b. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
- c. Because of the placement of a son or daughter with the employee for adoption or foster care;
- d. In order to care for the spouse, or a son, daughter or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition.

3.10. *Health care provider* for the purposes of Article VIII, addressing family medical leave protection, "health care provider" includes a medical or osteopathic doctor, psychologist, psychiatrist, or other health care provider recognized by the employer's health insurance carrier.

3.11. *Illegal drug* means a substance defined as unlawful by state and/or federal law or a prescribed drug used outside of the prescribed manner, or an over-the-counter drug used outside the prescribed manner.

3.12. *Indian* means an enrolled member of a federally recognized Indian tribe or band.

3.13. *Public body* means all of the following:

- a. An officer, agency, department, division, commission, council, authority or other body of the Band;
- b. A law enforcement agency or any member or employee of a law enforcement agency; and
- c. The Tribal Court and any member or employee of the Band's judiciary.

3.14. *Qualified individual with a disability* means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. For the purposes of this Code, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

3.15. *Reasonable accommodation* may include -

- a. making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- b. job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Reasonable accommodation shall not include making changes that would conflict with the application of the Band's policies or laws providing employment preferences for members of the Band or other Native Americans.

3.16. *Serious health condition* for the purposes of Article VIII, addressing family medical leave protection, "serious health condition" means an illness, injury, impairment or physical or mental condition that involves:

- a. Inpatient care in a hospital, hospice or residential medical care facility; or
- b. Continuing treatment by a health care provider.

3.17. *Tribal Court* means the Little River Band of Ottawa Indians Tribal Court.

3.18. *Undue hardship.*

a. *In General.* The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in paragraph (b) of this section.

b. *Factors to Be Considered.* In determining whether an accommodation would impose an undue hardship on an employer, factors to be considered include -

1. the nature and cost of the accommodation needed under this Code;
2. the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
3. the overall financial resources of the employer; the overall size of the business of the employer with respect to the number of its employees; the number, type, and location of its facilities; and
4. the type of operation or operations of the employer, including the composition, structure, and functions of its workforce; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

Article IV. Unlawful Employment Discrimination

4.01. *Unlawful Discrimination: General Rule.* Except when based on a bona fide occupational qualification or in furtherance of the provision of employment preferences to members of the Band or other Indians pursuant to the law, rules, or policies of the Band or pursuant policies or actions giving preferences to Indians under 42 U.S.C. § 2000-2(i), it shall be unlawful employment discrimination, in violation of this Code B

a. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of sex, race, color, national origin, religion, age, disability, veteran, marital status, or sexual orientation; or, because of those reasons, to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment; or, in recruiting of individuals for employment or in hiring them, to utilize any employment agency that the employer knows or has reasonable cause to know discriminates against individuals because of their sex, race, color, national origin, religion, age, or disability; or

b. For an employer to discriminate in any manner against individuals because they have opposed a practice that would be a violation of this Code or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under this Code.

c. For any employer to discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment as provided by Article XII section 12.03.

4.02. *Unlawful Discrimination Against Qualified Individual with a Disability; Medical Screening; Illegal Use of Drugs and Use of Alcohol.*

a. *General Rule.* An employer may not discriminate against a qualified individual with a disability because of the disability of the individual in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training and other terms, conditions and privileges of employment.

b. *Medical Examinations and Inquiries.* The prohibition against discrimination referred to in paragraph (a) of this section shall include medical examinations and inquiries.

1. *Preemployment.*

A. *Prohibited Examination or Inquiry.* Except as provided in subparagraph (B), an employer shall not conduct a medical examination or make inquiries

of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

B. *Acceptable Inquiry.* An employer may make preemployment inquiries into the ability of an applicant to perform job-related functions.

C. *Prior Employment Injury with Employer.* An employer may make preemployment inquiries where the applicant was previously employed with the employer and suffered an on-the-job injury and where that injury is reasonably related to the ability to complete the job duties involved in the applied for position.

2. *Employment Entrance Examination.* An employer may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if B

A. all entering employees are subjected to such an examination regardless of disability;

B. information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except thatC

i. supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

ii. first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment;

iii. tribal government officials investigating compliance with this Code shall be provided relevant information on request; and

C. the results of such examination are used only in accordance with this Code.

3. *Examination and Inquiry During Employment.*

A. *Prohibited Examinations and Inquiries.* An employer shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

B. *Acceptable Examinations and Inquiries.* An employer may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. An employer may make inquiries into the ability of an employee to perform job-related functions.

C. *Requirement.* Information obtained under subparagraph (B) regarding the medical condition or history of any employee is subject to the requirements of subparagraphs (B) and (C) of subparagraph (2).

c. *Drug and Alcohol Use Policies.* It shall not be a violation of this Code for an employer to adopt or administer reasonable policies or procedures, including but not limited to drug and alcohol testing, designed to ensure that an individual described in subparagraphs 3(A) or (B) is no longer engaging in the illegal use of drugs or the use or under the influence of alcohol while on the job.

1. *Medical Tests.* For purposes of paragraph (b) of this section, a test to determine the illegal use of drugs or alcohol use or under the influence of alcohol while on the job shall not be considered a medical examination.

2. *Qualified Individual with a Disability.* For purposes of this Code, the term "qualified

individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs or use of alcohol or under the influence of alcohol while on the job, when the employer acts on the basis of such use.

3. *Rules of Construction.* Nothing in subparagraph 4.02(c)(2) shall be construed to exclude as a qualified individual with a disability an individual who B

A. has successfully completed a supervised rehabilitation program and is no longer engaging in the illegal use of drugs or abuse of alcohol, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

B. is participating in a supervised rehabilitation program and is no longer engaging in such use; or

C. is erroneously regarded as engaging in such use, but is not engaging in such use.

4. *Authority of Employers.* An employer may:

A. prohibit the possession or use of illegal drugs and the possession or use of alcohol at the workplace by all employees;

B. require that employees may not be under the influence of alcohol or illegal drugs at the workplace;

C. require that employees behave in conformance with the requirements established under the federal Drug-free Workplace Act of 1988, 41 U.S.C. § 701 et seq.; and

D. hold an employee who engages in the use of illegal drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which that entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee, provided that an employer shall make reasonable accommodation to an alcoholic or drug user who is seeking treatment or has successfully completed treatment.

E. adopt written policies or procedures that allow for the use of pre-employment, random, reasonable suspicion, post-accident, and follow-up testing that does not violate the protections set forth in this section or the Constitution of the Little River Band of Ottawa Indians.

d. *Defenses.*

1. *General Provisions.* It is a defense to a charge of discrimination under section 4.02 if an alleged application of qualification standards, tests or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability is shown to be job-related and consistent with business necessity, and such performance can not be accomplished by reasonable accommodation.

2. *Qualification Standards Defined.* For the purposes of this section, the term "qualification standard" may include a requirement that an individual does not pose a direct threat to the health or safety of other individuals in the workplace.

3. *Disability.* This Code does not prohibit an employer from discharging or refusing to hire an individual with a disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an individual with disability, if the individual, because of the disability, is unable to perform the duties or to perform the duties in a manner that would not endanger the health or safety of the individual or others or is unable to be at, remain at or go to or from the place where the duties of employment are to be performed.

4.03. *Unlawful Employment Discrimination on the Basis of Pregnancy.*

a. *Sex Defined.* For the purpose of Section 4.01(a), the word "sex" includes pregnancy and

medical conditions which result from pregnancy.

b. *Pregnant Women Who Are Able to Work.* It shall be unlawful employment discrimination in violation of this Code, except where based on a bona fide occupational qualification, for an employer to treat a pregnant woman who is able to work in a different manner from other persons who are able to work.

c. *Pregnant Women Who Are Not Able to Work.* It shall also be unlawful employment discrimination in violation of this Code, except where based on a bona fide occupational qualification, for an employer to treat a pregnant woman who is not able to work because of a disability or illness resulting from pregnancy, or from medical conditions which result from pregnancy, in a different manner from other employees who are not able to work because of other disabilities or illnesses.

d. *Employer Not Responsible for Additional Benefits.* Nothing in this subsection may be construed to mean that an employer is required to provide sick leave, a leave of absence, medical benefits or other benefits to a woman because of pregnancy or other medical conditions that result from pregnancy, if the employer does not also provide sick leaves, leaves of absence, medical benefits or other benefits for the employer's other employees and is not otherwise required to provide those leaves or benefits under tribal law or applicable federal law.

4.04. *Unlawful Age Discrimination by Imposing a Mandatory Retirement Age.* It shall be unlawful employment discrimination:

a. For any employer to fail or refuse to hire any applicant 40 years of age or older for employment because of the age of the individual; or

b. For any employer to require, as a condition of employment, any employee to retire at or before a specified age or after completion of a specified number of years of service.

4.05. *Types of Discrimination.* "Unlawful employment discrimination," includes

a. *Overt Discrimination.* an intentional, purposeful act of discrimination, such as direct epithets aimed at an individual because of sex, race, color, national origin, religion, age, or disability, resulting in adverse employment action.

b. *Harassment, Including Sexual Harassment.*

1. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature as well as unwelcome comments, jokes, acts and other verbal or physical conduct related to race, color, national origin, religion, age, disability, or an employee's report that is protected under Article XII, section 12.03 constitute unlawful workplace harassment when:

A. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

B. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

C. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

2. An employer is responsible for its acts and those of its supervisory employees with respect to the types of harassment described in subparagraph (1). When the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or loss of benefits, liability attaches to the employer regardless of whether the employer knew or should have known of the harassment, and regardless of whether the specific acts complained of were authorized or even forbidden by the employer. When the supervisor's harassment does not culminate in a tangible employment action, the employer may raise an affirmative defense to liability or damages by proving by a preponderance of the evidence:

- A. that the employer exercised reasonable care to prevent and correct promptly the harassing behavior, and
- B. that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

3. With respect to persons other than an employer's supervisors as described in subparagraph (2), an employer is responsible for acts of workplace harassment where the employer, or its supervisory employees, knows or should have known of the conduct. An employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action;

c. *Unequal or Disparate Treatment.* treating persons in a different and less favorable manner than other similarly situated individuals on account of race or color, sex, disability, religion, age, national origin, or an employee's report that is protected under Article XII, section 12.03;

d. *Disparate Impact.* conduct which, although applied equally to all, has an adverse effect on persons because of their race or color, sex, disability, religion, age, national origin, or because they made a report that is protected under Article XII, section 12.03 as compared to the effect on other persons;

4.06. *Proof of unlawful discrimination.* Unlawful employment discrimination exists if a complainant shows that his or her race, color, sex, disability, religion, age, ancestry, national origin, or making a report that is protected under Article XII, section 12.03, even if not the sole factor, was nonetheless a substantial factor motivating the employer's action. If the complainant would not have been rejected, discharged or otherwise treated differently, but for membership in the protected class, the existence of other reasonable grounds for the employer's action does not relieve the employer from liability.

Article V. Not Unlawful Employment Discrimination

5.01. *Indian Preference.* Nothing in this Code shall be construed to prohibit any action to provide employment preferences to members of the Band or other Indians pursuant to the laws, rules or policies of the Band or any employment policy or action that is permitted under 42 U.S.C. ' 2000e-2(i).

5.02. *Age.* It shall not be unlawful employment discrimination to discriminate on account of age to:

- a. Comply with any tribal law relating to the employment of minors;
- b. Observe the terms of any bona fide employee benefit plan such as a retirement, pension or insurance plan that does not evade or circumvent the purposes of this Code.

5.03. *Infectious and Communicable Diseases.* Assignment of individuals with an infectious or communicable disease is governed by the following.

a. In any case in which an individual has an infectious or communicable disease, which is transmitted to others through the handling of food and is included on the list developed by the United States Secretary of Health and Human Services under the federal Americans with Disabilities Act, Title I, Section 103(d)(1), an employer may refuse to assign or continue to assign the individual a job involving food handling, unless the risk of disease transmission can be eliminated by reasonable accommodation.

b. Nothing in this Code may be construed to preempt, modify or amend any tribal law applicable to food handling that is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which can not be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the United States Secretary of Health and Human Services.

Article VI. Procedure before Fair Employment Practices Investigator and Complaints in Tribal Court

6.01. *Fair Employment Practices Investigators.* The Chief Judge of the Appellate Division of the Little River Band of Ottawa Indians Tribal Court shall establish a list of no more than three (3) attorneys who shall fulfill the functions of Fair Employment Practices Investigators (FEPIs) under this Article. The Chief Judge shall solicit applications from attorneys to serve as FEPIs and shall have discretion to make appointments of such individuals to serve as FEPIs under this Article, provided, however, that such individuals must reside within 70 miles of the reservation, be members, in good standing, with a state court bar and a federal court, and have experience in employment law and mediation. The Chief Judge shall establish a reasonable hourly rate and cost reimbursement schedule to compensate the appointed FEPIs. FEPIs shall serve as independent contractors for the Tribe and shall not be under any supervisory authority by the Tribal Court or any judge of the Tribal Court, provided, however, that the Chief Judge shall have discretion to remove any FEPI from the list for any reason and substitute new, qualified FEPIs, as appropriate. FEPIs shall have subpoena powers to investigate Charges of Discrimination.

6.02. *Charge of Discrimination.* Any person who believes that he or she has been subject to unlawful employment discrimination may file a Charge of Discrimination under oath with the Tribal Court Clerk on the "Charge of Discrimination" form available from the Tribal Court Clerk, setting forth the facts of alleged discrimination, provided that such a Charge of Discrimination must be filed with the Clerk not more than 180 days after the alleged act of unlawful employment discrimination. The Clerk shall date-stamp the Charge upon receipt and mail it, with an appropriate cover letter, to the next assigned FEPI. The assignment of Charges to FEPIs shall be consecutive, in alphabetical order by last name of FEPI, to ensure even distribution of Charges to FEPIs. The Clerk shall retain a copy of the Charge and the assignment to the FEPI.

6.03. *Investigation and Settlement Efforts.*

a. The FEPI shall mail the employer a copy of the Charge of Discrimination and investigate the allegations in the charge. The investigation shall result in a Report, to be completed within 70 days of the Tribal Court Clerk's receipt of the Charge, setting forth the following

1. Substance of complaint, including the name of the filing employee and the allegations of discrimination.
2. Persons interviewed.
3. A determination of whether there is reasonable cause to believe that a violation of this Code has occurred, including findings of fact and conclusions of law.

c. The FEPI shall mail copies of the Report to the complainant and to the employer upon completion.

d. If the Report finds reasonable cause to believe that discrimination in violation of this Ordinance has occurred, the FEPI shall convene a meeting of the employer (through a representative with authority negotiate a settlement if one can be reached) and the complainant within 21 days after mailing the Report and attempt to reach a conciliation agreement. Any such conciliation agreement may include any of the remedies provided by this Article.

e. If, without good cause, the employer fails to attend a conciliation meeting held pursuant to section 6.3(d), the Report shall be admissible in any subsequent action brought by the complainant under this Code. The FEPI shall make note any employer's failure to attend such a conciliation meeting as an Addendum to the Report, and describe the notice of the meeting that was provided to the employer. Copies of the Addendum shall be mailed to the complainant and the employer.

f. If within 60 days of the mailing of the Report, the parties fail to enter into a conciliation agreement signed by the complainant and the employer or otherwise resolve the dispute, the FEPI shall issue a "right to sue" letter to the complainant.

6.04. *Actions Filed by Complainants.* Within the time limitation set forth in section 6.06, a person who claims to have been subject to unlawful employment discrimination may file a civil action in the Tribal Court against the employer alleged to have engaged in unlawful discrimination in violation of this Code.

6.05. *Remedies.* In any action filed under this Code, the Tribal Court may grant the remedies set forth herein.

a. *Equitable Remedies.* If the court finds that unlawful discrimination occurred, its judgment must specify an appropriate remedy or remedies for that discrimination. The remedies may include, but are not limited to:

1. An order to cease and desist from the unlawful practices specified in the order;
2. An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay or reasonable front pay if reinstatement is unfeasible;

b. *Damages.* Subject to section 6.06, in cases of overt discrimination or unequal or "disparate treatment" as described in section 4.05, but not cases in which an employment practice is unlawful only for disparate impact, the court may award compensatory and punitive damages as provided in this subparagraph.

1. A complaining party may recover compensatory damages against an employer for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, provided, however, that such compensatory damages shall not include back pay, interest on back pay or any other type of relief authorized elsewhere under this subsection.

2. A complaining party may recover punitive damages against an employer if the complaining party demonstrates that the employer engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the rights of an aggrieved individual protected by this Code.

3. When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded when the employer demonstrates good faith efforts, in consultation with the person with the disability who has informed the employer that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

4. The total sum of compensatory and punitive damages may not exceed \$10,000 for employers with less than 50 employees, \$25,000 for employers with between 50 and 99 employees, and \$50,000 for employers with 100 or more employees

6.06. *Time Limitations.* Any action filed under this section shall be commenced not more than 2 years after the act of unlawful discrimination complained of.

6.07. *Attorneys' Fees and Costs.* In any civil action under this Code, the court, in its discretion, may allow the prevailing party reasonable attorneys' fees and costs, subject to the requirements of section 6.08.

6.08. *Limitations on Attorneys' Fees and Damages; Procedures.* Attorney fees under section 6.07 and civil penal damages or compensatory and punitive damages under section 6.05(b) may not be awarded to a plaintiff in a civil action under this Code unless the plaintiff alleges and establishes that, prior to the filing of the civil action, the plaintiff first filed a Charge of Discrimination with the Tribal Court Clerk and the FEPI has either:

a. Failed, within 90 days after finding reasonable grounds to believe that unlawful discrimination occurred, to enter into a conciliation agreement to which the plaintiff was a party; or

b. Issued a right-to-sue letter and the action was brought by the aggrieved person not more than 2 years after the act of unlawful discrimination of which the complaint was made.

6.09. *Resolution of Jurisdictional Disputes.* In any case or proceeding commenced under this Article VI, where the regulatory or adjudicatory jurisdiction of the Band or the Tribal Court is called into question, the Tribal Court shall address the jurisdictional question by means of a declaratory judgment.

Article VII. Sexual Harassment Policies and Training

7.01. *General.* All employers shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements set forth in this Article.

7.02. *Workplace Posting.* An employer shall post in a prominent and accessible location in the workplace a poster providing, at a minimum, the following information:

- a. the illegality of sexual harassment; a description of sexual harassment, utilizing examples;
- b. the complaint process begins by filing a written Charge of Discrimination with the Clerk of the Tribal Court; and
- c. The text of this poster may meet, but may not exceed, eight-grade literacy standards.

7.03. *Employee Notification.*

a. Employers shall provide annually all employees with individual written notice that includes, at a minimum, the following information:

1. the illegality of sexual harassment;
2. the definition of sexual harassment under the Band's law;
3. a description of sexual harassment, utilizing examples; the employer's internal complaint process available to the employee;
4. the legal recourse and complaint process provided by Article VI; and
5. the protection against retaliation as provided pursuant to section 4.01(b).

b. This notice must be initially provided within 90 days after the effective date of this section.

c. The notice must be delivered in a manner to ensure notice to all employees without exception, such as including the notice with an employee's pay.

7.04. *Education and Training.* Employers shall conduct an education and training program for all new employees within one year of commencement of employment that includes, at a minimum, the following information: the illegality of sexual harassment; the definition of sexual harassment; a description of sexual harassment, utilizing examples; the employer's internal complaint process available to the employee; the legal recourse and complaint process available pursuant to Article VI, including the process for filing a Charge of Discrimination with the Clerk of the Tribal Court; and the protection against retaliation as provided under section 4.01(b). Employers shall conduct additional training for supervisory and managerial employees within one year of commencement of employment that includes, at a minimum, the specific responsibilities of supervisory and managerial employees and methods that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

Article VIII. Family Medical Leave Protection

8.01. *Family Medical Leave Requirement.* This Article applies to employers who employ 50 or more employees within a radius of 75 miles. Every employee who has been employed by the same employer for 12 consecutive months and at least 1250 hours during the previous 12 months is entitled to up to 12 work weeks of unpaid family medical leave in the 12-month period designated by the employer. The following conditions apply to family medical leave granted under this section:

- a. The employee must give at least 30 days' notice of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving that notice;
- b. The employer may require certification from a health care provider.

8.02. Family medical leave granted under this Article may consist of unpaid leave. If an employer provides paid family medical leave for fewer than 12 workweeks, the additional weeks of leave

necessary to attain the total of 12 weeks required may be unpaid. An eligible employee may elect, or an employer may require the employee, to substitute any accrued paid vacation leave, personal leave, sick leave or family leave of the employee for leave provided under this Article.

8.03. *Employee Benefits Protection.*

a. *Restoration.* Any employee who exercises the right to family medical leave under this section, upon expiration of the leave, is entitled to be restored by the employer to the position held by the employee when the leave commenced or to an equivalent position with equivalent employee benefits, pay and other terms and conditions of employment.

b. *Maintenance of Employee Benefits.* During any family medical leave taken under this Article the employer shall maintain health insurance coverage for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment.

c. *Certification.* As a condition of restoration to employment, the employer may require the employee to provide health provider certification that the employee is able to resume work. Nothing in this Article shall be construed to prohibit an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

8.04. *Effect on Existing Employee Benefits.*

a. *Benefit Accrual.* The taking of family medical leave under this section shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

b. *Limitations.* Nothing in this Article shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave or any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

8.05. *Prohibited Acts.*

a. *Unlawful Interference or Denial of Rights.* The employer may not interfere with, restrain or deny the exercise of or the attempt to exercise any right provided by this Article.

b. *Unlawful Discrimination Against Exercise of Rights.* The employer may not discharge or in any other manner discriminate against any employee for exercising any right provided by this Article.

c. *Unlawful Discrimination Against Opposition.* The employer may not discharge or in any other manner discriminate against any employee for opposing any practice made unlawful by this section.

8.06. *Judicial Enforcement.* A civil action may be brought in the Tribal Court by an employee against any employer to enforce this Article not later than two years after the date of the last event constituting the alleged violation for which the action is brought. In regard to a willful violation of Section 8.05, such action may be brought within three years. The court may enjoin any act or practice that violates or may violate this Article and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce the requirements of this Article.

8.07. *Resolution of Jurisdictional Disputes.* In any case or proceeding commenced under section 8.06, where the regulatory or adjudicatory jurisdiction of the Band or the Tribal Court is called into question, the Tribal Court shall address the jurisdictional question by means of a declaratory judgment.

Article IX. Employment Leave for Victims of Violence

9.01. *Required Leave.* An employer must grant reasonable and necessary leave from work, with or without pay, for an employee to:

a. Prepare for and attend court proceedings;

b. Receive medical treatment or attend to medical treatment for a victim who is the employee's daughter, son, parent or spouse; or

- c. Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.

The leave must be needed because the employee or the employee's daughter, son, parent or spouse is a victim of violence, assault, sexual assaults under tribal, state, or federal law, stalking or any act that would support an order for protection under tribal, state, or federal law. An employer may not sanction an employee or deprive an employee of pay or benefits for exercising a right granted by this section.

9.02. *Definitions.* For purposes of this section, the terms "daughter," "son," "parent" and "spouse" have the same meanings as those terms have under federal regulations adopted pursuant to 29 U.S.C. § 2654, as in effect on January 1, 2002. An employer may require an employee to provide reasonable documentation of the family relationship, which may include a statement from the employee, a birth certificate, a court document or similar documents.

9.03. *Exceptions.* Section 9.01 is not violated if:

- a. The employer would sustain undue hardship from the employee's absence;
- b. The request for leave is not communicated to the employer within a reasonable time under the circumstances; or
- c. The requested leave is impractical, unreasonable or unnecessary based on the facts then made known to the employer.

9.04. *Confidentiality.* Information and records received by an employer in connection with a request for leave under this section shall be kept confidential.

9.05. *Civil Penalties.* The Tribal Court may assess civil penalties of up to \$300 against any employer for a violation of this section, provided that notice of the violation was given to the employer and an action for such penalties is commenced within 6 months of the occurrence.

Article X. Employee Wages and Hours

10.01. *Minimum Wage.* Any employee within the jurisdiction of the Band shall be paid an hourly wage of not less than the minimum wage established by federal law pursuant to federal Fair Labor Standards Act of 1938, Title 29 of the United States Code, sections 201 *et seq.*, as amended and regulations concerning the FLSA by the U.S. Department of Labor (FLSA). Such wage may be changed by vote of the Tribal Council. Provided that, tipped employees shall utilize the aggregate of hourly rate and tips to identify wage rate.

10.02. *Maximum Hours.* No employer shall employ any of its employees for a workweek longer than forty (40) hours unless such employee receives compensation for the employee's employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which the employee is employed.

10.03. *Exemptions.* The provisions in sections 10.02 and 10.04 shall not apply with respect to any employee employed in a bona fide executive, administrative, or professional capacity, or any other exemption category outlined in the FLSA.

10.04. *Private Right of Action.* Any individual aggrieved under this section may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation against an employer in the Tribal Court.

10.05. *Statute of Limitations.* Any action to secure unpaid minimum wages or unpaid overtime compensation must be commenced within two years after the date on which such wages or overtime compensation should have been included in an employee's paycheck.

10.06. *Guidance.* For the purposes of interpreting and enforcing this section only, the Tribal Court may look to the FLSA and regulations thereunder as well as relevant case law for guidance, provided however that nothing in this Article shall be construed as an adoption by the Band of the FLSA, nor a waiver of sovereign immunity from suit for any claims or process under the FLSA.

10.07. *Resolution of Jurisdictional Disputes by Tribal Court.* In any case or proceeding commenced under section 10.04, where the regulatory or adjudicatory jurisdiction of the Band or the Tribal Court

is called into question, the Tribal Court shall address the jurisdictional question by means of a declaratory judgment.

Article XI. Occupational Health and Safety Standards

11.01. The provisions of the Occupational Safety and Health Act of 1970, Title 29 of the United States Code, sections 651 *et seq.*, as amended (OSHA), are adopted as the law of the Band and apply to all employers within the jurisdiction of the Band; provided, however, that the Band does not hereby waive its sovereign immunity from suit for any claims or process under OSHA.

11.02. In any case or proceeding commenced in the Tribal Court to enforce this Article XI, where the regulatory or adjudicatory jurisdiction of the Band or the Tribal Court is called into question, the Tribal Court shall address the jurisdictional question by means of a declaratory judgment.

Article XII. Whistleblower Protection

12.01. *Purpose.* The purpose of this Article is to protect employees who report violations of law from employment discrimination.

12.02. *Definitions.* For the purposes of this Article, the following terms shall have the following meanings:

a. *Applicable law* means duly enacted tribal ordinances and regulations that apply within the jurisdiction of the Little River Band of Ottawa Indians as well as federal laws expressly made applicable to Indian tribes or to the Little River Band of Ottawa Indians

b. *Employer* means "employer" as defined in Article III, but shall also include elected officials of the Band who exercise hiring, firing, and other authority over the terms and conditions of employment for employees.

12.03. *Discrimination prohibited.* Except as otherwise provided by sections 12.04-12.07, no employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because:

a. The employee, acting in good faith, or a person acting on behalf of the employee, reports, in writing, to the employer or to the Tribal Prosecutor what the employee has reasonable cause to believe is a violation of applicable law;

b. The employee, acting in good faith, or a person acting on behalf of the employee, reports, in writing, to the employer or to the Tribal Prosecutor what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual;

c. The employee is requested to participate in an investigation, hearing or inquiry held by a commission or authority of the Tribe, including the Tribal Court, as a result of making a report under subsections a or b;

d. The employee, acting in good faith, has refused to carry out a directive to engage in an activity that would be a violation of applicable law or that would expose the employee or any individual to a condition that would result in serious injury or death, after having sought and been unable to obtain a correction of the illegal activity or dangerous condition from the employer, provided that the request for correction is made in writing; or

e. The employee, acting in good faith and consistent with tribal and federal privacy laws, reports to the employer, to the patient involved or to the appropriate licensing, regulating or credentialing authority, in writing, what the employee has reasonable cause to believe is an act or omission that constitutes a deviation from the applicable standard of care for a patient by an employer charged with the care of that patient. For purposes of this paragraph, "employer" means a health care provider, health care practitioner or health care entity within the territorial jurisdiction of the Band.

12.04. *Initial report to employer required; exception.* Section 12.03 does not apply to an employee who has reported or caused to be reported a violation, or unsafe condition or practice to the Tribal

Prosecutor unless the employee has first given written notice of the alleged violation, condition or practice to a person having supervisory authority within the employer and has allowed the employer a reasonable opportunity to correct the alleged violation of applicable law, condition or practice. Prior written notice to an employer is not required before reporting to the Tribal Prosecutor if the employee has specific reason to believe that a report to the employer will not result in promptly correcting the alleged violation of applicable law, condition or practice.

12.05. *Reported Activity Must Relate to the Operation of Tribal Government or Subordinate Economic Entity, or Occur within Employer Within the Jurisdiction of the Tribe.* Section 12.03 does not apply unless the reported violation involves applicable law that relates to the operation or function of the tribal government or subordinate economic entities owned by the Tribe or otherwise occurs within an employer within the Tribe's jurisdiction.

12.06. *Actual Knowledge Required.* Section 12.03 does not apply unless the reporting employee has actual knowledge of the activity being reported. This means the reporting employee must:

- a. Have witnessed the alleged unlawful activity first-hand; and/or
- b. Have access to, and possession of, tangible evidence which tends to establish or prove the alleged violation of applicable law, condition, or practice at issue.

12.07. *Written Report Required.* Except as provided by section 12.04, reports or notices of violations of applicable law, conditions or practices alleged in to be in violation of section 12.03 must be made in writing and shall include:

- a. The name of the individual making the report and their position within, or relationship to, the Tribe, subordinate economic entity or other employer at issue;
- b. The date the alleged violation of applicable law, or condition or practice at issue occurred;
- c. The factual circumstances surrounding the alleged violation of applicable law, or condition or practice at issue;
- d. Where a violation of applicable law is at issue, identification of the law alleged to have been violated;
- e. How the individual has knowledge of the alleged violation of applicable law or condition or practice; and
- f. The signature of the individual filing the report.

12.08. *Charge of Discrimination.* An employee who believes he or she has been subject to unlawful employment discrimination in violation of section 12.03 shall have all the procedural and substantive rights and remedies under Article VI, provided, however, that an elected official, who is found to have violated section 12.03 shall not be liable for any monetary award to any employee.

12.09. *Prosecutor's Duties Upon Receipt of Report.* When the Tribal Prosecutor receives a report from an employee under subsections 12.03(a) or 12.03(b), he shall proceed with an investigation as he sees fit and proceed, as he sees fit, to address with the employer such measures as would be appropriate to correct any violation of applicable law. Should the report involve an alleged crime, the Tribal Prosecutor shall inform the Chief of Police. Should the report involve a violation of a regulation of a particular Commission, the Tribal Prosecutor shall inform the Chair of the Commission.

12.10. *Employer's Duties Upon Receipt of Report.* When an employer receives a report from an employee under subsections 12.03(a) or 12.03(b), the employer shall duly investigate the allegations and, if they are warranted, establish a corrective plan, in writing, which shall state the expected time such plan will be completed. A copy of the corrective plan shall be provided to the Tribal Prosecutor.

12.11. *Failure to Implement Corrective Action Plan.* The Tribal Prosecutor shall have authority to commence an action in Tribal Court to obtain an order requiring an employer to implement a corrective action plan that has been prepared under subsection 12.09 or 12.10 or to take additional measures as the Tribal Court may find are necessary to protect the public health, safety and welfare.

Article XIII. Workplace Posters

Every employer subject to the provisions of this Code shall post a list, as directed by the Office of General Counsel, of the employee rights established by this Code. The list shall be posted in a common area of the workplace in a location that is readily visible to all employees.

Article XIV. Workers Compensation [reserved]

Article XV. Unemployment Insurance [reserved]

Article XVI. Labor Organizations and Collective Bargaining

16.01 Purpose.

The Little River Band of Ottawa Indians exercises powers of self-government over its members and territory. The Tribe has inherent authority to govern labor relations within its jurisdiction, and this includes regulating the terms and conditions under which collective bargaining may or may not occur within its territory. The Tribe's inherent authority further includes the right to protect the health, welfare, and political integrity of the Tribe from being harmed or threatened by the activities of non-members within the Tribe's territory. The purpose of this Article is to protect essential attributes of tribal self-government and the health and welfare of the members of the Tribe if labor organizations conduct operations within the jurisdiction of the Tribe.

16.02 Public Policy.

The Tribal Council declares that it is the policy of the Tribe to promote harmonious and cooperative relationships between tribal government and its employees by permitting employees within the Governmental Operations of the Band to organize and bargain collectively; to protect orderly Governmental Operations of the Band to provide for the health, safety, and welfare of the Band and its members; to prohibit and prevent all strikes by employees within the Governmental Operations of the Band; to protect the rights of employees within the jurisdiction of the Band to join or refuse to join, and to participate in or refuse to participate in, labor organizations; to protect the rights of tribal members to employment preferences; and to ensure the integrity of any labor organization doing business within the jurisdiction of the Band by requiring any such labor organization to obtain a license.

16.03 Definitions.

The definitions set forth in Article III shall not apply to this Article XVI. The following definitions apply to this Article XVI, whether the terms are stated in singular or plural form and whether the terms are capitalized or not.

Bargaining unit means a unit of employees within the Governmental Operations of the Band identified as an appropriate unit for representation pursuant to section 16.09 or such other criteria that may be recognized by resolution of the Tribal Council.

Confidential Employee means an employee of a public employer who assists or acts in a confidential capacity with respect to legal, financial, accounting or policy matters, and includes such employees who have access to information that is subject to use in contract negotiations,

the disposition of grievances, or other labor relations matters.

Fair share means an assessment to pay for the services of a labor organization with respect to negotiating and administering a collective bargaining agreement with a public employer.

Exclusive Bargaining Representative or *Exclusive Representative* means a labor organization that is lawfully elected to be the exclusive bargaining representative of a bargaining unit within the Governmental Operations of the Band,

Governmental Operations of the Band means the operations of the Little River Band of Ottawa Indian 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.

Indian Gaming Regulatory Act means 25 U.S.C. §§ 2701-2721.

Jurisdiction of the Little River Band of Ottawa Indian Tribe means the jurisdiction or governmental authority -- including legislative, judicial, and regulatory authority -- that the Band may exercise pursuant to its inherent authority as a federally recognized Indian tribe or pursuant to Congressional enactment or delegation, including all such authority over all lands now or in the future held in trust by the United States for the benefit of the Tribe acquired by or for the Tribe pursuant to 25 U.S.C. § 1300k-4(b) or such other lands upon which gaming may lawfully be conducted pursuant to the Indian Gaming Regulatory Act.

Labor organization, labor association, or labor union means any organization of employees organized for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment.

Laws of the Band or Laws of the Tribe means the Constitution and Tribal Code of the Little River Band of Ottawa Indians, resolutions of the Tribal Council and the Tribal Regulations of the commissions, agencies, departments, and authorities of the Little River Band of Ottawa Indians.

Little River Band of Ottawa Indians, the Band or the Tribe means the Little River Band of Ottawa Indians.

Little River Casino Resort means the Band's gaming enterprise, including related hotel and restaurant services, located at 2700 Orchard Highway, Manistee, Michigan, wherein the Tribe operates Class II and Class III gaming to generate governmental revenue for the Tribe pursuant to the Indian Gaming Regulatory Act.

Lock Out means any action by a public employer that prevents employees from going to work for the purpose of coercing employees to accept terms or conditions sought by a public employer in a negotiation with an exclusive bargaining representative..

Management means individuals holding supervisory and managerial positions within a public employer, who, because of their supervisory and managerial positions, do not qualify to be within a bargaining unit, and, when context so indicates, such individuals who have been delegated authority by a public employer to negotiate with an exclusive bargaining representative.

Model Band-Union Election Procedures Agreement means the model agreement referred to in Section 16.26 of this Article.

Neutral Election Official or *Election Official* means the Neutral Election Official appointed by the Tribal Council for the purpose of (a) certifying a showing of 30% or more support for union representation and (b) overseeing any union election pursuant to an agreement entered into by the Band with a labor organization that comports with the terms of the Model Band-Union Election Procedures Agreement.

Nonmember public employees means employees within a bargaining unit who are not members of a labor organization.

Public Employee means non-supervisory regular full-time and part-time (working a minimum of four hours per week) employee of a public employer, excluding all supervisory, managerial, confidential, temporary, seasonal, and casual employees.

Public Employer means a subordinate economic organization, department, commission, agency, or authority of the Band engaged in any Governmental Operation of the Band.

Strike means an employee's refusal, in concerted action with other employees, to report for duty or to be willfully absent, in whole or in part, from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of employment. The terms "strike" includes boycotts of any kind designed to adversely affect a public employer. Notwithstanding the provisions of any other law, an employee within the Governmental Operations of the Band who, by concerted action with others and without the lawful approval of his or her supervisor, willfully absents himself or herself from his or her position, or abstains in whole or in part from the full, faithful and proper performance of his or her duties for the purpose of inducing, influencing or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment shall be considered to be on strike.

Subordinate Economic Organization means an economic enterprise operating within the jurisdiction of the Band, whether under a tribal or corporate charter, established by resolution or ordinance of the Tribal Council pursuant to Art. IV section 7 of the Constitution of the Little River Band of Ottawa Indians and wholly owned by the Band.

16.04 Time Calculations.

For any action that is to occur under the provisions of this Article XVI within 10 days or less, weekends, tribal, state and national holidays shall not be counted. The Neutral Election Official, mediators, fact finders, and arbitrators shall have discretion to extend the deadlines herein for matters they handle only for good cause shown by a party in advance of the deadline.

16.05 Freedom of Choice Guaranteed.

Except as otherwise provided in section 16.13, addressing fair share contributions to labor organizations by nonmember public employees, with respect to employment or the terms or conditions of employment within any public employer:

- a. The right to work must be protected and maintained free from undue restraints and coercion. The right of persons to work shall not be denied or abridged by any public employer or by any labor organization on account of membership or non-membership in any labor union, labor organization, or association.
- b. No person shall be required to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment.
- c. No person shall be required, as a condition of employment or continuation of employment to be recommended, approved, referred, or cleared by or through a labor organization.
- d. It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the public employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the public employer.
- e. No person shall be required by any public employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.
- f. It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or public employer, or officer or agent thereof, by any threatened or actual intimidation of an employee or prospective employee or his parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to his property, to compel or attempt to compel such employee or prospective employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit his rights as guaranteed by provisions of this Article. It shall be unlawful to cause or attempt to cause such employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employee.
- g. Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and any public employer which violates the rights of employees as guaranteed by the provisions of this Article is hereby declared to be against public policy, an illegal combination or conspiracy in restraint of trade, null and void and of no legal effect. Any strike, picketing, boycott, or other action by a labor organization for the sole purpose of inducing or attempting to induce any public employer to enter into any agreement prohibited by this Article is hereby declared to be for an illegal purpose and is a violation of this Article.

16.06 Strikes Affecting the Governmental and Operations of the Band Prohibited.

(a) *Declaration and Findings.* The Governmental Operations of the Band are critical to the public health, safety, and welfare of the Tribe and its members. No employee or labor organization shall interfere with, threaten or undermine the Governmental Operations of the Band.

(b) *No Right to Strike.* Employees within the Governmental departments and agencies of the Operations of the Band, including the Little River Casino Resort, have no right to strike.

(c) *Strikes Prohibited.* Strikes, work stoppages, or slowdowns against the Governmental Operations of the Band are contrary to the health, safety and welfare of the Tribe and its members, and are

therefore prohibited. No employee or labor organization shall engage in a strike, work stoppage or slowdown with respect to any Governmental Operation of the Band. No labor organization shall cause, instigate, encourage or support an employee strike against a public employer.

16.07 Lock Outs Prohibited. A public employer shall not engage in any action constituting a lock out.

16.08 Licensing and Registration of Labor Organizations

(a) No labor organization shall engage in organizing employees working for any public employer without a license issued by the Little River Band of Ottawa Indians Gaming Commission, which shall provide as follows:

- (1) the right of such labor organization to conduct business within the Tribe's jurisdiction is a privilege, subject to the consent and regulatory authority of the Tribe;
- (2) the consent of the Tribe to allow such labor organization to conduct business within the jurisdiction of the Tribe is conditioned upon such labor organization's agreement to be subject to the laws of the Tribe and its regulatory authority, including this Code;
- (3) in consideration of the Tribe's consent to such labor organization's conduct of business within the jurisdiction of the Tribe, such labor organization agrees to (A) comply with all rules, regulations, and laws of the Tribe, (B) submit to the jurisdiction of the Tribe, including its Tribal Court, and (C) pay an annual business license fee in the amount of \$500.00;
- (4) such labor organization agrees that a license issued by the Tribe for conducting business within the territorial jurisdiction of the Tribe may be revoked by the Tribe at any time, with or without hearing, for any failure to comply with the laws of the Tribe; and
- (5) such other requirements as the Gaming Commission may require under its regulations.

(b) Subject to the requirements of subsection 16.08(a), the Gaming Commission is hereby authorized by the Tribal Council of the Little River Band of Ottawa Indians to enact such regulations as it sees fit to investigate and license any labor organization seeking to conduct business within the jurisdiction of the Tribe.

(c) Any person who intentionally makes a false statement to the Gaming Commission shall be deemed to be in violation of this Article XVI.

16.09 Appropriate Bargaining Units.

An appropriate bargaining unit of public employees may be established under the terms of an agreement entered into by the Band with a labor union that comports with the terms of the Model Band-Union Elections Procedures Agreement.

16.10 Union Elections.

An election for a labor union to become the exclusive representative of an appropriate bargaining

unit of public employees may proceed under the terms of an agreement entered into by the Band that comports with the terms of the Model Band-Union Elections Procedures Agreement.

16.11 Bargaining Unit and Election Dispute Resolution.

Disputes between management and a labor organization seeking to represent public employees with respect to (1) the appropriateness of a bargaining unit or (2) election procedures may be resolved under the terms of an agreement entered into by the Band that comports with the terms of the Model Band-Union Elections Procedures Agreement.

16.12 Duty to Bargain in Good Faith.

(a) Except as otherwise provided by this Article XVI, if a labor organization is lawfully elected to be the exclusive bargaining representative of a bargaining unit of public employees, management and the exclusive bargaining representative shall

(1) bargain in good faith on wages, hours and other terms and conditions of employment , *provided that* (A) neither management nor the exclusive representative shall be required to agree to a proposal or to make a concession and (B) management decisions to hire, to layoff, to recall, or to reorganize duties shall not constitute "other terms and conditions of employment" under this paragraph, and

(2) enter into written collective bargaining agreements covering employment relations.

(b) The obligation to bargain collectively imposed by this section shall not be construed to require management and an exclusive representative to negotiate over matters that would conflict with the provisions of any other laws of the Tribe, and in the event of a conflict between the provisions of any other laws of the Tribe and an agreement entered into by a public employer and the exclusive representative in collective bargaining, the laws of the Tribe shall prevail.

16.13 Fair Share Provisions for Nonmember Public Employees; Deauthorization of Fair share provisions; Payroll Deductions

(a) Management and the exclusive bargaining representative may bargain over fair share provisions for nonmember public employees, provided that such a provision requires:

(1) any such nonmember public employee to pay only for a fair proportion of costs of negotiating a collective bargaining agreement and contract administration;

(2) fair share contributions by all nonmember public employees in the bargaining unit, with pro-rata reductions for nonmember public employees who hold part-time positions;

(3) the exclusive bargaining representative to notify all nonmember public employees within the bargaining unit (i) that they have the right to be a nonmember, (ii) that they have the right to object to paying for labor organization activities not germane to negotiating a collective bargaining agreement or administering an agreement and to obtain a reduction in fees for such nongermane activities, (iii) of sufficient information to enable them to intelligently decide whether or not to object, (iv) about procedures for filing objections, and (v) that if a nonmember public employee objects, the labor organization must explain to such employee the basis for the calculation of the fair share charged to the employee and that the employee

has the right to challenge the calculation before an arbitrator.

(b) Subject to subsection (d), the exclusive bargaining representative's notice and procedures under subsection (a)(3) shall comply with *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986) and its progeny.

(c) Public employers shall have no duty to assure that a labor organization provides the notice set forth in subsection (a)(3) prior to deducting fair share amounts from a public employee paycheck if such a deduction is agreed to in a collective bargaining agreement pursuant to subsection (f).

(d) If a nonmember public employee objects to a fair share payment, and such employee and the exclusive bargaining representative cannot resolve the objection, either party shall notify the Neutral Election Official, who shall appoint an arbitrator to resolve the dispute. Such arbitrator shall have experience in public sector labor relations, shall be familiar with the issue of fair share contributions by public sector employees to labor organizations, and shall be a member of the National Academy of Arbitrators. The arbitrator shall hold such hearing and receive such evidence as the arbitrator sees fit to resolve the dispute and shall apply legal standards governing public sector labor relations, including *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986) and its progeny. The decision of the arbitrator shall be binding upon the employee and the labor organization. The fees and costs of the arbitrator shall be borne by the labor organization.

(e) Within 90-days after a public employer and a labor organization execute a collective bargaining agreement containing a fair share provision, one or more public employees within the bargaining unit may file with the Neutral Election Official a petition to have the fair share provision rescinded. The petition must be in writing and accompanied by a statement signed by 30% or more of the employees in the bargaining unit, stating that they wish to rescind the fair share agreement. The Neutral Election Official shall, within 5 days of receipt of such petition, determine whether the petition is properly supported and timely filed, and, if it is, he shall, within 14 days of such determination, direct a secret ballot election that comports with the mechanics for holding elections set forth in the Model Band-Union Election Procedures Agreement. If a majority of the votes cast in the election favor the fair share provision, it shall continue in effect. If there is no such majority, the Neutral Election Official shall certify deauthorization and the fair share agreement shall be deemed null and void as of the date of the petition, and the labor organization shall ensure the prompt refund of amounts withheld from nonmember employees, retroactive to the date of the petition, without interest.

(f) Payroll deduction of (i) the exclusive representative's membership dues for public employees who are members of a labor organization and (ii) fair share contributions of nonmember public employees shall be a mandatory subject of bargaining if either party chooses to negotiate the issue.

The amount of the dues and, in the case of nonmember public employees, the amount of the fair-share contributions, shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. A public employer shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and for so long as the labor organization is certified as the exclusive representative. During the time that a certification of a labor union by the Neutral Election Official is in effect for a particular appropriate bargaining unit, a public employer shall not deduct dues for any other labor organization.

16.14 Rights of Public Employees

It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

Public employees also have the right to refuse to join or participate in the activities of labor organizations and to represent themselves individually in their employment relations with public employers.

16.15 Unfair Labor Practices.

(a) A public employer is prohibited from:

- (1) Interfering with, restraining, or coercing public employees in the exercise of their rights guaranteed under section 16.14.
- (2) Encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, tenure, or other conditions of employment.
- (3) Refusing to bargain collectively, failing to bargain collectively in good faith, or refusing to sign a final agreement agreed upon with the exclusive bargaining representative.
- (4) Discharging or discriminating against a public employee because he or she has exercised rights guaranteed under section 16.14 or signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceeding provided by this Article XVI.
- (5) Dominating, interfering with, or assisting in the formation, existence, or administration of, any labor organization or contributing financial support to such an organization.
- (6) Refusing to discuss grievances in good faith pursuant to the terms of the collective bargaining agreement with either the exclusive bargaining representative or the employee involved.

(b) A labor organization or anyone acting in its behalf or its officers, representatives, agents, or members are prohibited from:

- (1) Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this Article XVI or interfering with, restraining, or coercing management by reason of its performance of duties or other activities undertaken in the interests of the Governmental Operations of the Band.
- (2) Causing or attempting to cause a public employer to discriminate against a public employee because of the employee's membership or nonmembership in a labor organization or attempting to cause a public employer to violate any of the provisions of this Article XVI.
- (3) Refusing to bargain collectively or failing to bargain collectively in good faith with management.

(4) Discriminating against a public employee because he or she has exercised rights guaranteed under section 16.14 or signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceeding provided for in this Article XVI.

(5) Participating in a strike against the Governmental Operations of the Band by instigating or supporting, in any positive manner, a strike. Any violation of this paragraph shall subject the violator to the civil penalties provided in this Article XVI.

(c) Notwithstanding the provisions of subsections (a) and (b), the parties' shall have the right to voice their views consistent with the protections afforded by the Tribe's Constitution, and the expression of any arguments or opinions shall not constitute, or be evidence of, an unfair labor practice or of any other violation of this Article XVI, if such expression contains no promise of benefits or threat of reprisal or force.

16.16 Resolution of Charges of Unfair Labor Practices; Breach of Duty of Fair Representation

(a) *Charges Involving Management or an Exclusive Representative*

(1) Charges, Notice, Good Faith Effort to Reach Early Resolution

(A) Should either management or an exclusive representative become aware of perceived conduct constituting an unfair labor practice, it shall notify the other party, in writing (which shall be transmitted electronically or by telecopier as well as via hard copy), of the charge and the alleged factual basis for the charge. The recipient party shall respond in writing (which shall be transmitted electronically or by telecopier as well as via hard copy), within 10 days of receipt of such written allegations. Management and the exclusive bargaining representative shall then make a good faith effort to resolve the alleged violation. This good faith effort shall include each party providing the other with unprivileged information relevant to the charge upon request.

(B) If such good faith efforts do not result in resolution of the charge, the objecting party may proceed to request arbitration.

(2) Arbitration

(A) If a claim is not resolved under subsection (a), charges of violations of unfair labor practices, including the duty to bargain in good faith, provided by this Article XVI shall, within 15 days of the receipt by either party of a written demand for arbitration (or such later time as the arbitrator may promptly schedule a hearing) be brought before an arbitrator, mutually agreed to by the exclusive bargaining representative and the public employer. If the parties are unable to agree upon an arbitrator, they shall use the American Arbitration Association (AAA) labor arbitrator selection procedure, provided that any arbitrator selected through the AAA labor arbitrator selection procedure shall be a member of the National Academy of Arbitrators.

(B) The selected arbitrator shall apply the law of the Band to resolve the charge, but in the absence of such law, the arbitrator shall apply persuasive authority

governing public sector labor relations.

- (C) The arbitrator's decision shall be in writing and mailed to the parties, return receipt requested within 30 days of the completion of arbitration. Except as provided by subsection (3), the arbitrator's decision shall be final and binding upon the parties.
- (D) Unless otherwise agreed to in writing by the public employer and the exclusive bargaining representative, if the arbitrator's decision is in favor of the public employer on every issue, the exclusive bargaining representative shall pay the fee of the arbitrator and if the arbitrator's decision is in favor of the exclusive bargaining representative on every issue, the public employer shall pay the fee of the arbitrator. Otherwise, the arbitrator shall allocate the cost of the arbitrator's services between the parties in accordance with the issues on which they have prevailed or not prevailed, and they shall pay their respective share of the arbitrator's fee in accordance with the arbitrator's decision.

(3) Judicial Review

- (A) A party who claims that the arbitrator's decision is in violation of, or conflicts with, the laws of the Band or procured by corruption, fraud or other undue or illegal means, may, within 10 days of receipt of the arbitrator's decision, bring a petition for review of the arbitrator's decision to the Tribal Court for resolution by that member or the Tribal Court who is licensed to practice law.
- (B) In any such review, the Tribal Court shall be limited to review for errors of law and the issuance of an order affirming the arbitrator's decision or correcting it for legal error as is necessary to render it in compliance with the law of the Band.
- (C) Should the Tribal Court find that a party's petition for review is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the petition.
- (D) The decision of the Tribal Court shall be final and there shall be no right of appeal to the Court of Appeals.

(4) Time Limits

No unfair labor practice charge shall proceed to Arbitration or Judicial review under section 16.16(a) unless a demand is made under subsection 16.16(a)(2)(A) no later than 180 days after the alleged action constituting the alleged unfair labor practice.

(b) *Charges of Discrimination by Public Employees*

A public employee who believes he or she has been subjected to unlawful discrimination in violation of section 16.15(a)(4) or section 16.15(b)(4) may proceed to seek relief for such

discrimination under the procedures and remedies provided by Article VI, provided, however, that (i) damages under 6.05(b) may not be awarded, (ii) in the event that the Charge is against a labor organization, the labor organization shall be treated in the same manner as an employer, subject to a Charge of Discrimination under Article VI, and (iii) no complaint may be filed in the Tribal Court unless a Charge of Discrimination has first been filed within 180 days of the asserted violation of section 16.15(a)(4) or section 16.15(b)(4).

(c) *Claims for Breach of Duty of Fair Representation*

(1) *Action in Tribal Court*

A public employee within a bargaining unit, who claims that an exclusive bargaining representative has breached its duty of fair representation, may bring an action in the Tribal Court, no later than 180 days after the alleged breach, against the exclusive bargaining representative.

(2) *Remedies*

If the Tribal Court finds that an exclusive bargaining representative has breached its duty of fair representation to a public employee, the Court shall award the employee such relief as will make the employee whole.

16.17 Resolution of Bargaining Impasse

(a) *Agreement to Resolve Negotiation Impasse.*

As the first step in the performance of their duty to bargain, management and the exclusive bargaining representative shall endeavor to agree upon impasse procedures. Such procedures shall define the conditions under which an impasse exists. Any such agreement with respect to the resolution of impasse issues shall not conflict with the provisions of this section.

(b) *Subjects Not Within Procedures for Resolving Bargaining Impasse.*

Nonmandatory subjects of bargaining shall not be subject to the impasse procedures of this section. Unless mutually agreed to by the parties, the impasse procedures of this section shall not be invoked during the pendency of any charge regarding the required scope of good faith bargaining under section 16.12.

(c) *Mediation and Fact Finding.*

(1) *Mediation.* Following the commencement of negotiations, if management and the exclusive bargaining representative reach an impasse, and they do not otherwise agree to proceed directly to fact finding, they shall jointly retain a mediator to assist them in resolving the impasse issues. In the absence of an agreement on the mediator, either party may request the Election Official to appoint a mediator, and the Election Official's appointment of such mediator shall be binding on the parties. It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree. Any appointed mediator shall be experienced in labor mediation, and shall be drawn from lists of such mediators maintained by the American Arbitration Association.

(2) *Fact Finding and Recommendation.* If the parties agree to proceed directly to fact finding in substitute for mediation or, if mediation under subsection (c)(1) does not result in an agreement on all impasse issues within 21 days of the appointment of the mediator, the parties shall jointly retain a fact finder. In the absence of an agreement on the fact finder, either party may request the Election Official to appoint a fact finder, and the Election Official's appointment of such fact finder shall be binding on the parties. The appointed fact finder shall be experienced in public sector labor relations, shall be drawn from lists of similar fact finders maintained by the American Arbitration Association, and shall be a member of the National Academy of Arbitrators.

Within 5 days of the appointment of the fact finder, the parties shall file with the fact finder a joint list of the issues as to which an impasse has been reached, provided that if such filing is not made jointly, each party shall file a list and serve a copy of the filing on the other party.

The fact finder shall conduct a hearing at a location agreed to by the parties or, failing agreement, at a location chosen by the fact finder that is convenient to the parties. The fact finder may administer oaths, may issue subpoenas (under the same terms that subpoenas may issue from the Tribal Court), and may petition the Tribal Court to enforce any subpoena compelling the attendance of witnesses and the production of records, subject to such protection order any party may obtain from the Tribal Court to protect against the disclosure of confidential or privileged information. The fact finder may request briefs, stipulations, or other written submissions from the parties to aid in reaching findings and recommendations. The fact finder shall make written findings of facts and recommendations for resolution of each dispute not later than 15 days from the close of hearing, and shall serve, by certified mail, return receipt requested, such findings upon the public employer, the exclusive bargaining representative, and the Election Official. In issuing said findings and recommendations, the fact finder shall redact any factual material deemed confidential pursuant to an agreement of the parties or pursuant to a protective order issued on behalf of a party.

Management and the exclusive bargaining representative shall immediately agree to accept the fact finder's recommendations or, commence further negotiations in a good faith effort to reach agreement. If, upon the expiration of 20 days after the Election Official's receipt of the fact finder's recommendations, the parties fail to jointly inform the Election Official that they have fully resolved all impasse issues, the Election Official shall make the fact finder's findings and recommendations public to the membership of the Tribe by arranging for publication on the Tribe's website, in the Tribe's newsletter to members, or both

(d) *Binding Arbitration.*

If the parties fail to resolve their disputes within 30 days of receipt of the fact finder's findings and recommendations, they may mutually agree in writing to proceed to binding arbitration. Absent agreement, either party may request that the impasse issues proceed to resolution by binding arbitration, and such request shall be served upon the other party, in writing, return receipt requested.

Within 10 days of the parties' written agreement or the receipt by one party of a request for binding arbitration, the parties shall jointly select an arbitrator, who shall not be the same individual who served as the fact finder. If the parties fail to agree on an arbitrator within the 10

day period, the selection shall be made using the procedures under the voluntary labor arbitration rules of the American Arbitration Association. Any arbitrator shall be drawn from lists of such arbitrators maintained by the American Arbitration Association, and shall be a member of the National Academy of Arbitrators.

The submission of the impasse items to the arbitrator shall be limited to those issues that had been considered by the fact finder and upon which the parties have not reached agreement. Within 10 days of the appointment of the arbitrator, management and the exclusive bargaining representative shall each submit to the arbitrator their respective recommendations for settling the dispute on each unresolved issue, the draft collective bargaining agreement to the extent that agreement has been reached, and the fact finder's findings of fact and recommendations.

The arbitrator shall conduct a hearing at a location agreed to by the parties or, failing agreement, at a location chosen by the arbitrator that is convenient to the parties. The arbitrator may administer oaths, may issue subpoenas (under the same terms that subpoenas may issue from the Tribal Court), and may petition the Tribal Court to enforce any subpoena compelling the attendance of witnesses and the production of records, subject to such protection order any party may obtain from the Tribal Court to protect against the disclosure of confidential or privileged information. The arbitrator shall issue a decision on each issue remaining at impasse not later than 30 days from the day of appointment. In issuing said findings and recommendations, the fact finder shall redact any factual material deemed confidential pursuant to an agreement of the parties or pursuant to a protective order issued on behalf of a party. The parties may continue to negotiate all offers until an agreement is reached or a decision is rendered by the arbitrator.

The arbitrator shall consider, in addition to any other relevant factors, the following factors:

- (1) Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- (2) Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

The arbitrator shall select the most reasonable offer of the parties' respective final offers on each impasse item or the recommendations of the fact finder on each impasse item. The arbitrator shall provide a written summary of the selected provisions and agreed-upon provisions to each party and to the Election Official, return receipt requested.

Said selections of the arbitrator, together with the items already agreed upon by the management and the exclusive bargaining representative shall be deemed to be the collective bargaining agreement between the parties, provided, however, that, subject to subsection (e), provisions related to the public employer's obligation to pay wages, salaries, bonuses, insurance, pension or retirement contributions shall not be binding upon the parties.

- (e) *Limited Review by Tribal Council of Economic Terms Recommended by Arbitrator Upon Rejection by Public Employer.*

If a public employer rejects an arbitrator's decision issued under section 16.17(d) regarding the public employer's obligation to pay wages, salaries, bonuses, insurance, pension or retirement

contributions, it shall so inform (i) the exclusive bargaining representative and (ii) the Tribal Council Speaker, in writing, within five (5) days of receipt of the arbitrator's decision.

Thereafter, the Tribal Council Recorder shall schedule a closed session meeting of the Tribal Council at which the public employer shall appear and show cause for why it has rejected the arbitrator's decision regarding its obligation to pay wages, salaries, bonuses, insurance, pension or retirement contributions. If the public employer is the Little River Casino Resort, any member of the Tribal Council that may have served on the Board of Directors of the Resort during the time that decisions were made about the Resort's bargaining position on any impasse issue addressed by an arbitrator's decision under section 16.17(d) shall abstain from voting and deliberating in accordance with the Tribe's Constitution and applicable law.

In advance of the Tribal Council meeting, the public employer shall submit to the Tribal Council the decision of the arbitrator, together with a written statement setting forth the reasons for its rejection of the decision, and it shall, at the same time, mail a copy of said written statement to the exclusive bargaining representative. In advance of the Tribal Council meeting, the exclusive bargaining representative shall be given the opportunity to submit a written statement setting forth the reasons why the Arbitrator's decision is appropriate and, upon submission of such a written statement to the Tribal Council, the exclusive bargaining representative shall mail a copy to the public employer.

At the scheduled meeting of the Tribal Council, both the public employer and the exclusive bargaining representative shall have the opportunity to be heard.

The Tribal Council shall decide only whether (a) the public employer's final offer regarding any impasse over wages, salaries, bonuses, insurance, pension or retirement shall become part of the parties' collective bargaining agreement or (b) the arbitrator's decision on any such impasse issue shall become part of the parties' collective bargaining agreement.

(f) *Costs of Impasse Resolution Proceedings*

Unless otherwise agreed to in writing, the public employer and the exclusive bargaining representative shall share equally all fees and costs of mediation, neutral arbitration, and binding arbitration provided for by this section.

(g) *Status of Terms and Conditions of Employment Pending Impasse Resolution*

At all times when an impasse remains unresolved, the status quo regarding wages and working conditions shall remain in effect even if a prior collective bargaining agreement governing the bargaining unit has expired. In such event, the status quo or the terms of any prior collective bargaining agreement shall continue in force and effect, until a new agreement shall be executed; provided, however, that for the purposes of this paragraph, the status quo, or continuing terms, shall not include fair share provisions, or increases to wages, increases in employer contributions to insurance, or increases in employer contributions to pensions.

(h) *Judicial Review*

- (1) A party who claims that the arbitrator's decision is in violation of, or conflicts with, the laws of the Band or procured by corruption, fraud or other undue or illegal means, may, within 10 days of receipt of the arbitrator's decision, bring a petition for review

of the arbitrator's decision to the Tribal Court for resolution by that member or the Tribal Court who is licensed to practice law.

- (2) In any such review, the Tribal Court shall be limited to review for errors of law and the issuance of an order affirming the arbitrator's decision or correcting it for legal error as is necessary to render it in compliance with the law of the Band.
- (3) Should the Tribal Court find that a party's petition for review is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the petition.
- (4) The decision of the Tribal Court shall be final and there shall be no right of appeal to the Court of Appeals.

16.18 Duration of Collective Bargaining Agreements for Public Employees.

Collective bargaining agreements entered into by the public employer and an exclusive bargaining representative shall have terms of three years or less.

16.19 Decertification of Exclusive Representative.

(a) A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative of a bargaining unit if thirty percent (30%) of the public employees in the bargaining unit make a written request to the Neutral Election Official for a decertification election. Decertification elections may be held in a manner prescribed by the Neutral Election Official so long as they are in accord with the mechanics for holding elections set forth in the Model Band-Union Election Procedures Agreement. A decertification election shall only be valid if forty percent (40%) of the eligible employees in the bargaining unit vote in the election.

(b) When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Neutral Election Official no earlier than 120 days and no later than 90 days before the expiration of the collective bargaining agreement.

(c) When, within the time period prescribed in subsection (b) of this section, a competing labor organization files a petition containing signatures of at least thirty percent (30%) of the public employees in the appropriate bargaining unit pursuant to an agreement entered into by the Band with such labor organization that comports with the terms of the Model Band-Union Elections Procedures Agreement, a representation election, rather than a decertification election, shall be conducted in accordance with the election procedures of such agreement.

(d) When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Neutral Election Official shall not accept a request for a decertification election earlier than twelve months subsequent to a labor organization's certification as the exclusive representative

16.20 Policies of Public Employers Addressing Abuse of Alcohol and Drugs Not Subject to Collective Bargaining.

- (a) *Declaration and Findings.* The abuse of alcohol and both legal and illegal drugs within

the public employers harms the health, safety and welfare of the Band and its members. Tribal communities, including that of the Band, are particularly vulnerable to drug and alcohol abuse, and the regulation of such abuse within public employers is critical to the health, safety, and welfare of the Band and its members.

(b) *Prohibition of Collective Bargaining Affecting Alcohol and Drug Testing Policies.* Public employers shall have the right to address the terms and conditions for testing public employees for alcohol and drug use, consistent with the laws of the Band, and such policies shall not be subject to bargaining with any labor organization.

16.21 Conflicts Between the Laws of the Band and Band-Union Election Procedures Agreement.

In the event of a conflict between any law of the Band and the provisions of the Model Band-Union Election Procedures Agreement or the provisions of an agreement entered into by the Band that comports with the terms of the Model Band-Union Elections Procedures Agreement, the laws of the Band shall control.

16.22 Conflicts Between Collective Bargaining Agreements and Personnel Policies.

Except as provided by 16.20, in the event of a conflict between the personnel policies or procedures of a public employer and the provisions of a collective bargaining agreement entered into by a public employer and a labor organization, the latter shall control.

16.23 Conflicts Between Collective Bargaining Agreements and Individual Contracts.

In the event of a conflict between the provisions of a collective bargaining agreement entered into by a public employer and a labor organization and the provisions of an individual contract of an employee within a bargaining unit, the terms of the collective bargaining agreement shall control.

16.24 Enforcement.

(a) *Strikes: Civil Actions, Penalties, Decertification and Exclusion* Any public employee or labor organization, and any employee or agent of any labor organization, that violates, or seeks to violate, the prohibition against strikes set forth in section 16.06 of Article XVI shall be subject to a civil action by the affected public employer for declaratory and injunctive relief in the Little River Band of Ottawa Indians Tribal Court. Upon a finding of any such violation by a labor organization or any person acting on behalf of a labor organization, the Court may impose a civil fine against the labor organization, not to exceed \$5,000 for each violation. Upon a finding of any such violation by a public employee, the Court may impose a civil fine against the employee not to exceed \$1,000 for each and the employer of such public employee shall have the right to suspend or terminate the employment of such public employee. Any labor organization found by the Tribal Court to be in violation of the prohibition against strikes shall be deemed decertified from representing any public employees and shall further be deemed not legally entitled to be present on tribal lands and subject to exclusion on a temporary or permanent basis.

(b) *Lock Outs: Civil Actions.* A public employee or labor organization shall have the right to seek declaratory and injunctive relief in the Little River Band of Ottawa Tribal Court against public employers to enforce the prohibition against lock outs set forth in Section 16.07 of this Article XVI.

Upon a finding by the Tribal Court that a public employer has violated section 16.07, the Tribal Court may award such employee or labor organization attorney fees and costs.

(c) *Licenses: Civil Actions, Penalties, Exclusions.* Any labor organization that (1) engages in activities that require a license under this Article XVI without such a license or (2) violates the terms of a license issued by the Gaming Commission in accordance with this Article XVI shall be subject to an action in the Tribal Court by the Gaming Commission or by the Band, through its General Counsel, for declaratory and injunctive relief. Any labor organization found by the Tribal Court to have violated the licensing requirements of this Article XVI or the terms of a license shall be subject to such civil penalty, not to exceed \$5,000. Any labor organization found by the Tribal Court to be in violation the licensing requirements of this Article XVI or the terms of a license issued by the Gaming Commission shall be deemed not legally entitled to be present on tribal lands and subject to exclusion on a temporary or permanent basis.

(d) *Other Tribal Court Declaratory Authority.*

(1) Unresolved disputes between management and an exclusive bargaining representative over the duty to bargain in good faith, involving a controversy over whether a subject conflicts with the laws of the Tribe, may be brought by either party (or by the affected public employer or labor organization) to the Tribal Court for resolution by that member of the Tribal Court who is licensed to practice law by declaratory judgment.

(2) Unresolved disputes regarding an alleged conflict between a provision of a collective bargaining agreement and the laws of Tribe may brought by a party with standing (including the affected public employer or labor organization, an affected public employee, the Gaming Commission, the Tribal Council, or the Ogema) to the Tribal Court for resolution by that member of the Court who is licensed to practice law by declaratory judgment.

(3) Should the Tribal Court find that a party's request for declaratory judgment under subsection d(1) or d(2) of this section is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the action.

(4) A decision of the Tribal Court under subsection d(1) or d(2) of this section shall be final, and there shall be no right of appeal to the Court of Appeals.

16.25 Resolution of Jurisdictional Disputes.

In any case or proceeding commenced under this Article XVI, where the regulatory or adjudicatory jurisdiction of the Band or the Tribal Court is called into question, the Tribal Court shall address the jurisdictional question by means of a declaratory judgment.

16.26 Limited Waiver of Sovereign Immunity.

The waiver of sovereign immunity set forth in Article II, Sec. 2.06 is of no effect with respect to this Article XVI. With respect to this Article XVI, the Tribe hereby waives the sovereign immunity of public employers solely for (1) actions for declaratory and injunctive relief and attorney fees and costs under subsection 16.24(b) and 16.24(d); (2) actions for judicial review and for the specific remedies and sanctions provided for by subsections 16.16(a), 16.16(b), and 16.17(g); and (3) actions in the Little River Band Tribal Court to enforce a collective bargaining agreement.

16.27 Model Band-Union Election Procedures Agreement.

The Tribal Council has adopted, by Resolution Number 08-1015-350, a Model Band-Union Election Procedures Agreement, which may form the basis for future election procedures for a labor organization seeking to represent a bargaining unit within a public employer. The Tribal Council Executive Assistant shall provide a copy of the Model Band-Union Election Procedures Agreement upon written request of any person, organization or entity.

Article XVII. Integrity of Fair Employment Practices Code.

17.1 Findings

(a) The Little River Band of Ottawa Indians has enacted and implemented this Fair Employment Practices Code pursuant to its inherent sovereign authority, confirmed by the decisions of the United States Supreme Court, and pursuant to the Band's Constitution, which has been approved by the United States Secretary of the Interior in accordance with Congress's Act to Restore the Little River Band of Ottawa Indians, 25 U.S.C. §§ 1300k-1300k-7 and the Indian Reorganization Act, 25 U.S.C. § 476.

(b) In providing for procedures, rights, and remedies for employers, employees, and labor organizations under this Code, including those afforded through actions in the Little River Band of Ottawa Indians Tribal Court, the Tribal Council has carefully considered (and continues to consider) the values and interests of the Band in order to establish fair processes, rights, and remedies for the parties and interests at stake. This has included careful consideration of, amongst other things, (i) the time, costs, and inconvenience of parties and witnesses involved in proceedings to resolve controversies or to establish rights and remedies under this Code; (ii) the need to protect the governmental operations of the Band from undue burdens from litigation, while according fair treatment to employees within those operations; and (iii) methods to resolve disputes through early settlement, including mediation.

(c) The integrity of this Code is threatened if parties bypass the procedures, rights, and remedies established herein and seek, instead, to invoke procedures or remedies outside of this Code for controversies that this Code is designed to address and resolve in accordance with the unique public policies of the Band. Investigations or proceedings directed at employers, apart from those provided for by this Code, which seek to address controversies or rights covered by this Code, require the expenditure of time and resources to the detriment of those involved and, in many instances, to the governmental operations of the Band. Such investigations or proceedings also threaten duplicative witness testimony and production of documents already available, or undertaken, pursuant to the provisions of this Code.

17.2 Purpose

The purpose of this Article is to protect the integrity of the procedures, rights, and remedies established by this Code as described in the foregoing findings.

17.3 Definitions

As used in this Article, the following terms have the following meanings:

- (a) Employee means any employee of an employer.
- (b) Employer means any "employer," as defined in section 3.06 and any "public employer" as defined in section 16.03, and any agent, officer, or representative of such employer.

17.4 Prohibition of Employer Testimony and Documents Disclosure in External Proceedings When Employees Fail to Exhaust Tribal Remedies

- (a) *Disclosures only with approval of Tribal Council.* Except with the express, written approval of the Tribal Council, employers are prohibited from giving testimony or witness statements of any kind or producing documents or other information of any kind in response to requests or subpoenas issued by outside authorities, other than those authorities expressly granted powers under this Code, engaged in investigations or proceedings on behalf of current or former employees, when such employees have failed to exhaust their remedies under this Code.
- (b) *Examples of failure to exhaust remedies.* For the purposes of subsection 17.4(a), employees shall be deemed to have "failed to exhaust their remedies under this Code" if they have failed to exhaust the procedures, rights, remedies, and appeals (including opportunities to challenge jurisdiction) available under this Code or the procedures of the Little River Band of Ottawa Indians Tribal Court, and have, instead, invoked investigations or proceedings outside of those authorized by this Code to (i) address controversies or rights covered by this Code, such as discrimination (see Article VI), family medical leave (see Article VIII), minimum wages (see Article X), whistleblower protection (see Article XII), and unfair labor practices (see Article XVI, section 16.15) or (ii) challenge the assertion of jurisdiction under this Code.

17.5 Actions for Injunctive Relief to Prevent Disclosures.

The Little River Band of Ottawa Indians Tribal Court shall have authority to grant preliminary and permanent injunctions to prevent employer disclosures in violation of section 17.4, and the sovereign immunity of employers imbued with sovereign immunity from such actions is hereby waived.

17.6 Use of Reports of Fair Employment Practice Investigators.

Reports of Investigators prepared pursuant to sections 6.01-6.02 may be submitted in any proceedings or controversies related to an employee's failure to exhaust remedies under this Code as described in subsection 17.4(b), provided, however, that such reports shall remain subject to section 6.03(b) regarding their admissibility in Tribal Court for the purposes proving or disproving the merits of Charges of Discrimination filed under section 6.02.

I, Janine Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Fair Employment Practices Code adopted by the Tribal Council on July 28, 2010.



Janine Sam
Tribal Council Recorder

[Seal]

APPENDIX II

AFFIDAVIT OF OGEMA LARRY ROMANELLI

**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

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 an enrolled member of *Gaá Čhing Ziibi Daáwaa Aníshinaábek*, the Little River Band of Ottawa Indians (the “Band” or the “Tribe”).
2. I have served as the Ogema (head of the Executive Branch) of the Band since June 20, 2007. This is an elected position pursuant to vote of the enrolled members of the Band.
3. Pursuant to Article V of the Band’s Constitution, as the elected Ogema, 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; to manage the economic affairs of the Tribe consistent with the ordinances and resolutions enacted by the Tribal Council; to prepare and present the annual budget of the Band to the Tribal Council for approval or other action; and, with the approval of the Tribal Council, to appoint Tribal Court judges, members of all regulatory commissions, and heads of subordinate organizations created by ordinance.
4. As the elected Ogema of the Band it is my duty to have knowledge of the exhibits attached hereto. They have been generated as part of the regular activities of the Band, its commissions, boards, or subordinate organizations and are maintained in the Band’s tribal government offices in the ordinary course of said government’s official business.

The Band, Its Restoration, and Its Government

5. The Band has nearly 4,000 enrolled members, who live within or near the Band's aboriginal lands in the State of Michigan. Article II, Section 1 of the Band's Constitution governs membership within the Band and provides, in pertinent part:

Section 1. Eligibility for Membership. An individual is eligible for membership in the Tribe, if he/she possesses at least one-fourth (1/4) degree Indian blood, of which at least one-eighth (1/8) degree must be Grand River Ottawa or Michigan Ottawa blood and:

- a. Is a lineal descendant of a member of the historic Grand River Bands who resided in Manistee, Mason, Wexford or Lake Counties in the State of Michigan, who was listed on the schedule of Grand River Ottawa in the Durant Roll of 1908 as approved by the Secretary of the Interior on February 18, 1910; or,
- b. Is a lineal descendant of individuals listed on the 1870 Annuity Payrolls of Chippewas and Ottawas of Michigan listed under the following Ottawa Chiefs:

Kewacushkum	Pay-quo-tush
Me-tay-wis	Shaw-be-quo-ung
Penayse	Kaw-gay-gaw-bowe
Maw-gaw-ne-quong	Ching-gawa-she
Aken Bell; and,	

- c. Is not currently enrolled in any other federally recognized Indian Tribe, band, or group.
6. Pursuant to Congress's 1994 Act restoring the Band to federal recognition, title 25 of the United States Code, sections 1300k to 1300k-7 (the "Restoration Act"), the Band is successfully restoring its land base, its government, its community, and its provision of governmental services to its members.
7. Since Congress's enactment of the Restoration Act, the United States, through the Office of the Secretary of Interior, has taken over 1,200 acres of the Band's ancestral lands in and near Manistee and Mason Counties into trust on behalf of the Band (hereinafter said lands are referred to as "trust lands" or "reservation").
8. In accordance with the Restoration Act, the Band has adopted a Constitution and later amendments thereto, which have been approved, pursuant to provisions of the Indian Reorganization Act, by the Office of the Secretary of Interior.
9. Pursuant to the Constitution and laws enacted by the Tribal Council of the Band, the Tribe exercises governmental authority over its trust lands and other territory.
10. The Constitution and laws of the Band are accessible to the public and maintained fully up-to-date at the official website of the Band: <https://www.lrbj-nsn.gov/council/ordinances.html> pursuant to the requirements of section 6.01 of the Band's Administrative Procedures Act -- Ordinances, Chapter 100, Title 7 of the Tribal Code.

11. The Band's governmental services and programs for its members and community are wide-ranging and now include: health services, including clinic and community health, and behavioral health and treatment programs (*Bedabin*) provided through the Band's Health Clinic; educational services to support tribal members pursuing, or enrolled in, higher education programs through the Band's Department of Education; family services, including counseling and support for families and children, through the Band's Department of Family Services; housing services for tribal members and elders through the Band's Housing Department; the provision of police and other public safety services within the Tribe's territory through the Band's Department of Public Safety; conservation, restoration, and monitoring of natural resources within the Tribe's territories through the Band's Department of Natural Resources; reservation economic development and the provision of employment opportunities for the Band's members through the Band's Department of Commerce and its subordinate organizations, including its reservation gaming operations under the Indian Gaming Regulatory Act; the administration of justice through a prosecutor's office and Tribal Court system; the maintenance of the Band's legislative and executive branches of government; and infrastructure support for all of these activities.
12. 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 members and their families. It is upgrading its clinic and building a pharmacy to better serve the tribal community. The clinic's *Bedabin* (meaning "coming of the dawn") services support tribal members in need of mental health counseling, including substance abuse counseling. Through its Department of Natural Resources, the Band is engaged in restoring sturgeon fish populations within the reservation. The Tribe is preserving its language through *Anishinaabemowin* language programs for tribal member youths and elders, and it recently completed construction of a new Community Center on the reservation to unify, and enhance services to, the tribal community.

The Band's Governmental Revenues and Programs

13. Like many Indian tribes, the Band has no significant base within its jurisdiction upon which to levy taxes.
14. The Band's governmental programs and services are jointly funded by (a) the Band's generation of revenues through its gaming operations 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's Indian Self-Determination and Education Assistance Act of 1975 (known as "P.L. 638"), Indian Health Care Improvement Act of 1976 (known as "IHS"), and Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA"). 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.

15. For example, under the Band's FY 2011 Government Services Budget, the Band combines federal funds with its IGRA gaming revenues to support the activities of its Department of Natural Resources, with about 60% of the budget funded from IGRA gaming revenues and 40% from P.L. 638 funds; its Department of Public Safety, with 64% of the budget funded from IGRA gaming revenues and 46% from P.L. 638 funds; its behavioral health (*Bedabin*) services at its Health Clinic, with about 80% of that budget funded from IGRA gaming revenues and 20% from IHS funds; maintenance and overhead for its Health Clinic building, with about 80% of those costs covered by IGRA gaming revenues and 20% from P.L. 638 funds; its Department of Family Services, with 77% of the budget funded from IGRA gaming revenues and 23% from P.L. 638 funds; its Housing Department, with 60% of the budget funded from IGRA gaming revenues and 40% from NAHASDA (apart from 2011 "stimulus" funds). In that same budget, the Band's IGRA gaming revenues provide 100% of the funds to support the Band's fitness center affiliated with its Health Department, the Tribal Prosecutor's office, and the Tribal Court. All of these percentages of funding sources for the Band's governmental services have remained the same, on average, from year to year during the course of my service as Ogema.
16. The Band's current funding agreement with the IHS is a good example of the method by which the Band supports its services to tribal members with both federal funds and IGRA gaming revenues. A copy of selected pages from that agreement is attached hereto as Exhibit A. I executed this agreement on behalf of the Band. As set forth in section 3, it covers funding for all aspects of health services, including clinical, dental, behavioral health (*Bedabin*), child development, family health, nutrition, and home care services. As set forth in subsection 3.3 of the agreement, the Band is required by the terms of the agreement, to merge its own revenues sources with those provided by IHS in order to supplement funds provided by IHS.
17. 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 enrolled members of the Tribe are given preferences over non-Indians for employment positions within the Tribe's governmental departments, agencies, commissions, and subordinate organizations. Ninety-nine tribal members currently work at the Band's IGRA gaming operations; twelve tribal members work at the Band's Health Clinic, with two providing *Bedabin* services; five tribal members work for the Band's Tribal Court; four work for its Family Services Department; and four work for its Public Safety Department. It is a goal of the Band to increase the number of tribal members working within all of its governmental operations.

**The Band's Generation of Governmental Revenue
Under the Indian Gaming Regulatory Act: The Little River Casino Resort**

18. Pursuant to the Band's Constitution, it is my responsibility, as Ogema, to manage the economic affairs of the Tribe, including its IGRA gaming operations, known as the Little River Casino Resort ("LRCR").

19. The LRCR is a tribally chartered instrumentality of the Band established by the Tribal Council pursuant to Article IV, section 7 of the Band's Constitution and overseen by a Board of Directors (described below) established by the Tribal Council as a subordinate organization of the Band. A true copy of the Tribal Council's resolution re-authorizing the chartering of LRCR is attached hereto as Exhibit B.
20. As mandated by IGRA, the Band's gaming operations are located on its trust lands. Further, as mandated by IGRA and the Band's Gaming Ordinance (Chapter 400, Title 1 of the Tribal Code of the Band), (a) the Band has the sole proprietary interest in, and responsibility for, LRCR, and (b) the net revenues generated from LRCR are the governmental revenues of the Band, which may be used only for the Band's governmental services, the general welfare of the Band and its members, tribal economic development, to support local governmental organizations, or to donate to charitable organizations.
21. Pursuant to its authority to create regulatory commissions and subordinate organizations under Article V, Section 7(f) of the Band's Constitution, the Tribal Council has delegated authority to a Board of Directors (the "Board" or "Board of Directors") to oversee the operations of the LRCR pursuant to the Gaming Enterprise(s) Board of Directors Act of 2010, Chapter 800, Title 3 of the Tribal Code of the Band ("GEBDA"), a copy of which is attached hereto as Exhibit C. (*See* sections 1.02 and 4.01 of the GEBDA.)
22. The Board is comprised of five Directors, all of whom must be enrolled members of the Band. Two are elected officials of the Band and three are "at large" (not elected officials). The first seat for an elected official may be held by the Ogema or by a member of the Tribal Council appointed by the Ogema with approval of the Tribal Council. The second seat for an elected official is held by a sitting member of the Tribal Council, appointed by the Ogema and approved by the Tribal Council. The three at large members are appointed by the Ogema and approved by the Tribal Council. (*See* section 4.02 of the GEBDA.)
23. The Board may vote to remove a Director for cause, and the Tribal Council may likewise remove a Director for cause in the event that the Board fails to bring a charge for removal. (*See* sections 5.01-5.03 of the GEBDA.)
24. The Board is charged with responsibility "[t]o ensure compliance with the laws and resolutions enacted by the Tribal Council"; to ensure that the Band's IGRA gaming complies with the provisions of the IGRA, the Band's gaming compact with the State of Michigan, entered into pursuant to the IGRA and the laws of the Band; and to ensure that all revenues from the Band's IGRA gaming are accounted for and transferred to the accounts of the Tribal Council as directed by the laws of the Band and procedures approved by the Tribal Council. (*See* section 9.01(a)-(c) of the GEBDA.)
25. The Board is also charged with responsibility to increase the number of enrolled members of the Band employed by LRCR in accordance with the Band's Indian

Preference in Employment Ordinance, Chapter 600, Title 2 of the Tribal Code. (*See* section 9.01(d)-(e) of the GEBDA).

26. The Band's Tribal Council has delegated to the Board authority to execute collective bargaining agreements for LRRCR and to execute a waiver of sovereign immunity on behalf of the Tribe in such an agreement, but only to the extent that such a waiver is consistent with the waiver of sovereign immunity provided by Article XVI of the Band's Fair Employment Practices Code, Chapter 600, Title 3 of the Tribal Code of the Band (the "FEP Code"). (*See* sections 9.03(d), 10.02(a), 10.03 of the GEBDA.)
27. The Band's Tribal Council has delegated to the Board additional limited authority to waive the sovereign immunity of LRRCR only in contracts for "essential daily operational needs," and any such waiver must be by Board resolution. (*See* sections 10.02(b) of the GEBDA.)
28. In accordance with the Band's Constitution and the GEBDA, the Board produces an annual budget for the LRRCR, which must be presented to, and approved or amended by, the Tribal Council by September 1. Said budget must be accompanied by (amongst other things) an operating plan for LRRCR and a human resources report addressing hiring and compensation plans. (*See* sections 12.02(a), 12.02(c)-12.02(e) of the GEBDA.)
29. The Board accounts to the Band's Tribal Council for all revenues generated by LRRCR and transfers those funds to the accounts of the Tribal Council, excluding authorized operating funds. (*See* section 9.01(c) of the GEDBA).
30. The Board has authority to approve and amend the Personnel Manual for the LRRCR, subject to overriding authority of the Tribal Council. (*See* section 9.03(b) of the GEDBA).
31. The Board also has authority to hire a General Manager for the LRRCR and to enter into an employment contract with such manager, subject to ratification by the Tribal Council. (*See* section 9.01(f) of the GEDBA).

Labor Organizing and Collective Bargaining at LRRCR Under the Laws of the Band

32. Pursuant to its Constitution and Article XVI of the FEP Code, the Band regulates labor relations and collective bargaining matters within its commissions, departments, agencies and subordinate organizations, including LRRCR.
33. In 2008, pursuant to Article V, Sec. 5 of the Band's Constitution, the Band entered into an Agreement with the United Steel Workers United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the "USW") to (amongst other things) establish procedures for employees within the security department at LRRCR ("security employees' bargaining unit") to identify themselves as an appropriate bargaining unit for collective bargaining and to make a showing that 30% or more of the employees within the unit supported union

representation so as to trigger a union election; to establish “civility” rules for union and management to follow during any election campaign; to set forth secret ballot voting procedures for employees to vote for union representation; and to establish processes for resolving disputes arising out of any campaign or vote. I executed said agreement in my capacity as Ogema, and my office was involved in discussions and negotiations concerning the content of said Agreement.

34. In entering into said Agreement, it was a central goal of my office, as Ogema, to minimize disruptions to the Band by establishing fair and orderly procedures for any union campaign within the jurisdiction of the Band.
35. Pursuant to amendments to Article XVI of the FEP Code, the Band’s Tribal Council adopted a Model Band-Union Election Procedures Agreement (“Model Agreement”), which serves as a template for the election of any labor organization to serve as an exclusive bargaining representative for employees within the governmental operations of the Band. The Model Agreement is modeled upon, and contains provisions that are substantially the same as, the Band’s Agreement with the USW pertaining to the security employees’ bargaining unit at LRCR referenced in paragraphs 33 and 34. I have read the Affidavit of Tribal Council Speaker Stephen Parson, dated March 3, 2011, submitted in the above-captioned matter, and a true copy of the Model Agreement is attached thereto as Exhibit C.
36. Since the execution of the Agreement referred to in paragraphs 33 and 34, the Band has entered into three Band-Union Election Procedures Agreements to govern elections procedures for bargaining units at LRCR, all executed by me, as Ogema, and ratified by the Tribal Council, and all conforming to the Model Agreement in accordance with Article XVI of the FEP Code.
37. Union elections, the initiation and resolution of election disputes, collective bargaining, the initiation and resolution of alleged unfair labor practices, and the initiation and resolution of bargaining impasse procedures have all proceeded apace for nearly three years pursuant to Article XVI of the FEP Code and the terms of the above-referenced Band-Union Election Procedures Agreements.
38. At least four unfair labor practices have been asserted and resolved under Article XVI of the FEP Code or the provisions of an executed Band-Union Election Procedures Agreement, including one by written decision of an arbitrator.
39. Collective bargaining agreement negotiations have proceeded for four separate bargaining units of employees at LRCR, made up of over 250 employees, and have involved, in the aggregate, over forty full days of negotiation sessions to date.
40. Each of said four bargaining units of employees is made up of enrolled members of the Band as well as nonmembers.


41. Enrolled members of the Band have served on the management's negotiating team with respect to collective bargaining for each of said four bargaining units; enrolled members of the Band continue to serve on management's negotiating team with respect to collective bargaining for two of the four said bargaining units of employees at LRCR; and enrolled members of the Band serve on management's team with respect to meetings under the collective bargaining agreement (referred to in paragraphs 50 and 51 below), which has been executed to govern the security employees' bargaining unit at LRCR.
42. An enrolled member of the Band served on the union's negotiating team with respect to collective bargaining for the security employees' bargaining unit.
43. A decertification petition and related union decertification vote resulted in the decertification of the exclusive bargaining representative by one bargaining unit of employees at LRCR in August, 2010. The petition and vote for said decertification proceeded in accordance with Article XVI of the FEP Code.
44. A separate decertification petition and related union decertification vote by a separate unit of employees at LRCR, held in February, 2011, did not result in the decertification of the exclusive bargaining representative for that separate unit. The petition and vote for this decertification also proceeded in accordance with Article XVI of the FEP Code.

The First Collective Bargaining Agreement Under Article XVI of the FEP Code

45. After over a year of negotiations between the management negotiating team and the union negotiating team regarding the terms for a collective bargaining agreement to govern the security employees' bargaining unit at LRCR, the parties reached an impasse over certain terms and invoked the three step impasse resolution process provided by Article XVI of the FEP Code: mediation, fact finding, and interest arbitration.
46. Hearing was held on or about June 24, 2010, by a fact finder, chosen by the parties, Anne T. Patton, Esq., and, in accordance with Article XVI of the FEP Code, she issued a thirty-two (32) page *Findings of Fact and Recommendations*, dated August 8, 2010.
47. As a result of said *Findings of Fact and Recommendations*, the parties narrowed the issues left for negotiation and then proceeded to interest arbitration.
48. Hearing was held on or about October 11, 2010, by the arbitrator chosen by the parties, Richard N. Block, Esq., and, in accordance with Article XVI of the FEP Code, he issued a thirty-nine page *Opinion and Award in the matter of Interest Arbitration under Article 16.17(d) of the Fair Employment Practice Code of the Little River Band of Ottawa Indians between Little River Resort and Casino and United Steelworkers*, dated November 22, 2010 ("Arbitration Award").
49. By resolution dated December 9, 2010, the Board of Directors voted to ratify a decision of LRCR management to accept said Arbitration Award. A copy of said Resolution is attached hereto as Exhibit D.

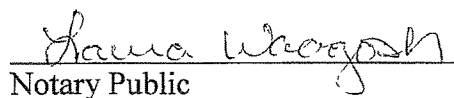
50. On or about December 16, 2010, employees within the security employees' bargaining unit voted to ratify a collective bargaining agreement with LRCR, and by Resolution dated December 20, 2010, the Board of Directors voted to approve and ratify the same collective bargaining agreement. A copy of said Board of Directors' Resolution is attached hereto as Exhibit E.
51. Said collective bargaining agreement is over forty (40) pages in length and contains thirty-nine (39) articles addressing the employment terms and conditions for the security employees' bargaining unit at LRCR. It is now in effect.
52. Collective bargaining negotiations continue pursuant to Article XVI of the FEP Code with respect to the two other bargaining units of employees at LRCR that previously voted for union representation pursuant to the Band-Union Election Procedures Agreements described above.

Dated: March 3, 2011


Larry Romanelli, Ogema, Little River Band
of Ottawa Indians

Personally appeared the above-named, Larry Romanelli, known to me to be the elected Ogema of the Little River Band of Ottawa Indians, and stated, under oath, that the foregoing facts are true, upon his personal knowledge, before me,

Dated: 3-3-11


Notary Public

Laura Waagosh
Notary Public - State of Michigan
County of Manistee
My Commission expires 5/16/2016
Acting in the County of Manistee

EXHIBIT A

to

AFFIDAVIT OF OGEMA LARRY ROMANELLI

**Multi-Year Funding Agreement between the Little River Band of Ottawa Indians
and the Secretary of Health and Human Services of the United States of America**

(Effective February 1, 2009 through December 31, 2011)

(Selected Pages)

**Multi-Year Funding Agreement
between
the Little River Band of Ottawa Indians
and
the Secretary of Health and Human Services
of the
United States of America**

Effective February 1, 2009 through December 31, 2011

This Funding Agreement is entered into by and between the Little River Band of Ottawa Indians and the Secretary of Health and Human Services (HHS) of the United States of America (Secretary) represented by the Director of the Indian Health Services (Director).

Section 1 — Obligations of the IHS.

1.1 Generally. Pursuant to this Funding Agreement, the Indian Health Service (IHS) shall provide funding and services identified herein and as provided in the Compact between the Little River Band of Ottawa Indians (Little River Band) and the United States (Compact). The IHS shall remain responsible for performing all federal residual programs, services, functions and activities (PSFAs). IHS shall further be responsible for performing its responsibilities as provided in the Indian Health Care Improvement Act (IHCIA), the Indian Self-Determination and Education Assistance Act, as amended (the Act), and other applicable provisions of Federal law.

In addition, although funds are provided from Headquarters and Area Office in support of the Compact and this Funding Agreement, the IHS will continue to make available to Little River Band, PSFAs from both Area Office and Headquarters unless 100 percent of the total tribal shares for these PSFAs have been specifically included in this Funding Agreement. In cases where a portion of tribal shares have been transferred, there may be some diminishment in the level of PSFAs provided by the IHS. The IHS PSFAs for which Little River Band does not assume responsibility and receive associated funding under this Funding Agreement will remain the responsibility of the IHS. The "Bemidji Area Indian Health Service Programs, Functions, Services & Activities (PFSA) Manual for use in FY 2009 Negotiations: Final" reflects the understanding of the parties regarding FY 2009 residual, transitional, and retained services of the Bemidji Area Office (BAO) to Little River Band. This document is hereby incorporated by reference.

1.2 IHS Services. Unless funds are specifically provided from IHS Headquarters or BAO, the IHS retains all PSFAs and Little River Band will not be denied access to, or services from, Headquarters or BAO. These include, but are not limited to, the following services from the IHS:

1.2.7 Recruitment. IHS has retained all BAO tribal shares associated with Recruitment. IHS will continue to provide technical assistance to the Little River Band in the recruitment of health professionals.

1.2.8 Clinical Applications and Business Office Coordination.

1.2.8.1 Clinical Applications Coordinator provides guidance and technical assistance on all aspects of electronic health records, including initial preparation, implementation, and ongoing technical assistance; serves as the point of contact for electronic health record initial planning and pre-implementation assistance; coordinates electronic health record software installation with the BAO management information system staff and with IHS OIT; provides one week of on-site training to tribal facility clinical application coordinator; coordinates OIT technical support; serves as technical liaison for electronic health records between OIT, BAO and health care facilities; and provides ongoing technical assistance on daily operation and modifications to electronic health records.

1.2.8.2 Business Office Coordinator provides consultation and technical assistance in establishing processes to enhance patient registration data quality and enhance revenue generation and accounts receivable programs; acts as an advocate and liaison with IHS Headquarters, Area, local, State and Federal programs; collaborates in partnerships on specific issues; assists BAO tribal operating units/urban programs and their patients with health care eligibility determination, and identification of alternative resources; provides technical assistance in negotiation process for agreement/contracts with external entities/payers and managed care provider networks and advocacy for payer problem resolution; and assists in the basic operation of Bemidji Area programs.

Section 2 – Obligations of the Little River Band. This Funding Agreement obligates Little River Band to be responsible to administer and to provide health PSFAs, identified in Section 3 [Tribal Programs and Budget], to eligible individuals pursuant to Section 3.4 of the Compact [Eligibility for Services], utilizing the resources transferred under this Funding Agreement and other funds as they may become available to Little River Band. This Funding Agreement further authorizes Little River Band to consolidate and redesign PSFAs as provided in the Act, and sections 3.4 [Eligibility for Services], 3.5 [Reallocation, Redesign and Consolidation], and 3.6 [Consolidation with Other Programs] of the Compact.

Section 3 – Tribal Programs and Budget. Little River Band agrees, subject to the availability of funding, to administer, provide, and be responsible for the health PSFAs, directly and through contract health services and other purchased services, identified below in accordance with the Compact and this Funding Agreement. For the purposes of the Funding Agreement, Little River Band's General Budget Categories consolidate related health PSFAs as described in this section, or as necessary to fully provide for the needs of persons served under this Funding Agreement.

3.1 Programs, Services, Functions and Activities. Little River Band is committed to and strives to provide quality health care services through advocacy, networking and collaborative efforts with local health and human services agencies and other tribal organizations to promote effective access and utilization of available resources and the maintenance of qualified staff, equipment, clinical sites and medical provisions. Little River Band and its staff

may provide services in settings other than those on Little River Band Territorial lands. Informational, preventive, and educational services are disseminated through various mediums and include a variety of subjects to promote cultural pride, leadership, health lifestyles and life management skills. Employees routinely travel to local townships, community groups and schools to participate in local and community-sponsored events.

3.1.1. Clinical and Ancillary Services. Subject to the availability of funding, Little River Band provides a broad range of ambulatory health care and ancillary services. These services include, but are not limited to:

3.1.1.1 Clinical Services, which comprise acute, chronic, therapeutic, and preventive health services, including, but not limited to: a full spectrum of family services, including traditional Ottawa medicine, acute medical care and hospital admission follow-up care, well child services, employee wellness, immunization tracking, injury prevention, health education, pharmaceutical services, medical case management, in-office labs, sexual assault nurse exams, and

3.1.1.1.1 Complementary and Alternative Medicine (CAM)
Services, including, but not limited to, acupuncture and homeopathy, which can be demonstrated to be reasonably safe and effective and are indicated for the patient's diagnosis or condition, may be provided following a referral from a primary care provider (defined as medical doctor, doctor of osteopathy, doctor of dental surgery, doctor of dental medicine, physician's assistant, advanced practice nurse, doctor of podiatric medicine) and, for those facilities with an organized Medical staff mechanism, if the CAM providers are credentialed as required by the facility's accrediting or certifying body for the specific patient care services.

3.1.1.1.2 Dental Services, which provides comprehensive services to raise the dental health and lower the incidence of dental disease, including, but not limited to, general dentistry, dental hygiene, orthodontics and dental education;

3.1.1.1.3 Optometry Program, which provides comprehensive direct optometric services, including, but not limited to, vision assessment, eye evaluation, retinal assessment, frame adjustment and repair, contact lens fitting, frames, eyeglass lenses, eye injury treatment, eye disease treatment, and low vision aids; and

3.1.1.1.4 Physical Rehabilitation Services, which provides comprehensive physical therapy evaluation and treatment, including, but not limited to, rehabilitation and occupational therapy, speech therapy services, certified massage therapy, chiropractic evaluation and treatment, back and spine rehabilitation therapy and training, ergonomic assessment, community education programs, and language and swallow evaluation and treatment.

3.1.1.2 Ancillary Services will be provided at levels sufficient to support medical diagnosis and treatment, and include, but are not limited to: radiology, mammography, ultrasound, bone density screening, lab services, microbiology, drug screening analysis, audiology, pharmacy services and dietary services.

3.1.1.3 Patient Transport for Medically Necessary Services. Little River Band manages a transport system in order for patients to receive services on-site such as specialty clinics and health seminars and at off-site health provider locations.

3.1.2 Behavioral Health Services provides comprehensive behavioral health services including, but not limited to, identification, psycho-social assessment, diagnosis, intervention and outpatient treatment of substance use disorders and mental health disorders, as well as injury prevention services for the protection of individuals impaired by alcohol and substance abuse and mental health crises. Counseling services, including prevention, relapse prevention, youth prevention and referral services, substance use disorder and other addiction treatment, mental health, psychiatric and outreach services, including family, child guidance, domestic violence, and child abuse prevention will also be made available. Therapy with children may include environmental modification (out of home placement). Multi-disciplinary case management and collaboration in development of agreements that will facilitate services are part of the services delivery.

3.1.3 Diabetes Prevention and Control provides comprehensive programs to reduce diabetes and encourage healthy lifestyles and individual and community wellness, through community and individual education and treatment, diabetic support groups; blood sugar screening; diabetic registry; prevention programs; exercise program; medication management; and foot care.

3.1.4 Community, Children and Family Services.

3.1.4.1 Habilitation Services provide comprehensive habilitation and rehabilitation programs and related services designed to assist individuals and their families to lead healthy, productive lives and engage fully in age-appropriate activities; such programs include, but are not limited to, for higher risk individuals clinical vocational rehabilitation, assistance, education and training.

3.1.4.2 Child Abuse and Neglect Services assures a safe environment for the welfare of the child and works toward the ultimate rehabilitation of the child and family by providing prevention and intervention services to respond to child physical abuse, sexual abuse, and neglect and other conditions that place a child at physical or emotional risk, including, but not limited to, support services for children, youth, and families; therapeutic activity and educational services aimed at recovery, healthy living skills and relationship development; individual, family and group counseling; family reunification support services; advocacy; health-related aspects of recruitment and certification of foster homes; collaboration with tribal, state, county, and city child protection and law enforcement agencies and other child and family advocacy programs; and facilitation and support of efforts to find permanent safe homes,

including health-related aspects of recruitment of potential adoptive families, conducting home studies and providing other support services.

3.1.4.3 Child Development Services provides services directed at assuring IHS beneficiaries the opportunity to participate in educational and other healthy age-appropriate activities and to enhance self-confidence and self-esteem, including, but not limited to health-related, educational, developmental, and student support activities, healthy lifestyles and cultural pride, and a variety of health-related child development services.

3.1.5 Family Health provides comprehensive family health services including, but not limited to providing in-home care visits; prenatal and sudden infant death syndrome (SIDS) prevention education, and immunizations.

3.1.6 Nutrition Services provides supplemental foods, and nutrition education, counseling and other services for individuals at nutritional risk.

3.1.7 Contract Health Care purchases health services not otherwise available or accessible to eligible beneficiaries through a contractual or open-market basis. Program administration includes, but is not limited to, patient advocacy, and monitoring of patient care for appropriateness of services and medical necessity.

3.1.8 Community Based Programs. Community-based health programs, include, but are not limited to the following:

3.1.8.1 Injury Prevention. Community safety and injury prevention program, which may be offered in conjunction with or in addition to the injury prevention services that IHS will continue to provide, may include participation in local first responder teams, providing health and medical services as part of community patrols, and liaison with tribal, local, state and federal governments and agencies directed at preventing intentional and unintentional injuries and death; and services for the protection of individuals impaired by alcohol and substance abuse and mental health crises.

3.1.8.2 Domestic Violence Prevention provides domestic violence prevention and advocacy, including participation in community sexual assault response teams;

3.1.8.3 Community Health and Wellness provides information, education and programs on: nicotine control/cessation; dietetics and nutrition services, including services associated with health promotion and disease prevention events; cooking classes to promote healthy diets; employee presentations and classes for community groups and schools; cancer prevention education and activities; injury prevention activities including parenting classes; community and individual activity and preventive health and wellness programs and life skills programming; tuberculosis screening and testing; needlestick and blood borne pathogen prevention and treatment; and immunizations and vaccinations;

3.1.8.4 Home Care and Other Community Based Services provides, through a combination of western methods and traditional modalities, home care and other community based services which include community health representatives (CHRs) or other employees of the Little River Band working under the direction and supervision of the health program providing homemaker services which consist of assisting the disabled, homebound, or bedridden with household chores, preparing food and feeding incapacitated patients, or assisting with personal care such as bathing or hair washing, vital signs, and medication reminders. These services are provided in support of other skilled nursing and medical services provided to individuals who are unable to meet their own needs. Home and community based services also provides: respite, nutrition, transportation and other supportive services; palliative and other end of life services; comprehensive care management services; transitional care; skilled nursing care services, and medical, public health, and preventive health services in support of long term care and engages in planning and development of additional services.

3.1.9 Environmental Health and Engineering. In addition to and in conjunction with the activities that IHS will perform under section 1.2.5 [environmental health and engineering services], Little River Band provides services described in paragraphs 3.1.9.1 [generally] and 3.1.9.2 [community response and disaster preparedness and response].

3.1.9.1 Generally. Environmental Health and Engineering provides Environmental Quality Assurance Program; air monitoring; air, mold, mercury, and other environmental testing; site contamination assessment and intervention; Material Safety Data Sheet (MSDS) program; safety preparedness; water plant and community and private well maintenance, including testing, operator training, water distribution maintenance, and 24 hour emergency response; community and private sewer and wastewater treatment plant and collection system maintenance, repairs and planning; solid waste collection and management, including hazardous waste collection and recycling; outreach; fire prevention and inspection, including fire extinguisher training and heating, ventilating and air conditioning (HVAC) and fire alarm system maintenance; infection control and universal precautions; occupational safety; and animal control, including dog bite prevention and rabies control.

3.1.9.2 Community Response and Disaster Preparedness and Response provides mitigation and prevention of, preparation for, response to, and recovery from the effects of natural, man-made, and biological events, including mutual aid agreements with tribal, local, state and federal governments and operation and support of warning and evacuation systems.

3.1.10 Benefit Outreach provides assistance to individuals in obtaining alternative funding for health care services.

3.1.11 Administration provides overall administrative services for the PSFAs described in this Funding Agreement and includes management, supervision, coordination and monitoring, and fiscal oversight, including a complement of services required to support the provision of health services to Little River Band including, but not limited to:

3.1.11.1 Administrative Functions include facilities and equipment management, maintenance and improvements; housekeeping and linen services; security; central sterile supply; mailroom functions; inventory control; budget development and maintenance; third party billing; grant writing, legal consultation and representation; accounting functions; contract development and management; purchasing management; and technology management;

3.1.11.2 Human Resources provides personnel services including staffing, recruitment, retention, job classification, pay and benefits administration, training, continuing education and development, employee relations, human resources information systems, infection control, and staff health education;

3.1.11.3 Compliance Coordination promotes responsible, ethical behavior and business practices consistent with Little River Band's mission, vision, and values; provides facility accreditation oversight and coordination; risk management; HIPAA compliance; policy and procedure development and enforcement; and quality improvement activities;

3.1.11.4 Patient Registration includes administrative services such as RPMS data entry; medical manager data entry maintenance; and health information management.

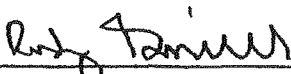

3.1.12 Tribal Ogema, Tribal Council and Health Commission. The Tribal Ogema, tribally elected council and Tribal Health Commission provide policy and direction for all Little River Band health-related activities, which will be the exclusive domain of the Tribal Ogema, Tribal Council, and the Health Commission, to the extent authorized by the Tribal Council.

3.1.13 Public Health and Epidemiology. Little River Band directly, and/or through the Great Lakes Inter-Tribal Council's Epidemiology Center, carries out public health, epidemiology and health research functions. These activities include, but are not limited to: collecting and receiving personally identifiable health information for the purposes of (1) preventing or controlling disease, injury, or disability; (2) reporting disease, injury and vital events such as birth and death; and (3) conducting Public Health investigations.

3.2 Other Programs/Services Funded. This Funding Agreement includes PSFAs resulting from tribal redesign, or consolidation, reallocation or redirection of fund, including its own funds or funds from other sources, provided that such consolidation, redesign or reallocation or redirection of funds must satisfy the conditions of 25 U.S.C. § 458aaa-5(e) and results in carrying out PSFAs that may be included in the Funding Agreement pursuant to 25 U.S.C. § 458aaa-4 and Section 3.6 of the Compact [Consolidation with Other Programs].


3.3 Non-IHS Funding. Little River Band will complement and supplement the PSFAs described in Section 3 [Tribal Programs and Budget] with funding from sources other than the IHS through this Funding Agreement, subject to the availability of such other funding. Consistent with Sections 3.5 [Reallocation, Redesign and Consolidation], 3.6 [Consolidation with Other Programs], and 3.7 [Program Income, including Medicare/Medicaid] of the Compact,

**United States of America
Secretary of Health and Human Services**

By: 
 **Robert G. McSwain**
Director, Indian Health Service

Date: 2/12/09

Little River Band of Ottawa Indians

By: 
Larry Romanelli
Tribal Ogema

Date: 1-27-09

EXHIBIT B

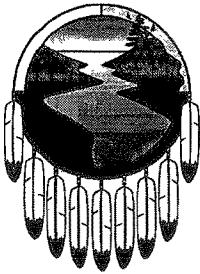
to

AFFIDAVIT OF OGEMA LARRY ROMANELLI

**Little River Band of Ottawa Indians
Resolution #04-0728-313**

*Re-Authorizing the Chartering of a Tribal Enterprise to be
Known as “Little River Casino Resort” and Re-Authorizing Use
Of the Tribal Seal in Connection with Such Tribal Enterprise*

(Adopted July 28, 2004)



Little River Band of Ottawa Indians

375 River Street
Manistee, MI 49660
(231) 723-8288

Resolution # 04-0728-313

Re-Authorizing the Chartering of a Tribal Enterprise to be Known As "Little River Casino Resort" and Re-Authorizing Use of the Tribal Seal in Connection with Such Tribal Enterprise

- WHEREAS, the status of the *Gaá Čhíng Ziibi Daáwaa Aníshinaábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and
- WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and
- WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and
- WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and
- WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) to provide for the public health, peace, morals, education and general welfare of the Little River Band and its members; and
- WHEREAS, the Tribe is entitled to the protections and benefits accorded federally-recognized Indian tribes under federal law, including those under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701 et seq.) ("*IGRA*"), which permits Indian tribes to operate Class II and Class III gaming activities on lands held in trust for the Tribe; and
- WHEREAS, the Tribe has determined that the establishment and operation of a Class II tribal gaming enterprise under the IGRA will assist the Tribe generate the revenues needed to establish an effective tribal government, provide necessary employment opportunities services for tribal members and promote tribal self sufficiency; and

WHEREAS, the Tribe and the State of Michigan have entered into a Tribal-State Gaming Compact ("*Compact*") providing for the conduct of Class III gaming activities by the Tribe on its Reservation Lands in Manistee County, which Compact was approved by Resolution of the Michigan Legislature and approved by the Assistant Secretary-Indian Affairs; and

WHEREAS, the Elders of the Tribe have recommended that the Tribe's gaming enterprise be conducted and do business under the name "Little River Casino Resort" which has been authorized under resolution # 99-0314-07; and

WHEREAS, the management contract terminates in mid-September 2004 and the Tribe is beginning the finalization of process to begin management of the Little River Casino Resort; and

WHEREAS, the Tribal Council has determined that re-authorization of the enterprise charter of the Little River Casino Resort as the prior documents were integrated with the Management Agreement that was then in place;

NOW THEREFOR IT IS RESOLVED THAT the Tribal Council, acting under its inherent sovereign governmental authority under Article IV, Section 7(a) of the Constitution, and in accordance with the federal policies enumerated in IGRA, hereby re-authorizes the chartering of Little River Casino Resort, as a distinct instrumentality created, wholly-owned and controlled by the Tribe, for the purpose of operating a Class II and Class III gaming resort on the Tribe's Reservation.

IT IS FURTHER RESOLVED THAT Little River Casino Resort shall be located on the Tribe's Reservation lands located in the NE1/4 of Section 28 in Township 22 North, Range 16 West in Manistee County, Michigan, as described on the Master Site Plan approved for such enterprise.

IT IS FURTHER RESOLVED THAT the seal of Little River Casino Resort shall be the Tribal Seal of the Little River Band of Ottawa Indians, but shall include the words "an enterprise of the Little River Band of Ottawa Indians." The seal of Little River Casino Resort may be used in connection with advertising and marketing of Little River Casino Resort approved by the Board of Directors.

IT IS FURTHER RESOLVED THAT the revenues of Little River Casino Resort shall be audited annually and that copies of those audits shall be provided to the Tribal Gaming Commission, the Tribal Council and the National Indian Gaming commission.

IT IS FURTHER RESOLVED THAT Little River Casino Resort shall comply with all Internal Revenue Service reporting and filing requirements applicable to the operations of the enterprise.

IT IS FURTHER RESOLVED THAT all net revenues from Little River Casino Resort distributed to the Tribe shall be used solely for the purposes stated in the Gaming Ordinance.

IT IS FURTHER RESOLVED THAT all contracts for the lease or purchase of gaming supplies, equipment, services or concessions in excess of \$25,000.00 annually, except contracts for professional, legal and accounting services, shall be subject to the annual audit described above.

IT IS FURTHER RESOLVED THAT the construction and maintenance of Little River Casino Resort facilities and the operation of those facilities shall be conducted in a manner which adequately protects the environment and the public health and safety, and in accordance with the mitigation required by the National Indian Gaming Commission.

IT IS FURTHER RESOLVED THAT all primary management officials and key employees proposed for employment at Little River Casino Resort shall have passed background checks and obtained the appropriate licenses required by the Gaming Commission prior to the commencement of gaming operations in the facilities.

IT IS FURTHER RESOLVED THAT the General Manager for Little River Casino Resort shall have obtained the appropriate gaming facility license required by the Gaming Commission prior to commencement of gaming operations in the facilities.

IT IS FURTHER RESOLVED THAT Little River Casino Resort shall pay such fees to the National Indian Gaming Commission as federal law may require.

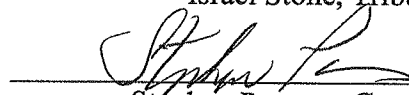
IT IS FURTHER RESOLVED THAT Little River Casino Resort shall comply with the terms of the Tribal-State Gaming Compact entered into with the State of Michigan with respect to all Class III gaming activities conducted at its facilities.

IT IS FINALLY RESOLVED THAT this re-authorized enterprise charter shall be effective on September 12, 2004 at 12:00 a.m. and shall supersede the prior enterprise charter at that time.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 8 FOR, 0 AGAINST, 0 ABSTAINING, and 1 ABSENT, at a Regular Session of the Little River Band of Ottawa Indians Tribal Council held on July 28, 2004, at the Little River Band's Dome Room in Manistee, Michigan, with a quorum being present for such vote.


Israel Stone, Tribal Councilor


Stephen Parsons, Council Speaker

Attest:

Distribution: Council Records
Tribal Ogema
Tribal Court

EXHIBIT C

to

AFFIDAVIT OF OGEMA LARRY ROMANELLI

**Gaming Enterprise(s) Board of Directors Act of 2010
(Ordinance # 10-800-03)**

(Adopted August 25, 2010)

Gaming Enterprise(s) Board of Directors Act of 2010
Ordinance # 10-800-03

Article I. Purpose; Findings

1.01. *Purpose.* The purpose of this Act is to establish a Gaming Enterprises Board of Directors to provide monitoring, oversight, and direction regarding the management of the gaming enterprise in order to maximize the income for existing and future Gaming Enterprise(s) and the Tribe.

1.02. *Authority.* The Tribal Council of the Little River Band of Ottawa Indians adopts this Ordinance in accordance with the following authority:

- a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:
 - 1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
 - 2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]" Article IV, Section 7(a); and
- b. Article V, Section 5(a)(2) of the Constitution provides that the Ogema shall oversee the administration and management of the Tribal government in accordance with the laws, resolutions and motions adopted by the Tribal Council; and
- c. Article V, Section 5(a)(8) of the Constitution provides that the Ogema shall manage the economic affairs, enterprises, property, and other interests of the Tribe, consistent with ordinances and resolutions enacted by the Tribal Council; and
- d. Article V, Section 5(a)(4), of the Constitution provides that the Ogema has the power, with the approval of the Tribal Council, to appoint heads of subordinate organizations created by ordinance; and
- e. Article V, Section 7(f), of the Constitution provides that Tribal Council has the power to 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; and
- f. Article IV, Section 7(h), of the Constitution provides that the Tribal Council has the power to approve appointments to regulatory commissions and heads of subordinate organizations created by ordinance.

1.03. *Findings.* The Tribal Council finds that:

- a. The Indian Gaming Regulatory Act identifies that a principal goal of federal Indian policy is to promote Tribal economic development, tribal self-sufficiency, and strong Tribal Governments, and has set forth limitations regarding the use of gaming revenues by Indian Tribes, as well as imposing on Tribes the manner in which they must operate their gaming enterprises; and
- b. The Gaming Enterprise(s) continue to grow and expand as the Tribe's primary source of governmental revenue and jobs; and
- c. The nature of the Gaming Enterprise(s)' 24-hour year-round operations requires constant monitoring, oversight, and direction; and
- d. The establishment of a Board of Directors for the Gaming Enterprise(s) to provide appropriate monitoring, oversight, and direction regarding the management and operation of any and all existing and future Gaming Enterprise(s) will serve the best interests of the Tribe by maximizing generation of income from gaming for the benefit of the Tribe, reducing expenses where appropriate, and minimizing the potential for political interference of business decision-making, all in accordance with the goals and budgets established by the Tribal Council by law or resolution.

Article II. Adoption; Amendment; Repeal; Severability

2.01. Adoption.

- a. This Ordinance is adopted by resolution #10-0825-292, which repeals all previous versions of the Board of Directors Act of 2005, Ordinance #05-800-03 effective thirty (30) days from the date of adoption, and replaces that Act with this Ordinance #10-800-03.
- b. Resolution #10-0915-310, which adopted amendments on an emergency basis to clarify the terms of office for members of the Interim Board of Directors, the First Board of Directors, and all subsequent Boards of Directors appointed in accordance with the provisions of this Ordinance.
- c. Resolution #10-0922-318, which adopted amendments on an emergency basis to eliminate provisions of this Ordinance that required an Elected Official to establish a quorum for the Board of Directors to conduct business.

2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution, the Administrative Procedures Act, and any other laws or rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.

2.03. *Repeal.* The following Resolutions are hereby repealed: Resolution #04-0721-307, Resolution #04-0922-380, Resolution #04-1013-405, Resolution #04-1027-432, Resolution #05-720-328, Resolution #09-0325-84, and Resolution #09-0325-85. This Ordinance may be repealed in accordance with the procedures set forth in Article IV of the Administrative Procedures Act – Ordinance #04-100-07.

2.04. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

2.05. *Title.* This Ordinance shall be referred to as the “Gaming Enterprise(s) Board of Directors Act of 2010” (“Act”).

Article III. Definitions.

3.01. *Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word “shall” is always mandatory and not merely advisory.

3.02. *At-Large Member* means a Member of the Gaming Enterprise Board who is not an elected official of the Tribe. At-Large Members shall be enrolled members of the Little River Band of Ottawa Indians.

3.03. *Capital Expenditures* means the amount spent to add to the value of or extend the useful life of property, plant or equipment or to adapt it to a new or different use. Expenses that keep property, plant and equipment in an ordinarily efficient operating condition and do not add to its value or appreciably add to its useful life are not capital expenditures. For purposes of this ordinance, only expenditures in excess of \$10,000 shall be considered capital expenditures.

3.04. *Collective Bargaining Agreement* means a contract between a Gaming Enterprise and a labor organization regarding wages, hours, terms or conditions of employment pursuant to the Fair Employment Practices Code.

3.05. *Contract* means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.

3.06. *Elected Official*, as used in this Ordinance, shall mean the Ogema and any sitting Tribal Council member appointed to serve on the Gaming Enterprise Board of Directors.

3.07. *First Board of Directors* shall mean the First Board appointed in accordance with Article XIV of this Ordinance.

3.08. *Gaming Enterprise(s)*, as used in this Ordinance, shall mean the Little River Casino Resort and any future facility at which gaming is authorized under Tribal, State, and/or Federal Law including, but not limited to, the Indian Gaming Regulatory Act, the Tribal-State Gaming Compact(s), and the Tribal Gaming Ordinance. Gaming Enterprises are considered public employers, and are authorized to conduct activities including, but not limited to, the following:

- a. Gaming activities authorized under the Tribal-State Gaming Compact.
 - b. Hotel and recreational activities.
 - c. Entertainment and conference activities.
 - d. Dining and banquet activities.
 - e. Activities reasonably related to the above.
 - f. Other activities as may be authorized from time to time by Resolution of the Tribal Council amending this ordinance.
- 3.09. *Gaming License Eligibility Standards*, as used in this Ordinance, shall mean the standards to be applied when determining whether elected officials are eligible to hold and/or maintain a gaming license. "Gaming License Eligibility Standards" shall include application of all Tribal and federal licensing eligibility requirements governing Primary Management Officials.
- 3.10. *Good Cause*, as used in this Ordinance as a basis for removal of a Member of the Board of Directors, shall have the meaning ascribed to it under Article V of this ordinance.
- 3.11. *Official Action* shall mean an action taken by Resolution or Motion approved by a majority of the Members of the Board of Directors present and voting at an official meeting.
- 3.12. *Official Capacity*. A Member of the Board of Directors is acting in his or her official capacity only when undertaking actions officially sanctioned and approved by a majority of Members of the Board of Directors present and voting at an official meeting.
- 3.13. *Primary Management Official* shall have the meaning ascribed to it under the Indian Gaming Regulatory Act, as amended from time to time.
- 3.14. *Public Employer* means a Gaming Enterprise or other subordinate economic organization, department, commission, agency, or authority of the Tribe engaged in any Governmental Operations of the Tribe.

Article IV. Board of Directors –Creation, Composition, Qualifications.

4.01. *Creation of the Board of Directors*. The Tribal Council hereby creates and establishes the Board of Directors for the Gaming Enterprise(s), to act as a subordinate organization of the Tribe in overseeing the Tribe's Gaming Enterprise(s), subject to the following conditions:

- a. The Board of Directors and its Members shall be subject to the Constitution, laws, and resolutions of the Tribe, including the legislative authority of the Tribal Council to enact laws and resolutions and the executive authority of the Ogema to carry out the laws and resolutions enacted by the Tribal Council.
 - b. The Board of Directors and its Members shall be subject to all federal laws, or any laws promulgated pursuant to federal law, including but not limited to the Indian Gaming Regulatory Act, the Tribal-State Gaming Compact, the Gaming Ordinance of the Tribe, and all applicable laws, regulations, internal operating procedures and minimum internal control standards.
 - c. The Members of the Board of Directors shall take an oath of office given by a member of the Judiciary of the Little River Band Tribal Court, and shall file a signed confidentiality statement with the Tribal Council Recorder.
- 4.02. *Composition and Qualifications of the Board of Directors*. The Board of Directors shall be comprised of five (5) Members seated as follows:
- a. Elected Officials.
 - 1. One Member of the Board of Directors may be the Tribal Ogema. In the event that the Ogema declines to sit as a Member of the Board, then he or she shall appoint a Tribal Council member to sit in his or her place. Any appointment made under this subsection shall be approved by the Tribal Council and shall have no effect on subsection 4.02(a)(2) below.
 - 2. One Member of the Board of Directors shall be a sitting member of the Tribal Council, appointed by the Ogema and approved by the Tribal Council.

3. Elected Tribal officials serving on the Board of Directors shall not be required to hold a Gaming License issued by the Tribe's Regulatory Authority, but shall be required to meet all Gaming License Eligibility Standards as defined in Section 3.08 of this Ordinance.
- b. *At-Large Members.* Three Members of the Board of Directors shall be at-large, and shall be appointed by the Ogema and approved by the Tribal Council.
 1. The Ogema and Tribal Council shall ensure that every effort is made to appoint and approve individuals who possess relevant experience in the fields of business, finance, and/or the hospitality industry, with a particular emphasis on gaming facility experience
 2. All at-large Members of the Board of Directors shall possess and maintain a Gaming License issued by the Gaming Commission or other Gaming Regulatory Agency of the Tribe.
 3. All at-large Members of the Board of Directors shall be duly enrolled members in the Little River Band of Ottawa Indians.
- c. *Officers; Chairperson; Vice-Chairperson.*
 1. If the Ogema is a sitting Member of the Board of Directors, then the Ogema may serve as Chairperson of the Board. In the event the Ogema chooses to not serve on the Board, the Ogema shall appoint another Member of the Board to act as Chairperson. Any appointment made under this subsection shall require approval by Tribal Council.
 2. The Office of Vice-Chairperson shall be filled by a Board Member duly seated on the Board of Directors.
- d. The Tribal Council may elect to secure a bond and/or insurance covering activities of Members of the Board of Directors. All Members of the Board of Directors shall cooperate fully with the Tribe to secure bonding and/or insurance covering his or her activities as a Member of the Board of Directors.
- e. The following individuals shall be prohibited from serving as a Member of the Board of Directors:
 1. Any person who previously held a seat on the Board of Directors who was removed for good cause.
 2. Any person previously disqualified from serving on the Board of Directors.
 3. Any person sitting as a Commissioner on the Little River Band of Ottawa Indians Gaming Commission or other Tribal Gaming Regulatory Agency.
 4. Any person employed by any Gaming Enterprise.
 5. Any person employed by the Little River Band of Ottawa Indians Gaming Commission or other Tribal Gaming Regulatory Agency.

Article V. Removal.

5.01. *Removal by Board of Directors.* The Board of Directors shall have the power to remove a Board Member for good cause upon a majority vote of the Board.

5.02. *Good cause*, as used in this ordinance as a basis for removal, means that a Member of the Board of Directors shall be removed for the following reasons by the Board of Directors:

- a. Failure to attend four meetings of the Board of Directors, including special or emergency meetings, within a twelve month period.
- b. Revocation of a professional license, permit or certification that reflects on the qualifications of the member to sit on the Board or reflects on the professional responsibilities and integrity of the member.
- c. Conviction of a felony, or conviction of a misdemeanor act that impinges on the professional responsibilities and integrity of the member.

d. Failure to carry out the fiscal obligations mandated by this Ordinance.

5.03. *Removal Process.* The following process for removal of a member of the Board of Directors shall be strictly adhered to:

a. *Notification – Reasons for Removal.* The member of the Board of Directors subject to removal shall receive written notification that sets forth, with specificity, the reason(s) for removal. The Notification shall include, at a minimum, the conduct, incident, or action that is the basis for the removal and the date and place the conduct, incident or action occurred; any documents relevant to the conduct, incident, or action; and the names of witnesses or other individuals with information regarding the conduct, incident or action.

b. *Notification – Hearing Date and Time.* The Notification shall include the place, date and time of the meeting at which the Board Member may answer the charge for removal. Removal hearings shall only be heard in a closed session meeting; provided that the Board Member subject to removal may request a public hearing.

c. *Filing of Notification.* A copy of the Notification and any attachments shall be forwarded to the Tribal Council Recorder.

d. *Witnesses; Documents.* The Board Member who is the subject of a removal proceeding shall submit, no later than forty-eight (48) hours prior to the hearing date and time, a list of proposed witnesses that will be called and/or a copy of all documents that will be presented at the removal hearing. Witnesses, at the time of the hearing, shall swear an oath as to the truth and accuracy of their statements.

e. *Majority Vote Required.* A Board Member shall only be removed by majority vote.

f. *Final Decision.* A majority vote of the Board of Directors, or the Tribal Council in accordance with Section 5.05 below, to remove a Board Member shall be final and may not be appealed to the Tribal Court.

5.04. *Return of Property.* Any Board Member subject to removal shall immediately, upon receipt of notification of removal, return any property, including documents or records of any type, that rightfully belongs in the possession of the Board of Directors.

5.05. *Removal by Tribal Council.* In the event the Board of Directors fails to bring a charge for removal against a Board Member for good cause under Section 5.02 above, the Tribal Council may remove the Board Member in accordance with the procedures identified in Section 5.03.

Article VI. Automatic Disqualification.

6.01. *Automatic Disqualification - General.* Automatic disqualifications are non-discretionary and must be strictly enforced by the Chairperson, or the Vice-Chairperson presiding in the Chairperson's absence.

6.02. *Grounds for Disqualification.* A Board Member shall be automatically disqualified from serving on the Board of Directors when one of the following occurs:

- a. The Board Member no longer holds or is eligible to hold a valid gaming license issued by the Tribe's gaming regulatory agency; or
- b. The Board Member is no longer an enrolled member of the Little River Band of Ottawa Indians; or
- c. The Board Member is an elected official who no longer holds an elected office during that term.

6.03. *Disqualification – Procedure.* When a Board Member is subject to disqualification under Section 6.02 above, the Chairperson, or the Vice-Chairperson presiding in the Chairperson's absence, shall notify the Board Member in writing. The notification shall contain, at a minimum:

- a. The reason(s) for the disqualification; and
- b. Notice that the Board Member is disqualified effective immediately; and
- c. Notice that the disqualification is not appealable to any hearing body.

6.04. *Return of Property.* Any Board Member disqualified from serving on the Board of Directors shall immediately return any property, including documents or records of any type, that rightfully belongs in the possession of the Board of Directors.

Article VII. Notice; Posting Required; Vacancies.

7.01. *Notification Required.* The Board of Directors is required to notify the Ogema and Tribal Council, in writing, when a vacancy is created by conclusion of a term, removal by the Board or Tribal Council, disqualification, or resignation of a member.

7.02. *Posting Notice of Vacancy for Applicants.* The Ogema shall post for 30 days in the Tribal newspaper, a notice that a vacancy on the Board of Directors exists, the preferred qualifications for the vacant position, the term of office for the vacant position, and the open and closing date of the application period. All applications received shall be forwarded to the Tribal Council with the appointments presented under Section 7.04 of this Ordinance. This Section shall not apply to appointments to the First Board of Directors appointed in accordance with this Ordinance.

7.03. *Vacancy Exists.* A vacancy exists upon removal by the Board of Directors or Tribal Council, automatic disqualification, resignation, expiration of term of office, or upon receipt of the notice of vacancy by the Ogema.

7.04. *Procedure for Filling Vacancies.* The following procedures shall be adhered to when filling vacancies on the Board of Directors:

- a. The Board of Directors performs duties necessary to the activities of the Gaming Enterprise(s) such that it is important that vacancies be filled in an efficient and timely manner. The Ogema shall submit appointments for vacancies on the Board of Directors within 45 days of receipt of notice of a vacancy.
- b. With respect to vacancies existing on the date of adoption of this ordinance, the Ogema shall submit appointments to Tribal Council for approval within thirty (30) days after the date of adoption.
- c. If the Ogema is unable to appoint individuals to fill vacancies on the Board, he or she shall identify the reasons why vacancies cannot be filled within the timelines set forth in this section, identify all attempts made to nominate qualified persons, and identify with specificity what qualifications each applicant is lacking.
- d. If a vacancy occurs on the Board of Directors in one or more of the seats which requires a minimum qualification as set by Section 4.02 above, the remaining Members of the Board of Directors may continue to conduct business.
- e. A vacancy in either an Elected Official or an At-Large seat shall be filled for the remainder of that term.
- f. A vacancy in the Board of Directors' seat reserved for the Ogema due to removal, disqualification or resignation shall be filled in accordance with Section 4.02(a)(1) of this Ordinance.

Article VIII. Meetings; Minutes; Compensation

8.01. *Quorum.* A quorum of the Board of Directors shall consist of any three (3) Members of the Board of Directors. A quorum shall be required to conduct business.

8.02. *Meetings.* The Board of Directors shall hold meetings at least once per month.

8.03. *Requirement to Attend Meetings.* All Board Members shall attend all regularly scheduled monthly meetings in order to be compensated for attendance. In the event that an emergency meeting is necessary in which the Board is required to take official action, Board Members may participate by telephone but shall not be compensated for attendance.

8.04. *Procedures.* The Board of Directors shall be authorized to establish its own meeting procedures not inconsistent with this Ordinance; provided that the Board of Directors shall act only by Resolution under the following circumstances:

a. When committing funds, including approval of contracts in accordance with Section 9.03 and

b. When authorizing a waiver of the sovereign immunity of the Gaming Enterprise(s) in accordance with Article X.

8.05. *Minutes.* The Board of Directors shall prepare minutes of all open and closed session meetings which shall describe with specificity all official actions taken by the Board, and shall memorialize all discussions related to those official actions. Copies of the Board of Directors' minutes shall be submitted to Tribal Council for acceptance to the record in a timely manner.

8.06. *Compensation.* Each at-large Member of the Board of Directors shall be paid reasonable compensation as authorized by Resolution of the Tribal Council subject to the following limitations:

a. Compensation for at-large Members of the Board of Directors shall not be diminished during any term of office.

b. The Ogema and Tribal Council Member(s) sitting on the Board of Directors shall not receive additional compensation for sitting on the Board.

c. Compensation shall be subject to the power of the Tribal Council to appropriate funds for such purposes.

d. In the event that an elected Tribal official sitting on the Board is not re-elected to his or her Tribal government position, he or she shall be paid the same compensation as at-large Members of the Board of Directors for a period of not more than sixty (60) days following the swearing-in of the new Ogema and/or Tribal Council, consistent with the hold-over provision in Article XIV below.

Article IX. Responsibilities and Duties

9.01. *Responsibilities.* The Board of Directors shall be responsible for the following:

a. To ensure compliance with the laws and resolutions enacted by the Tribal Council, including any goals for the Gaming Enterprise(s) established by the Tribal Council; and
b. to ensure compliance with all applicable laws and regulations, including the Indian Gaming Regulatory Act, the Tribal-State Gaming Compact, the Gaming Ordinance of the Tribe, and all applicable laws, regulations, internal operating procedures, policies and minimum internal control standards; and

c. to account for and transfer, or to direct the accounting and transfer of, all revenues generated by the Gaming Enterprise(s), excluding authorized operating funds, on at least a 48-hour basis to an account or accounts authorized and established by the Tribal Council by law or resolution; provided that such transfers shall be made according to written procedures established by the Board of Directors which shall be subject to modification by the Tribal Council by law or resolution; and,

d. to increase the number of Tribal Members employed by the Gaming Enterprise(s) in accordance with the Indian Preference in Employment Ordinance; and,

e. to increase the number of Tribal Members employed by the Gaming Enterprise(s) in management level positions in accordance with the Indian Preference in Employment Ordinance; and,

f. *General Manager.* The Board of Directors shall have the power to hire a General Manager for the Little River Casino Resort in accordance with the laws and resolutions of the Tribe. The Board of Directors may enter into an employment contract with the General Manager; provided, that such contract shall be subject to ratification by the Tribal Council. The Board of Directors shall evaluate the performance of the General Manager on an annual basis or more frequently as needed. The Board of Directors shall have the power to terminate the employment of the General Manager in accordance with the laws and resolutions of the Tribe.

g. to maintain a consistent and regular attendance record; and,

- h. to be held accountable, to the highest degree, for the accuracy and thoroughness of the records and reports of the Gaming Enterprise(s); and,
- i. to be responsible for the successful overall direction and operation of all activities of the Gaming Enterprise(s) in accordance with the laws and resolutions enacted by the Tribal Council.

9.02. *General Duties.* The Board of Directors shall:

- a. create, develop, and implement an effective strategy of business organization for the Gaming Enterprise(s) including setting objectives for future growth and expansion in accordance with the Annual Operating Plan and Annual Budget approved by the Tribal Council; and,
- b. ensure the quality of management activities and operations in all areas of the Gaming Enterprise(s); and,
- c. have all duties and responsibilities customary for a Board of Directors of a gaming, restaurant, hotel, and entertainment enterprise, including responsibility for the overall operation of the Gaming Enterprise(s), subject to any limitations or prohibitions set forth in this Ordinance.

9.03. *Specific Duties.*

- a. *Primary Management Official Employment.* The General Manager shall have the power to employ Primary Management Officials for the Gaming Enterprise(s) in accordance with the laws and resolutions of the Tribe. Any employment contract entered into in accordance with this Section shall be ratified by the Board of Directors. The Board of Directors shall be provided the evaluation reports regarding the performance of all Primary Management Officials on an annual basis or more frequently as needed. The General Manager shall keep the Board informed of any matters concerning performance of primary management official employees
- b. *Personnel Manual.* The Board of Directors shall have the power to approve and amend the Personnel Manual for the Gaming Enterprise(s), subject to the overriding authority of the Tribal Council to alter such Personnel Manual by law or resolution. The Board of Directors shall provide at least a 30-day advance notice to the Ogema and Tribal Council of all proposed amendments to the Personnel Manual.
- c. *Grievance Procedures.* Within thirty (30) days of the effective date of this Ordinance, the Board of Directors, in consultation with the General Manager, shall prepare and forward to Tribal Council for approval a comprehensive Grievance Procedure Policy which clearly identifies what personnel actions may be grieved. At a minimum, the Policy shall create a Board of Review made up of Enterprise employees who shall be authorized to hear grievances and make binding decisions. Any grievances pending before the Board of Directors on the date this Ordinance goes into effect shall be stayed and held in abeyance until a Board of Review has been created. Employees within a bargaining unit represented by an exclusive bargaining representative on or after the effective date of this Ordinance shall be exempt from application of this Grievance Procedure Policy.
- d. *Collective Bargaining Agreements; Contracts.* The Board of Directors is expressly delegated the authority to enter into Collective Bargaining Agreements for the Gaming Enterprise(s) on behalf of the Tribe in accordance with Article X of this Ordinance. Collective Bargaining Agreements shall only be approved by a duly authorized Resolution which shall be forwarded to the Tribal Council Recorder for filing with the Board's Monthly Report.
- e. *Contracts.* The Board of Directors shall have the power to approve contracts up to and including \$500,000.00 without Tribal Council approval subject to those limitations identified in Article XI of this Ordinance.

f. *Expenditures.* The Board of Directors shall authorize all Gaming Enterprise expenditures in excess of \$50,000.00.

9.04. *Additional Duties of Chairperson and Vice-Chairperson.* In addition to all other duties of the Board of Directors contained in this Ordinance, the Chairperson, or in his or her absence the Vice-Chairperson, shall be responsible for carrying out the following additional duties:

a. *Mandatory Reporting Requirements.* Ensuring the accuracy and timely submission of all mandatory budgets and reports in accordance with the schedules set forth in XII of this Ordinance.

b. *Mandatory Distributions.* Ensuring the accuracy and timeliness of all mandatory distributions of gaming revenues in accordance with the schedules set forth in Article XIII of this Ordinance.

c. In the event that any mandatory distribution or reporting requirements are not met in accordance with the provisions of this Ordinance, then the Chairperson, or Vice-Chairperson in his or her absence, shall submit to the Tribal Council a comprehensive Corrective Action Plan which, at a minimum:

1. identifies with specificity the individual(s) responsible for the Gaming Enterprise's failure to comply with the provisions of this Ordinance;
2. identifies with specificity any disciplinary action taken against the responsible individual(s); and
3. identifies with specificity what action the Board has taken to avoid future non-compliance with the provisions of this Ordinance; and
4. a Corrective Action Plan submitted under this Section shall be delivered to the Tribal Council Recorder within three (3) business days of the date of default. The Tribal Council Recorder shall place the matter on the next available Tribal Council closed session agenda for discussion.

Article X. Limited Authority to Waive Sovereign Immunity.

10.01. *Limited Delegation of Authority – General.* The Tribal Council expressly delegates its authority to the Board of Directors to waive or limit the right of the Gaming Enterprise(s) to be immune from suit in accordance with Article XI, Section 1 of the Constitution, subject to the limitations contained in this Article.

10.02. *Authority.* The Board of Directors shall have limited authority to waive the sovereign immunity of the Gaming Enterprise(s) in accordance with the terms and limitations set forth in this Article in the following circumstances:

a. The Board of Directors shall have limited authority to execute Collective Bargaining Agreements for the Gaming Enterprise(s) on behalf of the Tribe. To the extent a Collective Bargaining Agreement provides for a waiver of the Tribe's sovereign immunity, the Board is authorized to execute such a waiver, but only to the extent that such a waiver is consistent with the waiver of sovereign immunity provided by Article XVI of the Fair Employment Practices Code, or any amendments thereto.

b. The Board of Directors shall have the additional limited authority to waive the sovereign immunity of the Gaming Enterprise(s) only when contracting for essential daily operational needs.

10.03. *Limitations to Waiver Authority.* Any waiver of sovereign immunity shall be subject to the following limitations in order to be valid and enforceable:

a. A waiver of sovereign immunity authorized in accordance with Section 10.02(b) above shall be limited to claims against the Gaming Enterprise(s) and not the Tribe; and

- b. The Board of Directors shall not have authority to waive the right of the Gaming Enterprise(s) to be immune from suit for damages; and
 - c. For purposes of this Ordinance only, "damages" do not include remedies or awards for wages or other "make whole" remedies that employees may be entitled to recover pursuant to a Collective Bargaining Agreement entered into pursuant to Article XVI of the Fair Employment Practices Code.
- 10.04. *Procedure.* Only waivers of the sovereign immunity of the Gaming Enterprise(s) that strictly comply with the procedures set forth in this Section shall be valid and enforceable:
- a. The Board of Directors shall only waive the sovereign immunity of the Gaming Enterprise(s) by duly authorized Resolution which contains the following information:
 - 1. The precise waiver and any limitation(s) to the waiver as identified in the contract or Collective Bargaining Agreement; and
 - 2. The forum and choice of law which will govern claims or disputes.
 - b. A copy of the authorizing Resolution shall be forwarded to the Tribal Council Recorder for filing with the Board's Monthly Report.
- 10.05. *Non-Delegable Authority.* The Tribal Council expressly reserves all other authority to waive the sovereign immunity of the Tribe and the Gaming Enterprise(s) in accordance with Article XI of the Constitution.

Article XI. Limitations to Authority and Access.

- 11.01. *Official Action Required.* No Member of the Board of Directors shall be authorized to act independently or in the absence of an official action taken by roll call vote.
- 11.02. *Limitations on Access.* The Board of Directors shall not be authorized to access pits, cage, surveillance, count rooms, vaults, and behind bars serving food and/or alcohol in any Gaming Enterprise.
- 11.03. *Limitations on Contracting Authority.* The Board of Directors shall not have the power to enter into or approve any contracts for legal counsel or construction contracts, nor may the Board enter into any form of contract or agreement or initiate negotiations with any municipality, nation, Indian Tribe, state or body politic, without the approval of the Tribal Council. Contracts shall only be approved by a duly authorized Resolution which shall be forwarded to the Tribal Council Recorder for filing with the Board's Monthly Report.
- 11.04. *Limitation on Authority to Terminate Employment.* The Board of Directors shall have no independent authority to intervene or intercede in any personnel related matter, including termination of employment. The Board shall retain authority related to employment of the General Manager in accordance with Section 9.01(f) of this Ordinance.
- 11.05. *Limitation on Authority to Obligate Funds.* The Board of Directors shall have no authority to obligate funds outside the parameters of the approved budget without prior approval by the Tribal Council including, but not limited to, funding connected to any bonus or profit sharing programs.

Article XII. Budgets; Reporting Requirements; Schedules - Required

- 12.01. *Operation of Gaming Enterprise(s).* The operation of the Gaming Enterprise(s) is governed by the provisions contained within this Article. No deviation from approved plans and budgets shall occur unless approved by the Board of Directors and ratified by Tribal Council Resolution.
- 12.02. *Annual Budget, Reports and Operating Plan*
- a. The Board of Directors shall prepare, or cause to be prepared a separate proposed Annual Budget for each Gaming Enterprise in accordance with the power of the Ogema to prepare and present an annual budget to the Tribal Council under Article V, Section 5(a)(5) of the Constitution, and in accordance with the power of the Tribal

Council to approve or amend the annual budget; provided, that the Annual Budget shall include at a minimum:

1. Statements of revenue and expenses for three years:
 - i. For the budget year
 - ii. Actual results for the prior year
 - iii. Actual results year to date plus budget for the current year
2. The statement of revenue and expenses shall be presented:
 - i. By month
 - ii. Summary statement of all departments and other operating segments
 - iii. Detailed statements by department or other operating segment
 - iv. Detailed statement of monthly revenue by category
3. Schedule of budgeted depreciation & capital replacement reserves
4. Detail of budgeted capital expenditures by month including justification for each expenditure/project over \$100,000
5. Budget cash flow statement by month
6. Loan amortization schedule for the budget year
7. Loan covenant compliance calculation by month for the budget year
8. Schedule and discussion of risks and opportunities for the budget year
9. Budgeted Board of Directors expenditures including but not limited to:
 - i. Compensation
 - ii. Expenses
 - iii. Office space requirements
 - iv. Staff costs
 - v. Consulting fees
 - vi. Professional fees

b. *Annual Marketing Report.* The annual marketing report shall report on the activities of the current fiscal year to date as well as for the upcoming fiscal year by month and shall include but not be limited to the following:

1. Executive summary
2. Situation analysis
3. Market analysis/target markets
4. Competitive analysis
5. Marketing strategies
6. Direct mail
7. Player development activities
8. Event profiles and pro-formas

c. *Annual Human Resources Report.* The human resources report shall report on the activities of the current fiscal year to date as well as for the upcoming fiscal year by month and shall include but not be limited to the following:

1. Head count schedule
2. Preference employment report
3. Hiring plans
4. Training schedule
5. Employee development plans
6. Proposed changes to employee benefits / plans
7. Compensation plans
8. Disclosure of any bonus type plans
9. Status of Collective Bargaining Agreements and other union activities
10. Termination report

d. *Annual Operating Plan & Report.* The operating plan shall report on the proposed activities for the upcoming fiscal year by month and shall include but not be limited to the following:

1. Operating goals for the enterprise
2. Operating goals for each department
3. Proposed changes in operations
4. Status of Collective Bargaining Agreements and other union activities
5. Schedule and discussion of risks and opportunities

e. *Schedule for Submission of Annual Budgets and Reports.* The annual budget and annual reports described in items a. through d. above shall be submitted to the Ogema and Tribal Council no later than September 1.

12.03. *Monthly Reports*

a. The Board of Directors shall prepare, or cause to be prepared, a written monthly report to be submitted to the Ogema and Tribal Council. The monthly report shall include as attachments all Resolutions authorized by the Board during the reporting period, and shall summarize the status of all material aspects of the operation of each Gaming Enterprise. The monthly report shall include, at a minimum:

1. Statements of revenue and expenses that shall include:
 - i. Actual, budget and prior year results for the current month and year to date
 - ii. Summary statement of all departments and other operating segments
 - iii. Detailed statements by department or other operating segment
 - iv. Detailed statement of revenue by category
 - v. Cash flow statement
 - vi. Capital replacement reserve schedule
2. Three month forecast of revenues by category
3. Balance sheet
 - i. Current month
 - ii. Prior month
 - iii. Prior year end
4. Schedule of actual capital expenditures vs. budget for the current month and year to date
5. Schedule of forecast capital expenditures vs. budget for the next three months
6. Loan covenant compliance schedule
7. Management narrative of operations
8. Schedule and discussion of risks and opportunities for the next three months
9. Marketing Department Report
 - i. Impact of the current month's promotions
 - ii. Promotions scheduled for the next three months
 - iii. Entertainment venue and conference center use schedule for the next three months
10. Human Resources Report
 - i. Headcount schedule
 - ii. Preference employment report
 - iii. Summary of new hires
 - iv. Headcount forecast for the next three months
 - v. Termination report
11. Status of Collective Bargaining Agreements and other union activities

b. *Schedule for Submission of Monthly Reports.* The monthly report shall be submitted no later than the 20th day following month end.

12.04. *Applicable Accounting Standards.* The Board of Directors shall ensure that all budgets and reporting requirements contained in this Ordinance comply with Generally Accepted Accounting Practices in the United States as applicable.

Article XIII. Mandatory Distributions

13.01. *Mandatory Distributions.* The Board of Directors shall be responsible for ensuring the timely payment of all distributions required by applicable Federal, State or Tribal laws, Resolutions, Regulations, Compacts, or Agreements including, but not limited to, the following:

a. *Distributions Required by Compact(s).* Distributions mandated by any Compact between the Little River Band of Ottawa Indians and the State of Michigan shall be made in accordance with the terms of that Compact or any other Agreement entered into between the Tribe and the State

b. *National Indian Gaming Commission Payments.* All payments required to be made to the National Indian Gaming Commission, or any other payments mandated by the Indian Gaming Regulatory Act.

c. *Tribal Gross Gaming Tax.* The Tribal Gross Gaming Tax shall be distributed monthly in arrears to the Tribe along with a certificate signed by an officer stating the amount of the tax and showing how such amount was computed. The distribution of the tax shall be made no later than twenty days after the end of each month and shall be based on percentages as set forth by Ordinance.

d. *Net Gaming Revenue.* Distributions of net gaming revenue to the Tribal Government shall be made monthly, no later than twenty days after the end of each month.

Article XIV. Terms of Office; Hold-Over Period; First Board of Directors.

14.01 *Terms of Office.* Each Member of the Board of Directors appointed under the provisions of this ordinance shall have a term of office in accordance with the following schedule:

a. Seat 1. Seat 1 may be filled by the Ogema for a term of office consistent with the Ogema's term of office. If, at the commencement of the Ogema's term, the Ogema appoints a Tribal Council member to sit in her or his seat, that Tribal Council Member shall serve a term of office of two (2) years. Upon the expiration of this two (2) year term, the Ogema may fill this seat her or himself until the expiration of her or his term of office, or the Ogema shall appoint a Tribal Council Member to serve a two (2) year term of office that shall expire consistent with the expiration of the Ogema's term of office.

b. Seat 2. Seat 2 shall be filled by a Tribal Council member, who shall serve a term of office of two (2) years.

c. Seat 3. Seat 3 is an At-Large Member, who shall serve a term of office of four (4) years.

d. Seat 4. Seat 4 is an At-Large Member, who shall serve a term of office of four (4) years.

e. Seat 5. Seat 5 is an At-Large Member, who shall serve a term of office of four (4) years.

14.02. *Hold-Over Period.* To accommodate the appointment and approval provisions for seating Board Members, each member of the Board of Directors appointed and approved in accordance with this Ordinance may be held-over in office for a period not to exceed sixty (60) days.

14.03 *First Board of Directors and Initial Staggering of Terms of Office.* To stagger the terms of the At-Large Members of the Board of Directors for all subsequent Ogemas and to provide for the period beginning from the original adoption of this Ordinance, past its effective date, through the expiration of the term of office of the current Ogema and the commencement of the next Ogema's term of office, the First Board of Directors shall be comprised as follows:

- a. Seat 1. Seat 1 may be filled by the current Ogema until the expiration of his current term of office. If the Ogema appoints a Tribal Council member to sit in his seat, that Tribal Council Member shall serve a term of office that expires consistent with the expiration of the current Ogema's term of office.
- b. Seat 2. Seat 2 shall be filled by a Tribal Council member, who shall serve a term of office that expires consistent with the expiration of the current Ogema's term of office, at which time the next Ogema shall appoint a Tribal Council Member to serve as provided in section 14.01 (b).
- c. Seat 3. Seat 3 is an At-Large Member, who shall serve a term of office that expires consistent with the expiration of the current Ogema's term of office, at which time the next Ogema shall appoint an At-Large Member to serve as provided in section 14.01 (c)
- d. Seat 4. Seat 4 is an At-Large Member, who shall serve a term of office beginning from initial appointment, through the expiration of the current Ogema's term of office, and for two (2) years after the commencement of the next Ogema's term of office, at which time the next Ogema shall appoint an At-Large Member to serve as provided in section 14.01 (d).
- e. Seat 5. Seat 5 is an At-Large Member, who shall serve a term of office beginning from initial appointment, through the expiration of the current Ogema's term of office, and for two (2) years after the commencement of the next Ogema's term of office, at which time the next Ogema shall appoint an At-Large Member to serve as provided in section 14.01 (e).

Article XV. Effective Date. This Ordinance shall be in effect thirty (30) days from the date of its original adoption by Tribal Council Resolution.

CERTIFICATION

I, Janine M. Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Gaming Enterprise(s) Board of Directors Act of 2010 adopted by the Tribal Council on September 22, 2010.

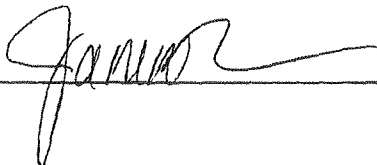




EXHIBIT D

to

AFFIDAVIT OF OGEMA LARRY ROMANELLI

Little River Casino Resort Board of Directors

Resolution #10-1209-027

***Ratifying Management Decision to Accept Those Portions of
The November 22, 2010 Interest Arbitration Award Relating
To the Payment of Wages, Bonuses and other Economic Terms
For the Security Officer Bargaining Unit With Contingency Condition***

(Adopted December 9, 2010)



**LITTLE RIVER CASINO RESORT
BOARD OF DIRECTORS**

U.S. 31 & M 22
2700 Orchard Highway
Manistee, MI 49660

Resolution #10-1209-027

*Ratifying Management Decision to Accept Those Portions of
The November 22, 2010 Interest Arbitration Award Relating
To the Payment of Wages, Bonuses and other Economic Terms
For the Security Officer Bargaining Unit With Contingency Condition*

WHEREAS, the status of the *Gaá Čhíng Ziibi Daáwaa Aníshinaábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of: the Treaty of Chicago [August 29, 1821; 7 Stat 218], the Treaty of Washington [March 28, 1836; 7 Stat 491], the Treaty of Detroit [July 31, 1855; 11 Stat 621] with the United States, as reaffirmed by federal law in P.L. 103-324 (108 Stat 2156), enacted September 21, 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) of the Constitution to provide for the public health, peace, morals, education and general welfare of the Little River Band and its members; and

WHEREAS, the Tribal Council is empowered by Article IV, Section 7(a) of the Constitution to establish laws through the enactment of ordinances and adoption of resolutions; and

WHEREAS, the Tribal Council is empowered by Article IV, Section 7(f) of the Constitution of the Tribe to create subordinate organizations and to delegate to such organizations the power to manage the enterprises of the Tribe; and

WHEREAS, the Tribal Council adopted the Gaming Enterprise(s) Board of Directors Act of 2010, Ordinance #10-80-03, by Tribal Council Resolution on August 25, 2010, which Ordinance became effective on September 24, 2010; and

WHEREAS, Article VIII, Section 8.04 of the Gaming Enterprise Board of Directors Act requires that the Board of Directors shall act only by Resolution when: (1) committing funds; (2) approving Collective Bargaining Agreements; and (3) authorizing a waiver of the sovereign immunity of the Gaming Enterprise in accordance with Article X of the Ordinance; and

WHEREAS, Article IX, Section 9.02(a) of the Gaming Enterprise Board of Directors Act requires that the Board "create, develop, and implement an effective strategy of business organization" for the Gaming Enterprise, "including setting objectives for future growth and expansion in accordance with the Annual Operating Plan and Annual Budget" approved by the Tribal Council; and

WHEREAS, Article IX, Section 9.02(b) of the Gaming Enterprise Board of Directors Act requires that the Board of Directors "ensure the quality of management activities and operations in all areas of the Gaming Enterprise(s);" and

WHEREAS, Article IX, Section 9.02(c) of the Gaming Enterprise Board of Directors Act vests in the Board of Directors "all duties and responsibilities customary for a Board of Directors of a gaming, restaurant, hotel and entertainment enterprise, including responsibility for the overall operation of the Gaming Enterprise(s)...;" and

WHEREAS, the Tribal Council adopted the Fair Employment Practices Code, Ordinance Number 05-600-03, and from time to time has approved amendments to that Ordinance; and

WHEREAS, Article XVI of the Fair Employment Practices Code sets forth comprehensive provisions which govern Labor Organizations and Collective Bargaining activities at the Little River Casino Resort; and

WHEREAS, the Little River Casino Resort and the United Steel Workers of America have been engaged in negotiating a Collective Bargaining Agreement between the Union and the Security Officers Bargaining Unit in accordance with Article XVI of the Fair Employment Practices Code; and

WHEREAS, the Union and the Resort reached an impasse in negotiating certain specific aspects of the Collective Bargaining Agreement on behalf of the Security Officers Bargaining Unit, triggering the provisions of Article XVI, Section 16.17 of the Fair Employment Practices Code, titled "Resolution of Bargaining Impasse;" and

WHEREAS, in accordance with Section 16.17 of the Fair Employment Practices Code, the Union and the Resort proceeded through fact finding and mediation in an effort to resolve the bargaining impasse; and

WHEREAS, on October 11, 2010, an interest arbitration hearing was conducted by Arbitrator Richard N. Block, which resulted in an "Opinion and Award in the matter of the Interest Arbitration under Article 16.17(d) of the Fair Employment Practices Code" dated November 22, 2010; and

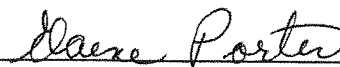
WHEREAS Article XVI, Section 16.17(d) of the Fair Employment Practice Code provides that the arbitrator's decision "shall be deemed to be the collective bargaining agreement between the parties" provided that the Resort may reject an arbitrator's decision regarding the public employer's obligation to pay wages, salaries, bonuses, insurance, pension or retirement contributions; and

WHEREAS, a copy of the November 22, 2010 Interest Arbitration Award has been provided to and reviewed by the Little River Casino Resort Board of Directors and, under the authority granted to it by the Gaming Enterprise Board of Directors Act, the Board has determined that it is in the best interests of the Tribe and the Resort to ratify Management's decision to accept the Award contingent upon the Union's agreement to change the payroll period with respect to the Security Officers Bargaining unit.

NOW THEREFORE IT IS RESOLVED that the Little River Casino Resort Board of Directors hereby ratifies the decision of Resort Management to accept Richard Block's November 22, 2010 Interest Arbitration Award contingent upon the Union's agreement to change the payroll period with respect to the Security Officers Bargaining Unit.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Little River Casino Resort Board of Directors with 3 FOR, 0 AGAINST, 0 ABSTAINING, and 1 ABSENT, at a Regular Closed Session Meeting of the Board of Directors held on December 9, 2010, at the Little River Casino Resort's Executive Conference Room in Manistee, Michigan, with a quorum being present for such vote.



Chairperson/Vice-Chairperson

Distribution: Tribal Council
Tribal Ogema
Resort Board of Directors Records
LRCR General Manager

EXHIBIT E

to

AFFIDAVIT OF OGEMA LARRY ROMANELLI

Little River Casino Resort Board of Directors

Resolution #10-1220-059

Ratifying Collective Bargaining Agreement Between the Little River Casino Resort, an economic enterprise of the Little River Band of Ottawa Indians, a federally recognized Indian Tribe and Sovereign Nation, and The United Steel, paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC

(December 20, 2010)



**LITTLE RIVER CASINO RESORT
BOARD OF DIRECTORS**

U.S. 31 & M 22
2700 Orchard Highway
Manistee, MI 49660

Resolution #10-1220-059

*Ratifying Collective Bargaining Agreement Between the
Little River Casino Resort, an economic enterprise of the Little River Band of Ottawa
Indians, a federally recognized Indian Tribe and Sovereign Nation, and
The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union, AFL-CIO, CLC*

WHEREAS, the status of the *Gaá Číng Ziibi Dadwaa Anishinaabek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of: the Treaty of Chicago [August 29, 1821; 7 Stat 218], the Treaty of Washington [March 28, 1836; 7 Stat 491], the Treaty of Detroit [July 31, 1855; 11 Stat 621] with the United States, as reaffirmed by federal law in P.L. 103-324 (108 Stat 2156), enacted September 21, 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) of the Constitution to provide for the public health, peace, morals, education and general welfare of the Little River Band and its members; and

WHEREAS, the Tribal Council is empowered by Article IV, Section 7(a) of the Constitution to establish laws through the enactment of ordinances and adoption of resolutions; and

WHEREAS, the Tribal Council is empowered by Article IV, Section 7(f) of the Constitution of the Tribe to create subordinate organizations and to delegate to such organizations the power to manage the enterprises of the Tribe; and

WHEREAS, the Tribal Council adopted the Gaming Enterprise Board of Directors Act of 2010, Ordinance #10-80-03, by Tribal Council Resolution on August 25, 2010, which Ordinance became effective on September 24, 2010; and

WHEREAS, Article I, Section 1.01 of the Gaming Enterprise Board of Directors Act provides that the purpose of the Act is to establish a Gaming Enterprise Board of Directors to provide monitoring, oversight, and direction regarding the management of the Tribe's gaming enterprises, including the Little River Casino Resort, which operate to generate Tribal Government revenues pursuant to the Indian Gaming Regulatory Act; and

WHEREAS, Article VIII, Section 8.04 of the Gaming Enterprise Board of Directors Act requires that the Board of Directors shall act only by Resolution when: (1) committing funds for; (2) approving Collective Bargaining Agreements for; and (3) authorizing a waiver of the sovereign immunity of the Little River Casino Resort in accordance with Article X of the Ordinance; and

WHEREAS, Article X, Section 10.02 of the Gaming Enterprise Board of Directors Act authorizes the Board to execute Collective Bargaining Agreements for the Resort on behalf of the Tribe, and further authorizes the Board to execute a waiver of the Resort's sovereign immunity consistent with those waivers identified in Article XVI of the Fair Employment Practices Code; and

WHEREAS, Article X, Section 10.04 of the Gaming Enterprise Board of Directors Act requires that the Board only waive the sovereign immunity of the Resort by Resolution which identifies the precise waiver(s) and any limitation(s) to the waiver and the forum and choice of law which will govern claims or disputes; and

WHEREAS, the Little River Casino Resort, as an economic enterprise of the Little River Band of Ottawa Indians, is subject to all Tribal laws enacted and adopted by the Tribal Council, and further enjoys all governmental immunities bestowed upon a sovereign Indian Nation; and

WHEREAS, the Tribal Council adopted the Fair Employment Practices Code, Ordinance Number 05-600-03, and from time to time has approved amendments to that Ordinance; and

WHEREAS, Article XVI of the Fair Employment Practices Code sets forth comprehensive provisions which govern Labor Organizations and Collective Bargaining activities within the governmental operations of the Tribe, including the Little River Casino Resort; and

WHEREAS, the Little River Casino Resort and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the "Union") have been engaged in negotiating an initial Collective Bargaining Agreement with the Resort Security

Officers Bargaining Unit in accordance with Article XVI of the Fair Employment Practices Code; and

WHEREAS, the Little River Casino Resort and the Union have conducted all negotiations; elections; dispute and impasse resolution; and bargaining processes related to the initial Collective Bargaining Agreement in accordance with Tribal Law, and specifically in accordance with Article XVI of the Fair Employment Practices Code and other procedures agreed upon by the Resort and the Union; and

WHEREAS, the Collective Bargaining Agreement between the Little River Casino Resort and the Union was approved by a majority vote of the Security Officer Bargaining Unit on December 16, 2010; and

WHEREAS, the Board of Directors and the Tribe recognize and acknowledge that the Collective Bargaining Agreement approved on December 16, 2010 is the first Collective Bargaining Agreement in the United States to have been the product of a union election and labor contract negotiation process governed solely by Tribal law; and

WHEREAS, the Board of Directors believes that it is in the best interests of the Tribe and its Resort to ratify and approve the Collective Bargaining Agreement between the Little River Casino Resort and the Union, and to delegate its authority to execute the Collective Bargaining Agreement to the General Manager of the Resort.

NOW THEREFORE IT IS RESOLVED that the Little River Casino Resort Board of Directors hereby approves and ratifies the Security Officers I, II, and III Collective Bargaining Agreement between the Little River Casino Resort and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the "Union").

IT IS FURTHER RESOLVED that the Little River Casino Resort Board of Directors specifically delegates its authority to execute the Collective Bargaining Agreement to the Resort General Manager, and authorizes execution upon adoption of this Resolution.

IT IS FURTHER RESOLVED that the Board of Directors authorizes the limited waiver of sovereign immunity of the Resort which authorizes employee grievances to proceed to Level Four arbitration, and provides further that costs of arbitration shall be divided equally between the parties.

IT IS FURTHER RESOLVED that the Board of Directors authorizes the limited waiver of sovereign immunity of the Resort which allows for claims of discrimination based upon Union activities arising under Article 16.15(a)(2) of the Fair Employment Practice Code to proceed to Level Four arbitration.

IT IS FINALLY RESOLVED that the above Resolves reflect the only waivers of sovereign immunity contained in the Agreement, and that no other waivers exist as a matter of law on behalf of either the Resort or the Tribe, other than waivers duly and expressly enacted by the Tribal Council under the Constitution and laws of the Tribe.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Little River Casino Resort Board of Directors with 4 FOR, 0 AGAINST, 0 ABSTAINING, and 0 ABSENT, at a Regular Closed Session Meeting of the Board of Directors held on December 20, 2010, at the Little River Casino Resort's Executive Conference Room in Manistee, Michigan, with a quorum being present for such vote.



Chairperson/Vice-Chairperson

Distribution: Tribal Council
Tribal Ogema
Resort Board of Directors Records
LRCR General Manager

APPENDIX III

AFFIDAVIT OF DAVID M. PETERSON

**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

AFFIDAVIT OF DAVID M. PETERSON

Now comes David M. Peterson, who deposes and states, under oath, as follows:

1. My name is David M. Peterson. I am an attorney, licensed to practice law in the State of Michigan, and I serve as the Neutral Election Official for the Little River Band of Ottawa Indians, *Gaá Čhíng Ziibi Daáwaa Aníshinaábek* (the “Band”).
2. Attached hereto as Exhibit A is a true and accurate copy of my curriculum vitae, prepared by me and listing my education, work experience, and appointed positions.
3. Between 1985 and 1999, I served as Chief Judge for the 5th District Court in the State of Michigan, as the Presiding Judge of the Criminal Division of the Berrien County Trial Court, and as the Circuit Court Judge, Civil Division.
4. Since 2002, I have served as the Tribal Judge for the Pokagon Band of Potawatomi Indians, a federally recognized Indian tribe in Michigan.
5. In 2008, I was appointed to the position of Neutral Election Official by the Band’s Tribal Council.
6. As Neutral Election Official, I oversee the process for employees within the governmental operations of the Band (as defined in Article XVI of the Fair Employment Practices Code, Chapter 600, Title 3 of the Tribal Code of the Band (the “FEP Code”)) to establish the requisite support to allow a vote to occur for union representation of an appropriate bargaining unit of employees, and, if such a vote occurs, I oversee the election process and certify the outcome of the vote.
7. As Neutral Election Official, I also oversee the process for employees within the governmental operations of the Band to establish the requisite support to allow a vote to

occur to decertify union representation of a bargaining unit of employees, and, if such a vote occurs, I oversee the election process and certify the outcome of the vote.

8. The documents in Exhibits B and C attached hereto, set forth the regular activities of my office as Neutral Election Official, and they are generated as part of, and kept in the ordinary course of, my official business as Neutral Election Official.
9. Attached hereto as Exhibit B is a true copy of a Memorandum, entitled the "Neutral Election Official Duties with Respect to Elections," approved by the Band's Tribal Council, which sets forth my responsibilities as Neutral Election Official.
10. In addition to said Memorandum, my responsibilities and duties as Neutral Election Official are governed by Article XVI of the FEP Code and in any Agreement entered into by the Band and any labor organization, sometimes referred to as a "Band-Union Election Procedures Agreement."
11. Over the course of my tenure as Neutral Election Official since 2008, I have overseen (and issued sworn declarations in reference to) the count of signatures of employees to verify the requisite support for union elections with respect to four separate bargaining units of employees, all at the Band's gaming facility known as the Little River Casino Resort ("LRCR"), which operates pursuant to the Indian Gaming Regulatory Act.
12. Over the course of my tenure as Neutral Election Official since 2008, I have also overseen (and issued Official Tallies of Votes in reference to) four elections with respect to four separate bargaining units of employees, all at LRCR. The documents attached hereto as Exhibit C are true copies of the Official Tallies of Votes that I certified in reference to said elections. As shown in the Official Tallies of Votes, excluding the challenged ballots of four employees, three hundred and twenty one (321) employees cast votes in these elections.
13. Over the course of my tenure as Neutral Election Official since 2008, I have overseen the voting process (and issued Official Tallies of Votes in reference to) elections for the decertification of a labor organization previously elected to serve as the exclusive bargaining representative for bargaining units of employees at LRCR. One such election resulted in a majority vote for the decertification of the union as the exclusive bargaining representative. Excluding the challenged ballot of one employee, one hundred and thirty four (134) employees cast votes in that election. Another such election, involving a separate unit of employees, resulted in a majority vote not to decertify the union as the exclusive bargaining representative. Excluding the challenged ballot of two employees, eighty-six employees cast votes in that election.
14. I continue to serve as the Band's Neutral Election Official to perform the duties described herein as necessary.

Dated: February 23, 2011

David M. Peterson
David M. Peterson

Personally appeared the above named, David M. Peterson, who stated, under oath, that the foregoing facts are true, upon his personal knowledge, before me:

Dated: February 23, 2011

Doris W. Hickman
Notary Public Doris W. Hickman
Berrien County, Michigan
My Commission Expires: 9/30/2013

EXHIBIT A

to

AFFIDAVIT OF DAVID M. PETERSON

Curriculum Vitae

DAVID M. PETERSON

Graduated:	June 1962	Lawton High School, Lawton, Michigan
Attended:	1962-1964	Western Michigan University – Student Council, Dormitory Representative, Delta Upsilon Fraternity
Graduated:	June 1967	Wayne State University - Bachelor of Science degree and Certificate in Mortuary Science
Graduated:	June 1970	Detroit College of Law – Juris Doctor degree Several awards for academic excellence
Experience:	1970-1985	Private practice of law – General trial attorney, criminal, domestic relations, real estate, and personal injury
	1980-1985	Berrien County Commissioner, Chairman of the Board and Finance Committee
	1985-1999	Chief Judge of the 5th District Court, Presiding Judge of the Criminal Division of the Berrien County Trial Court, Assigned as Circuit Judge, Civil Division, under Supreme Court Ordered Demonstration Project, served in the Civil Division
	1999-Present	Private practice of law, municipal law, involved in numerous municipal water and sewer projects, governmental relations, public policy, general civil litigation and ordinance enforcement
	2002-Present	Tribal Judge- Pokagon Band of Potawatomi Indians
	2008-Present	Neutral Election Official - Little River Band of Ottawa Indians
	2010	Gaming Commissioner - Nottawaseppi Huron Band of Potawatomi Indians
Past and Present Memberships:		Berrien County District Judge, Michigan District Judges Association, State Bar of Michigan, American Bar Association, Federal Bar Association, Berrien County Bar Association, President, Representative Assembly of State Bar of Michigan, Panel member of State Bar Attorney Discipline Board, Michigan Indian Judge's Association, Berrien County Board of Commissioners, Chairman, Berrien County Finance Committee, Economic Development Committee, Southwestern Michigan Regional Planning Commission, Overall Economic Development Planning Committee, Berrien County Pension Board, Berrien County Action Inc. Board, St. Paul's Episcopal Church, Sr. Warden, Heritage Bank, Board of Directors, Benton Harbor Fruit Market Board, Blossomtime Inc., Board of Directors, St. Joseph-Benton Harbor Rotary, St. Joseph Improvement Association, Southwestern Michigan Economic Club

EXHIBIT B

to

AFFIDAVIT OF DAVID M. PETERSON

Memorandum

Neutral Election Official Duties With Respect to Elections

MEMORANDUM

NEUTRAL ELECTION OFFICIAL DUTIES WITH RESPECT TO ELECTIONS

I. GENERALLY

The Neutral Election Official will be responsible for overseeing the card check and voting processes in connection with any Band-Union Election Procedures Agreement (the "Agreement") entered into pursuant to Article XVI of the Fair Employment Practices Law of the Little River Band of Ottawa Indians (hereafter the "Tribe"). This responsibility should be undertaken in a manner which best ensures: (1) the proper enfranchisement of eligible participants; (2) a voting environment free of coercion or intimidation; and (3) the accurate reflection of employee choice concerning union representation.

II. CARD CHECK

A. Requisite Showing of Proof

The Election Official will be responsible for checking employee signatures on authorization cards to determine if the requisite number of properly signed authorization cards were submitted by the Union in accordance with the Agreement.

B. Signature Checking

A list of public employees in the bargaining unit that is the subject of the Agreement will be provided to the Election Official along with the Union submitted authorization cards. Also provided will be employment forms, maintained by the appropriate Human Resources Department ("Human Resources"), containing employee signatures. The Election Official will confirm:

- that each authorization card signature is authentic
- that the number of signed cards is sufficient to meet the minimum requirement for the Tribe to schedule a representation election under the terms of the Agreement (the "minimum requirement").

If there is a question about the authenticity of a signature, the Election Official will be supplied additional documents, by Human Resources, with the employee's signature. If confirmation cannot be made, the card will not count towards the required showing of support. If the card is necessary for the Union to satisfy the minimum requirement, its authenticity will be determined either by agreement of the parties or pursuant to the parties' Dispute Resolution process.

C. Card Retention

The Election Official will retain the authorization cards until such time as the relevance of the cards is no longer meaningful. This means the disposition of the representation issue has concluded, along with any dispute resolution proceeding which has a potential bearing on the outcome. Cards should be returned to the Union at that time, with the exception of any card that did not count due to lack of verifiable signature. Any such card shall be retained by the Election Official.

III. VOTING PROCESS

A. Confirming Accuracy of the List

Prior to the start of the polling process, Management and the Union shall meet to discuss the eligibility of voters; namely, whether to add or delete anyone from the List of Eligible Voters.

B. Eligibility Issues

To the extent there is a question about whether an individual should be allowed to vote, in the absence of an agreement by Management and the Union over any individual's eligibility, such individual shall only be permitted to vote by Challenged Ballot. The Election Official must make sure the ballot of a Challenged voter is not mixed in with the rest of the ballots, but is placed in an envelope marked "Challenged" prior to being inserted in the ballot box.

The Polling Process

- (1) During the polling period, after eligible voters enter the voting area they should form a single file line. (If they gather and crowd the table in an unordered manner, ask them to form a line).
- (2) No politicking or campaigning is allowed. There should be no discussions about which way to vote.
- (3) Ask the public employee to state his/her full name. Relying upon the two (2) Election Observers in attendance, confirm that the individual is who they say they are, putting a check (✓) next to their name.
- (4) The Observers should likewise put checks next to the individual's name. (Using different color pens will avoid any confusion about whether both Observers checked the individual's name.)
- (5) Hand the individual one ballot, directing them to the voting booth where they can vote. Tell them they should mark either box, then fold their

ballot and put it in the "Ballot Box". Tell them not to sign or otherwise mark their ballot except as directed.

- (6) If the voter is someone whose eligibility is in doubt based on preliminary discussions with the parties their ballot must be placed in an envelope marked "Challenged". The individual's name should be put on the envelope before being put in the Ballot Box.
- (7) Any person who attempts to vote whose name is not on the Voter Eligibility List should have their ballot be placed in a Challenged Ballot envelope before being inserted in the Ballot Box. The individual's name should be written on the outside of the envelope.

Counting the Ballots

- (1) After the final polling period has concluded, wait until representatives from Management and the Union are both present to watch the Ballot Box being opened.
- (2) Once all parties are present, open the Ballot Box, then divide the ballots into two piles, a "yes" pile and a "no" pile. Then count each pile, entering the tally on the "Poll Results" form. No one but the Election Official may touch a ballot. No Challenged Ballot should be opened.
- (3) If there is any doubt about whether a voter marked a ballot, Management and the Union should be advised and a discussion held to ascertain if the voter's intent is reasonably discernible. Failure of the sides to agree will mean the Ballot will be held aside and retained separately by the Election Official pending the final tally.
- (4) If the election outcome would not be affected by the acceptance or rejection of one or more of the Challenged Ballots and/or one or more questionably marked ballots, the results will be confirmed without including the uncounted Ballots in the tally. If the outcome would be affected by the uncounted ballots the uncounted ballots will be kept by the Election Official. The validity of any uncounted ballot(s) will be decided by the Dispute Resolution process set forth in the parties' Agreement.
- (5) Sign the "Poll Results" (a form is attached) after filling in the results. All Ballots counted or uncounted should be retained by the Election Official.

**NEUTRAL ELECTION OFFICIAL
LITTLE RIVER BAND OF OTTAWA INDIANS**

Poll Results:
Official tally of Votes

On _____, at

Manistee, Michigan

Upon being duly sworn and deposed, this officer says:

1. My name is David M. Peterson and I am the duly appointed and serving Neutral Election Official for Little River Band of Ottawa Indians.

2. I have conducted the election for union representation by
_____ [name of Labor Organization] held _____, 200_,
at _____.

3. I have accurately counted and tallied the ballots as follows:

_____ Yes votes

_____ No votes

_____ Challenged ballots

4. The following observers hereby confirm the above tally.

Management Observer

Union Observer

I hereby certify that the above vote tally is true and accurate.

David M. Peterson

Subscribed and sworn to before me this _____ day of _____, 200_.

Notary Public, _____ County Michigan
Acting in _____ County
My Commission Expires: _____

ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of the above tally and that each party has seven (7) days from today to file any objection or claim of violation of the agreement in writing to David M. Peterson, Neutral Election Official, at 26680 CR 352, Lawton, Michigan 49065, with copies to the other party and the basis of the objection or claim.

Date and time:

For _____
[Name of Public Employer]

Date and time:

For _____
[Name of Labor Organization]

EXHIBIT C

to

AFFIDAVIT OF DAVID M. PETERSON

Neutral Election Official

**Official Tallies of Votes at the
Little River Casino Resort**

(October 16, 2008)

(March 5, 2009)

(May 26, 2009)

(August 5, 2009)

NEUTRAL ELECTION OFFICIAL

**Official Tally of Votes
on
October 16, 2008, at Little River Casino Resort
Manistee, Michigan**

Upon being duly sworn and deposed, this officer says:

1. My name is David M. Peterson and I am the duly appointed and serving Neutral Election Official pursuant to the Agreement between Little River Band of Ottawa Indians and United Steel Workers.

2. I have conducted the election for union representation held October 16, 2008, at the Little River Casino Resort.

3. I have accurately counted and tallied the ballots as follows:

39 Yes votes
17 No votes
-0- Challenged ballots
-0- Spoiled ballots

4. The following observers hereby confirm the above tally.

Steven Miller
Management Observer
Steven Miller

Don Branson, Sr.
Union Observer
Don Branson, Sr.

I hereby certify that the above vote tally is true and accurate.

David M. Peterson

David M. Peterson
Neutral Election Official

Subscribed and sworn to before me this 16th day of October, 2008.

Sharon K. Little
Notary Public, MANISTEE County, Michigan
Acting in MANISTEE County
My Commission Expires: 1-23-12

ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of the above tally and that each party has seven (7) days from today to file any objection or claim of violation of the agreement in writing to David M. Peterson, Neutral Election Official, at 26680 CR 352, Lawton, Michigan 49065, with copies to the other party and the basis of the objection or claim.

Date and time: Oct. 16, 2008

Date and time: Oct. 16, 2008

Peter R. Kraft
For Little River Casino Resort

William L. Loney, JR.
For United Steel Workers
William L. Loney, JR.

NEUTRAL ELECTION OFFICIAL

**Official Tally of Votes
on
March 5, 2009, at Little River Casino Resort
Manistee, Michigan**

Upon being duly sworn and deposed, this official says:

1. My name is David M. Peterson and I am the duly appointed and serving Neutral Election Official pursuant to the Election Procedure Agreement between Little River Band of Ottawa Indians and United Steel Workers.

2. I have conducted the election for union representation held March 5, 2009, at the Little River Casino Resort.

3. I have accurately counted and tallied the ballots as follows:

9 Yes votes

0 No votes

 Challenged ballots

 Spoiled ballots

Do you want to be represented by the
United Steel Workers International Union
for purposes of collective bargaining?

4. The following observers hereby confirm the above tally.

Christina Exo-Biers
Management Observer

Robert Fisher
Union Observer

I hereby certify that the above vote tally is true and accurate.

David M. Peterson
David M. Peterson
Neutral Election Official

Subscribed and sworn to before me this 5th day of March, 2009

Susan R. Lytle
NOTARY PUBLIC-STATE OF MICHIGAN
COUNTY OF MANISTEE

My Commission Expires 1-23-13
Acting in the County of Manistee

Susan R. Lytle
Notary Public, Manistee County, Michigan
Acting in Manistee County
My Commission Expires: 1-23-13

ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of the above tally and that each party has seven (7) days from today to file any objection or claim of violation of the agreement in writing to David M. Peterson, Neutral Election Official, at 26680 CR 352, Lawton, Michigan 49065, with copies to the other party and the basis of the objection or claim.

Date and time: March 5, 2009 11:10 AM

Lynn Moore
For Little River Casino Resort

Date and time: March 5, 2009 11:10 AM

William L. Laney Jr.
For United Steel Workers
William Laney Jr.

NEUTRAL ELECTION OFFICIAL

Official Tally of Votes
on
May 26, 2009, at Little River Casino Resort
Manistee, Michigan

Upon being duly sworn and deposed, this official says:

1. My name is David M. Peterson and I am the duly appointed and serving Neutral Election Official pursuant to the Election Procedure Agreement between Little River Band of Ottawa Indians and United Steel Workers dated April 30, 2009.

2. I have conducted the election for union representation held May 26, 2009, at the Little River Casino Resort.

3. I have accurately counted and tallied the ballots as follows:

<u>93</u>	Yes votes
<u>67</u>	No votes
<u>4</u>	Challenged ballots
_____	Spoiled ballots

Do you want to be represented by the United Steel Workers International Union for purposes of collective bargaining?

4. The following observers hereby confirm the above tally.

[Signature]
 Management Observer

 Union Observer

I hereby certify that the above vote tally is true and accurate.

David M. Peterson
 David M. Peterson
 Neutral Election Official

Subscribed and sworn to before me this 26th day of May, 2009

[Signature]
 Notary Public, Manistee County, Michigan
 Acting in Manistee County
 My Commission Expires: 1-23-13

ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of the above tally and that each party has seven (7) days from today to file any objection or claim of violation of the agreement in writing to David M. Peterson, Neutral Election Official, at 26680 CR 352, Lawton, Michigan 49065, with copies to the other party and the basis of the objection or claim.

Date and time: May 26, 2009 4:33 pm

C. G. Champagne
 For Little River Casino Resort

Date and time: May 26, 2009 4:33 pm

William L. Larey
 For United Steel Workers

NEUTRAL ELECTION OFFICIAL

**Official Tally of Votes
on
August 5, 2009, at Little River Casino Resort
Manistee, Michigan**

Upon being duly sworn and deposed, this official says:

1. My name is David M. Peterson and I am the duly appointed and serving Neutral Election Official pursuant to the Election Procedure Agreements between Little River Band of Ottawa Indians and United Steel Workers.

2. I have conducted the election for union representation held August 5, 2009, at the Little River Casino Resort.

3. I have accurately counted and tallied the ballots as follows:

58 Yes votes

38 No votes

_____ Challenged ballots

_____ Spoiled ballots

Do you want to be represented by the
United Steel Workers International Union
for purposes of collective bargaining?

4. The following observers hereby confirm the above tally.

Kristy Davis
Kristy DAVIS
Sara Ecker
Management Observers
Sara Ecker

Karen Stimmer
Karen Stimmer
Beverly Kawalec
Union Observers
Beverly Kawalec

I hereby certify that the above vote tally is true and accurate.

David M. Peterson
David M. Peterson
Neutral Election Official

Subscribed and sworn to before me this 5th day of August, 2009

Susan K. Lytle
Notary Public, Manistee County, Michigan
Acting in Manistee County
My Commission Expires: 1-23-13

ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of the above tally and that each party has seven (7) days from today to file any objection or claim of violation of the agreement in writing to David M. Peterson, Neutral Election Official, at 26680 CR 352, Lawton, Michigan 49065, with copies to the other party and the basis of the objection or claim.

Date and time: August 5, 2009 4:21 pm

C. A. Champagne
For Little River Casino Resort

Date and time: August 5, 2009 4:21 pm

William L. Haney Jr.
For United Steel Workers

APPENDIX IV

AFFIDAVIT OF KELLY MASER

**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

AFFIDAVIT OF KELLY MASER

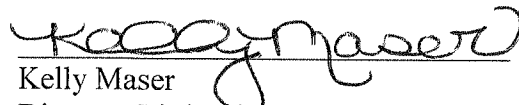
Now comes Kelly Maser, who deposes and states, under oath, as follows:

1. My name is Kelly Maser. I serve as the Director of the Little River Band of Ottawa Indians Gaming Commission (the "Commission"), a governmental commission of the Little River Band of Ottawa Indians, *Gaá Čhing Ziibi Daáwaa Anishinaábek* (the "Band"). I have served in this position since 2005.
2. The Commission is established under authority of the Constitution of the Band and is governed by the Band's Gaming Commission Ordinance, Chapter 400, Title 4 of the Tribal Code of the Band, and the Commissions Ordinance, Chapter 150, Title 01 of said Code.
3. As Director of the Commission, it is my duty to assist with the regular activities of the Commission, including the maintenance of its documents and records. I have personal knowledge of the facts stated herein and of the documents and records attached hereto.
4. The documents and records attached hereto set forth the regular activities of the Commission, they are kept in the course of the Commission's regularly conducted business, and it is the regular practice of the Commission to generate said documents and records.
5. The Commission is a regulatory body made up of between three and five Commissioners, each of whom is appointed by the Band's Tribal Ogema with approval by the Band's Tribal Council for four year terms. Each Commissioner is an enrolled member of the Band and is subject to rigorous background checks and regulatory training in order to qualify to serve as Commissioner.

6. The Commission is charged with licensing outside entities that conduct business within the territorial jurisdiction of the Band to protect the health, safety and welfare of the Band and its community.
7. Pursuant to Article XVI of the Fair Employment Practices Code, Chapter 600, Title 3 of the Tribal Code of the Band (the "FEP Code"), the Commission is charged with licensing any labor organization that conducts business within any of the governmental operations of the Band, including its gaming operations under the Indian Gaming Regulatory Act.
8. The Commission has significant experience in carrying out investigations and related licensing activities for the issuance of licenses to entities or individuals who are required, under the laws of the Band, to have licenses in order to engage in economic activity within the territorial jurisdiction of the Band.
9. No other commission or body of the Band has such experience or authority with respect to the licensure of outside entities or individuals engaged in such activity.
10. Pursuant to the FEP Code, the Band's Tribal Council authorized the Commission to promulgate regulations to govern the licensure of labor organizations conducting business within any of the governmental operations of the Band, including its gaming operations under the Indian Gaming Regulatory Act.
11. I assisted the Commission in drafting its regulations to govern the licensing of such labor organizations. In so doing, the Commission studied examples of licensing procedures from other jurisdictions, including Michigan, in an effort to design a set of regulations best suited to the needs of the Band in accordance with the authority given the Commission under the FEP Code.
12. On June 3, 2008, after several drafting sessions and meetings, the Commission completed its first draft regulations to govern the licensing of labor organizations within the Band's gaming operations and posted them for public comment.
13. On July 24, 2008, the Commission unanimously approved the Gaming Commission Regulations Chapter 13 – Labor Organization Licensing Regulations. A copy of the Commission's Resolution approving said regulations is attached hereto as Exhibit A and a copy of the regulations is attached as Exhibit B. The Band's Tribal Council subsequently approved said regulations on August 6, 2008.
14. The Commission has continued to review the effectiveness of said regulations since their initial promulgation, and on February 23, 2010, the Commission approved certain revisions to better disclose the process for background checks of the designated agents of labor organizations and to provide for a related Release of Authorization for background investigations. A copy of the Commission's Resolution approving said revised regulations is attached hereto as Exhibit C, and a copy of the revised regulations is attached as Exhibit D. The Tribal Council subsequently approved said revised regulations on March 17, 2010.

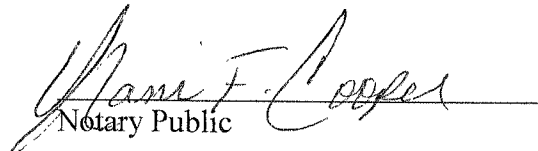
15. In the late summer of 2008, pursuant to its regulations and the FEP Code, the Commission processed an application for a license from the United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("USW") and thereafter issued a one year Tribal Labor Organization License to the USW, effective August 26, 2008, a copy of which is attached hereto as Exhibit E.
16. In the late summer of 2009, pursuant to its regulations and the FEP Code, the Commission processed an application for a license from the USW and thereafter issued a second one year Tribal Labor Organization License to the USW, effective August 26, 2009, a copy of which is attached hereto as Exhibit F.
17. In the late summer of 2010, pursuant to its regulations and the FEP Code, the Commission processed an application for a license from the USW and thereafter issued a third one year Tribal Labor Organization License to the USW, effective August 26, 2010, a copy of which is attached hereto as Exhibit G.
18. The Commission continues to assess the effectiveness of its licensing regulations governing labor organizations within the territory of the Band to ensure that they protect the health, safety and welfare of the Band and its community in accordance with the authority given to the Commission under the FEP Code.

Dated: 2/17/11


Kelly Maser
Director, Little River Band of Ottawa
Indians Gaming Commission

Personally appeared the above named, Kelly Maser, who stated, under oath, that the foregoing facts are true, upon her personal knowledge, before me:

Dated: 2-17-11


Notary Public

Lani F. Cooper
Notary Public - State of Michigan
County of Manistee
My Commission expires 3/14/2017
Acting in Manistee County

EXHIBIT A

to

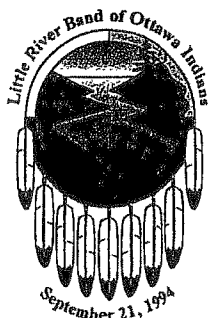
AFFIDAVIT OF KELLY MASER

**Little River Band of Ottawa Indians
Gaming Commission**

Gaming Commission Resolution No. #GC08-0724-21

***Approving Gaming Commission Regulation Chapter 13
Labor Organization Licensing Regulations #R400-04:GC-03***

(Adopted July 24, 2008)



**Little River Band of Ottawa Indians
Gaming Commission**

PO Box 337
Manistee, MI 49660-0337
Tel: (231) 723-7755 • Fax: (231) 723-7788

Gaming Commission Resolution No. #GC08-0724-21

*Approving Gaming Commission Regulation
Chapter 13 – Labor Organization Licensing
Regulations #R400-04:GC-03*

WHEREAS, the Tribe's status as a federally-recognized Indian tribe was reaffirmed and restored by Congress pursuant to Public Law 103-324, 108 Stat. 2156 (25 U.S.C. § 1300k et seq.); and

WHEREAS, the Tribe adopted a Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribal Council in Gaming Commission Ordinance No. 04-400-04, created a Gaming Commission and delegated to such Commission the authority to regulate all gaming activities authorized by the Tribe and to enforce all Tribal and federal laws governing the conduct of Tribally-licensed gaming activities; and

WHEREAS, the Gaming Commission, pursuant to Section 6.04(a) of the Gaming Commission Ordinance, shall promulgate regulations consistent with the ordinance and necessary to carry out the orderly performance of its duties and powers; and

WHEREAS, the Gaming Commission created Gaming Commission Regulation Chapter 13 – Labor Organization Licensing Regulations which requires labor organizations that directly represent casino gaming employees be licensed with the Gaming Commission on an annual basis; and

Page 2

Gaming Commission Resolution No. #GC08-0724-21
Approving Gaming Commission Regulation Chapter 13 –
Labor Organization Licensing Regulations

WHEREAS, the Gaming Commission posted its proposed revisions for public comment where none were received and the regulation was finalized and is ready for approval.

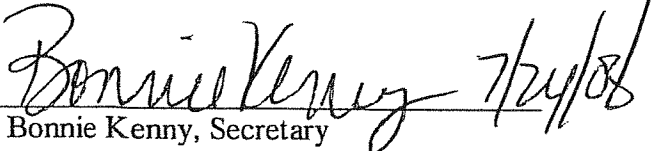
NOW THEREFORE IT IS RESOLVED THAT the Little River Band of Ottawa Indians Gaming Commission hereby approves the Gaming Commission Regulation Chapter 13 Labor Organization Licensing Regulation #R400-04:GC-03; and

IT IS FURTHER RESOLVED THAT Chapter 13 Labor Organization Licensing Regulation #R400-04:GC-03 be forwarded to the Tribal Council Recorder to be placed on the Tribal Council Agenda for approval in accordance with Gaming Commission Ordinance Section 6.04(b).

Certificate of Adoption

I, Bonnie Kenny, Secretary of the Little River Band of Ottawa Indians Gaming Commission, do hereby certify that this resolution was adopted on July 24, 2008 by a vote of 3 in favor, 0 opposed, 0 abstentions and 0 absent. This resolution has not been amended or rescinded in any way.

Attest:


Bonnie Kenny, Secretary

Distribution: Commission Records
Tribal Council Liaison

EXHIBIT B

to

AFFIDAVIT OF KELLY MASER

Chapter 13

**Labor Organization Licensing Regulations
(Gaming Enterprise)**

Regulation # R400-04:GC-13

(Approved July 24, 2008)

Chapter 13

Labor Organization Licensing Regulations (Gaming Enterprise)

Regulation # R400-04:GC-13

Section 1. Purpose; Authority; Definitions

1-1. *Purpose.* The purpose of this regulation is to set forth the licensing requirements for labor organizations engaged in organizing employees working for the gaming enterprise of the Little River Band of Ottawa Indians.

1-2. *Authority.* These regulations are promulgated pursuant to the Article XVI, section 16.07(b) of the Fair Employment Practices Law of the Little River Band of Ottawa Indians.

1-3. *Labor Organization* shall mean any organization working for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment, which engages in organizing, including solicitation for union membership.

1-4. *Local* shall mean the local affiliate, chapter, or other sub-unit of any labor organization.

1-5. *Designated Individual* shall mean an officer, agent, principal, employee, or individual performing any of the following functions on behalf of a labor organization with respect to employees of any gaming enterprise of the Tribe:

- a. soliciting employees for union membership;
- b. adjusting grievances for or negotiating or administering the wages, hours, working conditions of employees;
- c. soliciting, collecting, or receiving any dues, assessments, levies, fines, contributions, or other charges from employees;
- d. supervising, directing or controlling other officers, agents, or employees of a labor organization in performing the functions listed in subsections a-c.

1-6. *Gaming Enterprise* shall mean any gaming facility of the Little River Band of Ottawa Indians, operating pursuant to the Indian Gaming Regulatory Act, including any related hotel or restaurant services.

1-7. *Indian Gaming Regulatory Act* shall mean 25 U.S.C. §§ 2701-2721.

1-8. *Tribe* shall mean the Little River Band of Ottawa Indians.

Section 2. License Application Requirements

Every labor organization or its Local shall complete a license application, issued by the Gaming Commission, which shall include the following information:

- 2-1. The labor organization's name, address, and telephone number.
- 2-2. The name and address of any international labor organization with which it directly or indirectly maintains an affiliation or relationship.
- 2-3. All of the following information for any and all Designated Individuals and other personnel of the Local:
 - a. The individual's full name and any know alias or nickname;
 - b. The individual's business address and telephone number;
 - c. The individual's title or other designation in the local labor organization;
 - d. A brief description of the individuals duties and activities; and
 - e. The individual's compensation, including salary, allowances, reimbursed expenses, and other direct or indirect disbursements.
- 2-4. All of the following additional information for any and all Designated Individuals:
 - a. The individual's home address and telephone number;
 - b. The individual's date and place of birth;
 - c. The individual's social security number;
 - d. The date he/she was hired by or first consulted with or advised the labor organization; and
 - e. A detailed description of the following:
 1. The individual's duties and activities.
 2. Whether he/she performed the same or similar activities previously on a labor organization's behalf; and
 3. The individual's prior employment or occupational history;
 - f. Excluding minor traffic offenses, a detailed description of the following:
 1. The individual's convictions, including any conviction that was expunged or set aside, sealed by court order, or for which he/she received a pardon; and
 2. Any criminal offense for which he/she was charged or indicted, but not convicted;
 - g. Whether he/she was ever denied a business, liquor, gaming, or professional license or had such a license revoked.
 - h. Whether a court or governmental agency determined the individual unsuitable to be affiliated with a labor organization and the details of that determination.
 - i. Whether the individual was ever subpoenaed as a witness before a grand jury, legislative committee, administrative body, crime commission, or similar agency and the details relating to that subpoena.
 - j. A photograph of the individual taken within the previous 60 days.
 - k. For the labor organization's first filing, a complete set of the individual's fingerprints (conducted by the Gaming Commission).
 - l. A written certification under oath by the labor organization president, secretary, treasurer, or chief official that the information provided under this subsection is complete and accurate. The Gaming Commission shall prescribe the form for this certification.

2-5. If information required under subsection 2-1 thru 2-4 for a designated individual changes after submission of an application or if the labor organization gains or assigns a designated individual after submission of an application, the labor organization shall provide the Gaming Commission with that new information or the information, photograph, and fingerprints required for the new designated individual within 21 days.

Section 3. Disqualifications

3-1. Upon finding a preponderance of the evidence that grounds for disqualification under subsection 3-2 exist, the Gaming Commission may disqualify any officer, agent, or principal employee of a labor organization from performing any of the following:

- a. Soliciting employees for union membership;
- b. Adjusting grievances for or negotiating or administering the wage, hours, working conditions of casino gaming employees;
- c. Soliciting, collecting, or receiving from casino gaming employees any dues, assessments, levies, fines, contributions, or other charges within this state for or on behalf of the labor organization; and
- d. Supervising, directing, or controlling other officers, agents, or employees of the labor organization in performing functions described in subsection a-c.

3-2. An individual may be disqualified from serving as a Designated Individual under if any of the following apply:

- a. He/she has been convicted of or entered a plea of guilty or no contest to a gambling-related offense, fraud or misrepresentation; or
- b. He/she has been convicted of or entered a plea of guilty or no contest to any offense not specified in paragraph (a) within the immediately preceding five years; this provision shall not apply if that person has been pardoned by the Governor of the State where the conviction occurred.
- c. He/she has knowingly and willfully provided materially false and misleading statements or information to the regulatory agency or refused to respond to questions asked by the regulatory agency.
- d. He/she has been determined by the regulatory agency to have participated in organized crime or unlawful gambling or whose prior activities, criminal records, reputation, habits, and/or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming.
- e. He/she is on parole following release from incarceration and has not yet successfully completed one full year (365 days) of parole.

3-3. Each officer, agent, or principal employee shall report all information described in subsection 3-2 concerning him/her to the labor organization. A labor organization shall report all information described in subsection 3-2 concerning its designated individuals of which it has actual knowledge to the Gaming Commission.

3-4. The Gaming Commission shall give written notice to the labor organization of individuals which are disqualified, stating the grounds for the disqualification and describing any supporting

evidence in the Gaming Commission possession. Within 14 days after receiving the written notice of disqualification, the labor organization may file with the Gaming Commission a written request for a hearing, which shall take place promptly. The Gaming Commission shall conduct the hearing in conformity with its regulation and procedures. A labor organization aggrieved by a final disqualification has the right to appeal to the Tribal Court.

3-5. Not later than January 31 of each calendar year a labor organization shall provide the Gaming Commission with a sworn statement that no disqualified individual served as a Designated Individual or performed any functions described in subsection 1-5 and/or 3-1 of these Regulations.

Section 4. Investigations; Interviews

4-1. The Gaming Commission shall have authority to investigate any labor organization, local, or any Designated Individual, or any other agent, officer, or representative of any labor organization or local for the purpose of confirming the moral character and suitability of the organization or individual.

4-2. The Gaming Commission's authority to investigate under this section shall include interviewing individuals in person or by telephone.

4-3. Refusal of any Designated Individual or any other agent, officer, or representative of any labor organization or local to cooperate in any investigation of the Gaming Commission may constitute grounds for disqualification under Section 3.

Section 5. Application Fee

5-1. Every application for a license under this Chapter shall be accompanied by a non-refundable license fee in the amount of Five Hundred Dollars (\$500.00).

EXHIBIT C

to

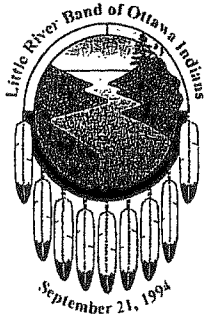
AFFIDAVIT OF KELLY MASER

**Little River Band of Ottawa Indians
Gaming Commission**

Gaming Commission Resolution No. #GC10-0223-03

***Approving Gaming Commission Regulation Chapter 13
Labor Organization Licensing Regulations #R400-04:GC-13***

(Adopted February 16, 2010)



**Little River Band of Ottawa Indians
Gaming Commission**

PO Box 337
Manistee, MI 49660-0337
Tel: (231) 723-7755 • Fax: (231) 723-7788

Gaming Commission Resolution No. #GC10-0223- 03

*Approving Revised Gaming Commission Regulation
Chapter 13 – Labor Organization Licensing
Regulations #R400-04:GC-13*

WHEREAS, the Tribe's status as a federally-recognized Indian tribe was reaffirmed and restored by Congress pursuant to Public Law 103-324, 108 Stat. 2156 (25 U.S.C. § 1300k et seq.); and

WHEREAS, the Tribe adopted a Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) to provide for the public health, peace, morals, education and general welfare of the Little River Band of Ottawa Indians and its members; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(I) to take action, not inconsistent with the Constitution or Federal law, which is necessary and proper to carry out the sovereign powers of the Tribe; and

WHEREAS, the Tribal Council adopted Gaming Commission Ordinance # 04-400-04 which created a Gaming Commission and delegated to such Commission the authority to regulate all gaming activities authorized by the Tribe and to enforce all Tribal and federal laws governing the conduct of Tribally licensed gaming activities; and

WHEREAS, the Gaming Commission, pursuant to Section 6.04(a) of the Gaming Commission Ordinance, shall promulgate regulations consistent with the ordinance and necessary to carry out the orderly performance of its duties and powers; and

Page 2

Gaming Commission Resolution No. #GC10-0223- 07
Approving Revised Gaming Commission Regulation Chapter 13 –
Labor Organization Licensing Regulations

WHEREAS, the Tribal Council adopted the Fair Practices Code #05-600-03 – Article XVI, Section 16.08 (a) which requires any and all labor organizations engaging in organizing employees working for any public employer to be licensed by the Little River Band of Ottawa Indians Gaming Commission; and

WHEREAS, the pursuant to the Fair Employment Practices Code #05-600-03 – Article XVI, Section 16.08 (b) the Gaming Commission enacted Chapter 13 – Labor Organization Licensing Regulation which sets forth the licensing requirements for labor organizations and this regulation was approved by the Gaming Commission on July 24, 2008 and by Tribal Council on August 6, 2008; and

WHEREAS, revisions have been made to the regulation to provide applicants with full disclosure of what the process is for conducting background investigations and it also requires applicant to sign a Release of Authorization Form allowing the Gaming Commission to conduct the background investigation.

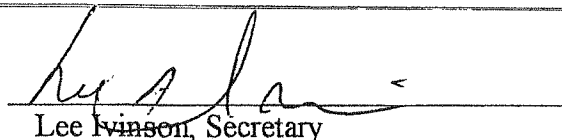
NOW THEREFORE IT IS RESOLVED THAT the Little River Band of Ottawa Indians Gaming Commission hereby approves the revised Gaming Commission Regulation Chapter 13 Labor Organization Licensing Regulation #R400-04:GC-13; and

IT IS FURTHER RESOLVED THAT Chapter 13 Labor Organization Licensing Regulation #R400-04:GC-13 be forwarded to the Tribal Council Recorder to be placed on the Tribal Council Agenda for approval in accordance with Gaming Commission Ordinance Section 6.04(b).

Certificate of Adoption

I, Lee Ivinson, Secretary of the Little River Band of Ottawa Indians Gaming Commission, do hereby certify that this resolution was adopted on February 16, 2010 by a vote of 7 in favor, 0 opposed, 0 abstentions and 0 absent. This resolution has not been amended or rescinded in any way.

Attest:


Lee Ivinson, Secretary

Distribution: Commission Records
Tribal Council Liaison

EXHIBIT D

to

AFFIDAVIT OF KELLY MASER

Chapter 13

**Labor Organization Licensing Regulations
(Gaming Enterprise)**

Regulation # R400-04:GC-13

(Approved March 17, 2010)

Chapter 13

Labor Organization Licensing Regulations (Gaming Enterprise)

Regulation # R400-04:GC-13

Section 1. Purpose; Authority; Definitions

1-1. *Purpose.* The purpose of this regulation is to set forth the licensing requirements for labor organizations engaged in organizing employees working for the gaming enterprise of the Little River Band of Ottawa Indians.

1-2. *Authority.* These regulations are promulgated pursuant to the Article XVI, section 16.07(b) of the Fair Employment Practices Law of the Little River Band of Ottawa Indians.

1-3. *Labor Organization* shall mean any organization working for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment, which engages in organizing, including solicitation for union membership.

1-4. *Local* shall mean the local affiliate, chapter, or other sub-unit of any labor organization.

1-5. *Designated Individual* shall mean an officer, agent, principal, employee, or individual performing any of the following functions on behalf of a labor organization with respect to employees of any gaming enterprise of the Tribe:

- a. soliciting employees for union membership;
- b. adjusting grievances for or negotiating or administering the wages, hours, working conditions of employees;
- c. soliciting, collecting, or receiving any dues, assessments, levies, fines, contributions, or other charges from employees;
- d. supervising, directing or controlling other officers, agents, or employees of a labor organization in performing the functions listed in subsections a-c.

1-6. *Gaming Commission* shall mean any Tribal Gaming Regulatory Authority or Regulatory agency created by Tribal law.

1-7. *Gaming Enterprise* shall mean any gaming facility of the Little River Band of Ottawa Indians, operating pursuant to the Indian Gaming Regulatory Act, including any related hotel or restaurant services.

1-8. *Indian Gaming Regulatory Act* shall mean 25 U.S.C. §§ 2701-2721.

1-9. *Tribe* shall mean the Little River Band of Ottawa Indians.

Gaming Commission Approved: July 24, 2008.

Gaming Commission Resolution No. #GC08-0724-21.

Tribal Council Approved: August 6, 2008

Tribal Council Resolution No. #08-0806-273

Gaming Commission Revisions Approved: February 23, 2010

Gaming Commission Resolution No. #GC10-0223-03

Tribal Council Revisions Approved: March 17, 2010

Tribal Council Resolution No. #10-0317-86

Section 2. License Application Requirements

Every labor organization or its Local shall complete a license application, issued by the Gaming Commission, which shall include the following information:

- 2-1. The labor organization's name, address, and telephone number.
- 2-2. The name and address of any international labor organization with which it directly or indirectly maintains an affiliation or relationship.
- 2-3. All of the following information for any and all Designated Individuals and other personnel of the Local:
 - a. The individual's full name and any know alias or nickname;
 - b. The individual's business address and telephone number;
 - c. The individual's title or other designation in the local labor organization;
 - d. A brief description of the individuals duties and activities; and
 - e. The individual's compensation, including salary, allowances, reimbursed expenses, and other direct or indirect disbursements.
- 2-4. All of the following additional information for any and all Designated Individuals:
 - a. The individual's home address and telephone number;
 - b. The individual's date and place of birth;
 - c. The individual's social security number;
 - d. The date he/she was hired by or first consulted with or advised the labor organization; and
 - e. A detailed description of the following:
 1. The individual's duties and activities.
 2. Whether he/she performed the same or similar activities previously on a labor organization's behalf; and
 3. The individual's prior employment or occupational history;
 - f. Excluding minor traffic offenses, a detailed description of the following:
 1. The individual's convictions, including any conviction that was expunged or set aside, sealed by court order, or for which he/she received a pardon; and
 2. Any criminal offense for which he/she was charged or indicted, but not convicted;
 - g. Whether he/she was ever denied a business, liquor, gaming, or professional license or had such a license revoked.
 - h. Whether a court or governmental agency determined the individual unsuitable to be affiliated with a labor organization and the details of that determination.
 - i. Whether the individual was ever subpoenaed as a witness before a grand jury, legislative committee, administrative body, crime commission, or similar agency and the details relating to that subpoena.
 - j. A photograph of the individual taken within the previous 60 days.

Gaming Commission Approved: July 24, 2008.

Gaming Commission Resolution No. #GC08-0724-21.

Tribal Council Approved: August 6, 2008

Tribal Council Resolution No. #08-0806-273

Gaming Commission Revisions Approved: February 23, 2010

Gaming Commission Resolution No. #GC10-0223-03

Tribal Council Revisions Approved: March 17, 2010

Tribal Council Resolution No.#10-0317-86

k. For the labor organization's first filing, a complete set of the individual's fingerprints to be used in conducting a criminal background investigation in accordance with Section 4-2 below.

l. A written certification under oath by the labor organization president, secretary, treasurer, or chief official that the information provided under this subsection is complete and accurate. The Gaming Commission shall prescribe the form for this certification.

m. An executed "Authorization to Release Information" to allow the Gaming Commission to conduct a background investigation as described in Section 4-2 below.

2-5. If information required under subsection 2-1 thru 2-4 for a designated individual changes after submission of an application or if the labor organization gains or assigns a designated individual after submission of an application, the labor organization shall provide the Gaming Commission with that new information or the information, photograph, and fingerprints required for the new designated individual within 21 days.

Section 3. Disqualifications

3-1. Upon finding, on a preponderance of the evidence, that grounds for disqualification under subsection 3-2 exist, the Gaming Commission may disqualify any officer, agent, or principal employee of a labor organization from performing any of the following:

- a. Soliciting employees for union membership;
- b. Adjusting grievances for or negotiating or administering the wage, hours, working conditions of casino gaming employees;
- c. Soliciting, collecting, or receiving from casino gaming employees any dues, assessments, levies, fines, contributions, or other charges within this state for or on behalf of the labor organization; and
- d. Supervising, directing, or controlling other officers, agents, or employees of the labor organization in performing functions described in subsection a-c.

3-2. An individual may be disqualified from serving as a Designated Individual if any of the following apply:

- a. He/she has been convicted of or entered a plea of guilty or no contest to a gambling-related offense, fraud or misrepresentation; or
- b. He/she has been convicted of or entered a plea of guilty or no contest to any offense not specified in paragraph (a) within the immediately preceding five years; this provision shall not apply if that person has been pardoned by the Governor of the State where the conviction occurred.
- c. He/she has knowingly and willfully provided materially false and misleading statements or information to the regulatory agency or refused to respond to questions asked by the regulatory agency.
- d. He/she has been determined by the regulatory agency to have participated in organized crime or unlawful gambling or whose prior activities, criminal records, reputation, habits, and/or associations pose a threat to the public interest or to the

Gaming Commission Approved: July 24, 2008.

Gaming Commission Resolution No. #GC08-0724-21.

Tribal Council Approved: August 6, 2008

Tribal Council Resolution No. #08-0806-273

Gaming Commission Revisions Approved: February 23, 2010

Gaming Commission Resolution No. #GC10-0223-03

Tribal Council Revisions Approved: March 17, 2010

Tribal Council Resolution No. #10-0317-86

effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming.
e. He/she is on parole following release from incarceration and has not yet successfully completed one full year (365 days) of parole.

3-3. Each officer, agent, or principal employee shall report all information described in subsection 3-2 concerning him/her to the Gaming Commission.

3-4. The Gaming Commission shall give written notice to the labor organization of individuals who are disqualified, stating the grounds for the disqualification and describing any supporting evidence in the Gaming Commission's possession. Within 14 days after receiving the written notice of disqualification, the labor organization may file with the Gaming Commission a written request for a hearing, which shall take place promptly. The Gaming Commission shall conduct the hearing in conformity with its regulation and procedures. A labor organization aggrieved by a final disqualification has the right to appeal to the Tribal Court.

3-5. Not later than January 31 of each calendar year a labor organization shall provide the Gaming Commission with a sworn statement that no disqualified individual served as a Designated Individual or performed any functions described in subsection 1-5 and/or 3-1 of these Regulations.

Section 4. Investigations

4-1. The Gaming Commission shall have authority to investigate any labor organization, local, or any Designated Individual, or any other agent, officer, or representative of any labor organization or local for the purpose of confirming the moral character and suitability of the organization or individual.

4-2. The Gaming Commission's authority to investigate under this Section shall include interviewing individuals in person or by telephone and conducting a criminal background investigation sufficient to make a determination under Section 4-1.

a. The criminal background investigation of each Designated Individual applying for a Labor Organization License shall be conducted. The Gaming Commission shall submit impressions of the applicant's fingerprints, taken under Section 2-4 (k), to the Federal Bureau of Investigation Criminal Information Center or and any other law enforcement agency(ies) that the Gaming Commission deems appropriate in requesting a criminal history report.

b. If the criminal history provided by applicant, or obtained in initial phase of the background investigation identify incidents which may disqualify the applicant as a result of his habits, reputation or associations, the Gaming Commission shall endeavor to obtain copies of police reports, court records or other information to determine specific details relative to such criminal offenses or charges.

c. The Gaming Commission may contract with private, municipal, state, and/or

Gaming Commission Approved: July 24, 2008.

Gaming Commission Resolution No. #GC08-0724-21.

Tribal Council Approved: August 6, 2008

Tribal Council Resolution No. #08-0806-273

Gaming Commission Revisions Approved: February 23, 2010

Gaming Commission Resolution No. #GC10-0223-03

Tribal Council Revisions Approved: March 17, 2010

Tribal Council Resolution No.#10-0317-86

federal investigation agencies to perform the required background and/or criminal history investigations.

d. All information received/obtained by the Gaming Commission during the course of any criminal background investigation shall remain confidential and shall not be disclosed unless authorized by law or in writing.

4-3. Refusal of any Designated Individual or any other agent, officer, or representative of any labor organization or local to cooperate in any investigation of the Gaming Commission may constitute grounds for disqualification under Section 3.

Section 5. Application Fee

5-1. Every application for a license under this Chapter shall be accompanied by a non-refundable license fee in the amount of Five Hundred Dollars (\$500.00).

Gaming Commission Approved: July 24, 2008.

Gaming Commission Resolution No. #GC08-0724-21.

Tribal Council Approved: August 6, 2008

Tribal Council Resolution No. #08-0806-273

Gaming Commission Revisions Approved: February 23, 2010

Gaming Commission Resolution No. #GC10-0223-03

Tribal Council Revisions Approved: March 17, 2010

Tribal Council Resolution No. #10-0317-86

EXHIBIT E

to

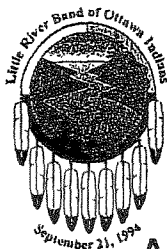
AFFIDAVIT OF KELLY MASER

**Little River Band of Ottawa Indians
Gaming Commission**

Tribal Labor Organization License Issued To:

**United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and
Service Workers International Union. AFL-CIO, CLC**

(Effective Date 08/26/08)



Little River Band of Ottawa Indians
Gaming Commission

A TRIBAL LABOR ORGANIZATION LICENSE IS HEREBY ISSUED TO:

**UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC**


The Little River Band of Ottawa Indians Gaming Commission hereby issues this Tribal Labor Organization License to the above named organization in accordance with Tribal law and the regulations of the Little River Band of Ottawa Indians Gaming Commission.

License Number: # 001

License Type: Labor Organization

Effective Date: 08/26/08

Expiration Date: 08/26/09


Authorized Signature

NOTICE: 1) the right of the above-named organization to be present and conduct business within the territorial jurisdiction of the Little River Band of Ottawa Indians (the "Tribe") is a privilege, subject to the consent and regulatory authority of the Tribe; 2) the consent of the Tribe to allow the above-named organization to be present and conduct business within the territory jurisdiction of the Tribe is conditioned upon such labor organization's agreement to be subject to the laws of the Tribe and its regulatory authority, including Chapter 600, Title 3, Article XVI of the Tribal Code; 3) in consideration of the Tribe's consent to such labor organization's conduct of business within the territorial jurisdiction of the Tribe, such labor organization agrees to (A) comply with all rules, regulations, and laws of the Tribe, (B) submit to the jurisdiction of the Tribe, including its Tribal Court, and (C) pay an annual business license fee in the amount of \$500.00; 4) such labor organization agrees that a license issued by the Tribe for conducting business within the territorial jurisdiction of the Tribe may be revoked by the Tribe at any time, with or without hearing, for any failure to comply with the laws of the Tribe. The above-named organization may engage in business only through the designated individuals listed in its license application in accordance with the regulations of the Gaming Commission.

EXHIBIT F

to

AFFIDAVIT OF KELLY MASER

**Little River Band of Ottawa Indians
Gaming Commission**

Tribal Labor Organization License Issued To:

**United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and
Service Workers International Union. AFL-CIO, CLC**

(Effective Date 08/26/09)



Little River Band of Ottawa Indians
Gaming Commission

A TRIBAL LABOR ORGANIZATION LICENSE IS HEREBY ISSUED TO:

**UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC**

The Little River Band of Ottawa Indians Gaming Commission hereby issues this Tribal Labor Organization License to the above named organization in accordance with Tribal law and the regulations of the Little River Band of Ottawa Indians Gaming Commission.

License Number: # 001

License Type: **Labor Organization**

Effective Date: 08/26/09

Expiration Date: 08/26/10

Authorized Signature

NOTICE: 1) the right of the above-named organization to be present and conduct business within the territorial jurisdiction of the Little River Band of Ottawa Indians (the "Tribe") is a privilege, subject to the consent and regulatory authority of the Tribe; 2) the consent of the Tribe to allow the above-named organization to be present and conduct business within the territory jurisdiction of the Tribe is conditioned upon such labor organization's agreement to be subject to the laws of the Tribe and its regulatory authority, including Chapter 600, Title 3, Article XVI of the Tribal Code; 3) in consideration of the Tribe's consent to such labor organization's conduct of business within the territorial jurisdiction of the Tribe, such labor organization agrees to (A) comply with all rules, regulations, and laws of the Tribe, (B) submit to the jurisdiction of the Tribe, including its Tribal Court, and (C) pay an annual business license fee in the amount of \$500.00; 4) such labor organization agrees that a license issued by the Tribe for conducting business within the territorial jurisdiction of the Tribe may be revoked by the Tribe at any time, with or without hearing, for any failure to comply with the laws of the Tribe. The above-named organization may engage in business only through the designated individuals listed in its license application in accordance with the regulations of the Gaming Commission.

EXHIBIT G

to

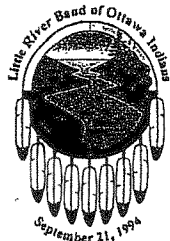
AFFIDAVIT OF KELLY MASER

**Little River Band of Ottawa Indians
Gaming Commission**

Tribal Labor Organization License Issued To:

**United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and
Service Workers International Union. AFL-CIO, CLC**

(Effective Date 08/26/10)



Little River Band of Ottawa Indians
Gaming Commission

A TRIBAL LABOR ORGANIZATION LICENSE IS HEREBY ISSUED TO:

**UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC**

The Little River Band of Ottawa Indians Gaming Commission hereby issues this Tribal Labor Organization License to the above named organization in accordance with Tribal law and the regulations of the Little River Band of Ottawa Indians Gaming Commission.

License Number: # 001

License Type: Labor Organization

Effective Date: 08/26/10

Expiration Date: 08/26/11


Authorized Signature

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APPENDIX V

COMPLAINT AND NOTICE OF HEARING

(December 10, 2010)

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

LITTLE RIVER BAND OF OTTAWA
INDIANS TRIBAL GOVERNMENT

Respondent

and

CASE 7-CA-51156

LOCAL 406, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Charging Union

COMPLAINT AND NOTICE OF HEARING

The Charging Union has charged that Respondent has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq. Based thereon, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Charging Union on March 28, 2008, and a copy was served by regular mail on Respondent on the same date.

2. At all material times, Respondent has owned, operated, and managed a hotel, restaurant, entertainment and gaming complex known as the Little River Casino Resort in Manistee, Michigan.

3. During calendar year 2009, a representative period, Respondent, in the course and conduct of its business operations described in paragraph 2, derived gross revenues in excess of \$500,000, and purchased and received goods and supplies at its Manistee, Michigan place of business valued in excess of \$50,000 directly from suppliers located outside the State of Michigan.

4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. At all material times, the Charging Union has been a labor organization within the meaning of Section 2(5) of the Act.

6. Since its original adoption on November 2, 2005, and as amended, most recently on about July 28, 2010, Respondent has maintained and published a "Fair Employment Practices Code", herein called the FEP Code, which is also known as Ordinance No. 05-600-03, that contains Article XVI, "Labor Organizations and Collective Bargaining," and Article XVII, "Integrity of Fair Employment Practices Code," copies of which are attached hereto as Exhibit 1.

7. Respondent's FEP Code affects and governs terms and conditions of employment of its employees employed at its Little River Casino Resort in Manistee, Michigan, and their rights to organize and bargain collectively.

8. Respondent's FEP Code interferes with, restrains, and coerces employees in the exercise of their rights guaranteed in Section 7 of the Act by the following provisions:

(a). Section 16.01 grants Respondent exclusive authority to regulate the terms and conditions under which collective bargaining may or may not occur, thereby preempting application of the Act and interfering with access to the Board's processes.

(b). Section 16.02 prohibits all strikes by Respondent's employees and requires any labor organization doing business within Respondent's jurisdiction to obtain a license from Respondent.

(c). Section 16.06(a) prohibits employees and labor organizations from interfering with governmental operations of Respondent, including its Little River Casino Resort, and thereby prohibits or restricts lawful protected concerted activities.

(d). Sections 16.06(b) and (c) prohibit strikes by Respondent's employees.

(e). Section 16.08 requires labor organizations to obtain a license from Respondent to organize employees or conduct other business within Respondent's jurisdiction, including its Little River Casino Resort.

(f). Section 16.12(a)(1)(B) precludes collective bargaining over Respondent's decisions to hire, to lay off, to recall, or to reorganize duties of its employees.

(g). Section 16.12(b) precludes collective bargaining over any subjects in conflict with provisions of Respondent's tribal laws, thereby unlawfully asserting Respondent's supremacy over bargaining rights and obligations established by the Act.

(h). Section 16.13(e) limits the period of time that employees may file a deauthorization petition to the first three months of a contract, thereby interfering with their right under Section 9(e) of the Act to file such a petition during the entire term of the contract.

(i). Section 16.15(b)(1) prohibits labor organizations from calling for any action that interferes with Respondent's business operations, thereby prohibiting lawful strikes and other protected concerted activities of employees.

(j). Section 16.15(b)(5) prohibits labor organizations and employees from participating in, or instigating, or supporting a strike, and it subjects them to civil penalties for strike activity.

(k). Section 16.16 precludes review of arbitration decisions and awards by the Board and the courts, and it requires labor organizations to notify Respondent, in writing, of any alleged unfair labor practice and to attempt to resolve the dispute before resorting to any outside forum, thereby imposing an unlawful exhaustion requirement before seeking access to the Board's processes.

(l). Section 16.17 permits contractual interest arbitration but precludes review of any allegedly unlawful award by the Board or the courts.

(m). Section 16.18 mandates that collective-bargaining agreements have terms of three years or less, thereby unlawfully restricting bargaining over a mandatory subject.

(n). Section 16.20 excludes alcohol and drug abuse policies from collective bargaining, thereby unlawfully prohibiting bargaining over a mandatory subject.

(o). Sections 16.24(a) and (c) unlawfully subject labor organizations and employees to civil fines and injunctive relief for violating the strike prohibitions and union licensing requirements of Article XVI of Respondent's FEP Code.

(p). Section 16.24(d) provides that decisions by Respondent, through its Tribal Court, over disputes involving the duty to bargain in good faith or alleged conflicts between a collective-bargaining agreement and tribal laws shall be final and not subject to appeal, thereby unlawfully limiting access to the Board's processes.

(q). Section 17.1(c) discourages labor organizations and employees from invoking procedures or remedies outside of the FEP Code, thereby unlawfully interfering with access to the Board's processes and reasserting Respondent's authority to regulate collective bargaining and to preempt application of the Act.

9. By the conduct described in paragraphs 6, 7, and 8, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

10. The described unfair labor practices of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, it is prayed that Respondent be ordered to:

1. Cease and desist from engaging in the conduct described in paragraphs 6, 7, and 8, or in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action:

(a). Rescind the provisions of Respondent's FEP Code described in paragraph 8.

(b). Post appropriate notices.

(c). Post appropriate notices, and contemporaneously post and maintain a signed and legible copy of the notice on Respondent's web site, on a page made accessible to all employees.

The Acting General Counsel further prays for such other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before December 27, 2010, or postmarked on or before December 26, 2010**. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlrh.gov>, click on the **E-Gov tab**, select **E-Filing** and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification for the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer needs to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **February 2, 2011, at 10:00 a.m.** and on consecutive days thereafter until concluded, at the National Labor Relations Board located at Gerald R. Ford Federal Building, 110 Michigan Street, N.W., Room 299, Grand Rapids, Michigan, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Detroit, Michigan, this 10th day of December 2010.

(SEAL)

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board
Seventh Region, Room 300
Patrick V. McNamara Federal Building
477 Michigan Avenue
Detroit, Michigan 48226

Attachments

FAIR EMPLOYMENT PRACTICES CODE
Ordinance # 05-600-03

Article I. Purpose; Findings

1.01. *Declaration and Policy.* As a sovereign Indian tribe, the Little River Band of Ottawa Indians has inherent authority to govern employment relations within its jurisdiction. It is the public policy of the Band to:

- a. ensure that members of the Band and other Indians gain and maintain employment opportunities within the Band's jurisdiction;
- b. prevent and remedy any discrimination in employment (other than to promote the employment of Band members and other Indians) on the basis of sex, race, color, national origin, religion, age, disability, veteran, marital status, or sexual orientation; and
- c. ensure that employees within the jurisdiction of the Band work in safe conditions, receive fair compensation, and otherwise have fair terms and conditions of employment.

1.02. *Purposes.* The purpose of this Code is to:

- a. prevent and remedy discrimination in employment, unless in furtherance of Indian employment preferences, on the basis of sex, race, color, national origin, religion, age, disability, veteran, marital status, or sexual orientation; and
- b. establish standards for fair and safe working conditions.

1.03. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

- a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]” Article IV, Section 7(a).

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted by Tribal Council resolution # 05-1102-564.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances. An emergency amendment to add Article XVI, Labor Organizations and Collective Bargaining was adopted by Resolution # 07-0620-334. Permanent adoption to add Article XVI Labor Organizations and Collective Bargaining was adopted by Resolution # 07-0801-427. Article XVI was revised and adopted on an emergency basis by Resolution #08-0206-32, and permanently adopted by Resolution #08-0319-76. Emergency amendments were again adopted to revise Article XVI, to add a new Article XII, Whistleblower Protection, to establish remedies for violations of new Article XII, and to correct minor typographical errors in the Code by Resolution # 08-1015-348. Further amendments were adopted by Resolution #09-0304-60 to (1) require the posting of employee rights provided by this Code under Article XIII; (2) revise Article XII, Whistleblower Protection, to clarify investigation requirements; and (3) revise Article XVI to (a) more specifically describe public employer bargaining duties, (b) more specifically provide for Tribal Court review of certain disputes, (c) more specifically identify employee rights by separate article, (d) require good faith efforts by parties to resolve alleged unfair labor practices, (e) streamline procedures for the resolution of bargaining impasses, and (f) more specifically describe terms and conditions not subject to change during bargaining impasse. Amendments were made by Resolution # 09-0715-194 to (a) amend Article XVI, section 16.16(b) to correct a drafting error

Article XIII. Workplace Posters

Every employer subject to the provisions of this Code shall post a list, as directed by the Office of General Counsel, of the employee rights established by this Code. The list shall be posted in a common area of the workplace in a location that is readily visible to all employees.

Article XIV. Workers Compensation [reserved]

Article XV. Unemployment Insurance [reserved]

Article XVI. Labor Organizations and Collective Bargaining

16.01 Purpose.

The Little River Band of Ottawa Indians exercises powers of self-government over its members and territory. The Tribe has inherent authority to govern labor relations within its jurisdiction, and this includes regulating the terms and conditions under which collective bargaining may or may not occur within its territory. The Tribe's inherent authority further includes the right to protect the health, welfare, and political integrity of the Tribe from being harmed or threatened by the activities of non-members within the Tribe's territory. The purpose of this Article is to protect essential attributes of tribal self-government and the health and welfare of the members of the Tribe if labor organizations conduct operations within the jurisdiction of the Tribe.

16.02 Public Policy.

The Tribal Council declares that it is the policy of the Tribe to promote harmonious and cooperative relationships between tribal government and its employees by permitting employees within the Governmental Operations of the Band to organize and bargain collectively; to protect orderly Governmental Operations of the Band to provide for the health, safety, and welfare of the Band and its members; to prohibit and prevent all strikes by employees within the Governmental Operations of the Band; to protect the rights of employees within the jurisdiction of the Band to join or refuse to join, and to participate in or refuse to participate in, labor organizations; to protect the rights of tribal members to employment preferences; and to ensure the integrity of any labor organization doing business within the jurisdiction of the Band by requiring any such labor organization to obtain a license.

16.03 Definitions.

The definitions set forth in Article III shall not apply to this Article XVI. The following definitions apply to this Article XVI, whether the terms are stated in singular or plural form and whether the terms are capitalized or not.

Bargaining unit means a unit of employees within the Governmental Operations of the Band identified as an appropriate unit for representation pursuant to section 16.09 or such other criteria that may be recognized by resolution of the Tribal Council.

Confidential Employee means an employee of a public employer who assists or acts in a confidential capacity with respect to legal, financial, accounting or policy matters, and includes such employees who have access to information that is subject to use in contract negotiations,

the disposition of grievances, or other labor relations matters.

Fair share means an assessment to pay for the services of a labor organization with respect to negotiating and administering a collective bargaining agreement with a public employer.

Exclusive Bargaining Representative or *Exclusive Representative* means a labor organization that is lawfully elected to be the exclusive bargaining representative of a bargaining unit within the Governmental Operations of the Band.

Governmental Operations of the Band means the operations of the Little River Band of Ottawa Indian 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.

Indian Gaming Regulatory Act means 25 U.S.C. §§ 2701-2721.

Jurisdiction of the Little River Band of Ottawa Indian Tribe means the jurisdiction or governmental authority -- including legislative, judicial, and regulatory authority -- that the Band may exercise pursuant to its inherent authority as a federally recognized Indian tribe or pursuant to Congressional enactment or delegation, including all such authority over all lands now or in the future held in trust by the United States for the benefit of the Tribe acquired by or for the Tribe pursuant to 25 U.S.C. § 1300k-4(b) or such other lands upon which gaming may lawfully be conducted pursuant to the Indian Gaming Regulatory Act.

Labor organization, labor association, or labor union means any organization of employees organized for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment.

Laws of the Band or *Laws of the Tribe* means the Constitution and Tribal Code of the Little River Band of Ottawa Indians, resolutions of the Tribal Council and the Tribal Regulations of the commissions, agencies, departments, and authorities of the Little River Band of Ottawa Indians.

Little River Band of Ottawa Indians, the Band or *the Tribe* means the Little River Band of Ottawa Indians.

Little River Casino Resort means the Band's gaming enterprise, including related hotel and restaurant services, located at 2700 Orchard Highway, Manistee, Michigan, wherein the Tribe operates Class II and Class III gaming to generate governmental revenue for the Tribe pursuant to the Indian Gaming Regulatory Act.

Lock Out means any action by a public employer that prevents employees from going to work for the purpose of coercing employees to accept terms or conditions sought by a public employer in a negotiation with an exclusive bargaining representative..

Management means individuals holding supervisory and managerial positions within a public employer, who, because of their supervisory and managerial positions, do not qualify to be within a bargaining unit, and, when context so indicates, such individuals who have been delegated authority by a public employer to negotiate with an exclusive bargaining representative.

Model Band-Union Election Procedures Agreement means the model agreement referred to in Section 16.26 of this Article.

Neutral Election Official or Election Official means the Neutral Election Official appointed by the Tribal Council for the purpose of (a) certifying a showing of 30% or more support for union representation and (b) overseeing any union election pursuant to an agreement entered into by the Band with a labor organization that comports with the terms of the Model Band-Union Election Procedures Agreement.

Nonmember public employees means employees within a bargaining unit who are not members of a labor organization.

Public Employee means non-supervisory regular full-time and part-time (working a minimum of four hours per week) employee of a public employer, excluding all supervisory, managerial, confidential, temporary, seasonal, and casual employees.

Public Employer means a subordinate economic organization, department, commission, agency, or authority of the Band engaged in any Governmental Operation of the Band.

Strike means an employee's refusal, in concerted action with other employees, to report for duty or to be willfully absent, in whole or in part, from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of employment. The terms "strike" includes boycotts of any kind designed to adversely affect a public employer. Notwithstanding the provisions of any other law, an employee within the Governmental Operations of the Band who, by concerted action with others and without the lawful approval of his or her supervisor, willfully absents himself or herself from his or her position, or abstains in whole or in part from the full, faithful and proper performance of his or her duties for the purpose of inducing, influencing or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment shall be considered to be on strike.

Subordinate Economic Organization means an economic enterprise operating within the jurisdiction of the Band, whether under a tribal or corporate charter, established by resolution or ordinance of the Tribal Council pursuant to Art. IV section 7 of the Constitution of the Little River Band of Ottawa Indians and wholly owned by the Band.

16.04 Time Calculations.

For any action that is to occur under the provisions of this Article XVI within 10 days or less, weekends, tribal, state and national holidays shall not be counted. The Neutral Election Official, mediators, fact finders, and arbitrators shall have discretion to extend the deadlines herein for matters they handle only for good cause shown by a party in advance of the deadline.

16.05 Freedom of Choice Guaranteed.

Except as otherwise provided in section 16.13, addressing fair share contributions to labor organizations by nonmember public employees, with respect to employment or the terms or conditions of employment within any public employer:

- a. The right to work must be protected and maintained free from undue restraints and coercion. The right of persons to work shall not be denied or abridged by any public employer or by any labor organization on account of membership or non-membership in any labor union, labor organization, or association.
- b. No person shall be required to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment.
- c. No person shall be required, as a condition of employment or continuation of employment to be recommended, approved, referred, or cleared by or through a labor organization.
- d. It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the public employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the public employer.
- e. No person shall be required by any public employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.
- f. It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or public employer, or officer or agent thereof, by any threatened or actual intimidation of an employee or prospective employee or his parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to his property, to compel or attempt to compel such employee or prospective employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit his rights as guaranteed by provisions of this Article. It shall be unlawful to cause or attempt to cause such employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employee.
- g. Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and any public employer which violates the rights of employees as guaranteed by the provisions of this Article is hereby declared to be against public policy, an illegal combination or conspiracy in restraint of trade, null and void and of no legal effect. Any strike, picketing, boycott, or other action by a labor organization for the sole purpose of inducing or attempting to induce any public employer to enter into any agreement prohibited by this Article is hereby declared to be for an illegal purpose and is a violation of this Article.

16.06 Strikes Affecting the Governmental and Operations of the Band Prohibited.

(a) *Declaration and Findings.* The Governmental Operations of the Band are critical to the public health, safety, and welfare of the Tribe and its members. No employee or labor organization shall interfere with, threaten or undermine the Governmental Operations of the Band.

(b) *No Right to Strike.* Employees within the Governmental departments and agencies of the Operations of the Band, including the Little River Casino Resort, have no right to strike.

(c) *Strikes Prohibited.* Strikes, work stoppages, or slowdowns against the Governmental Operations of the Band are contrary to the health, safety and welfare of the Tribe and its members, and are

therefore prohibited. No employee or labor organization shall engage in a strike, work stoppage or slowdown with respect to any Governmental Operation of the Band. No labor organization shall cause, instigate, encourage or support an employee strike against a public employer.

16.07 Lock Outs Prohibited. A public employer shall not engage in any action constituting a lock out.

16.08 Licensing and Registration of Labor Organizations

(a) No labor organization shall engage in organizing employees working for any public employer without a license issued by the Little River Band of Ottawa Indians Gaming Commission, which shall provide as follows:

- (1) the right of such labor organization to conduct business within the Tribe's jurisdiction is a privilege, subject to the consent and regulatory authority of the Tribe;
- (2) the consent of the Tribe to allow such labor organization to conduct business within the jurisdiction of the Tribe is conditioned upon such labor organization's agreement to be subject to the laws of the Tribe and its regulatory authority, including this Code;
- (3) in consideration of the Tribe's consent to such labor organization's conduct of business within the jurisdiction of the Tribe, such labor organization agrees to (A) comply with all rules, regulations, and laws of the Tribe, (B) submit to the jurisdiction of the Tribe, including its Tribal Court, and (C) pay an annual business license fee in the amount of \$500.00;
- (4) such labor organization agrees that a license issued by the Tribe for conducting business within the territorial jurisdiction of the Tribe may be revoked by the Tribe at any time, with or without hearing, for any failure to comply with the laws of the Tribe; and
- (5) such other requirements as the Gaming Commission may require under its regulations.

(b) Subject to the requirements of subsection 16.08(a), the Gaming Commission is hereby authorized by the Tribal Council of the Little River Band of Ottawa Indians to enact such regulations as it sees fit to investigate and license any labor organization seeking to conduct business within the jurisdiction of the Tribe.

(c) Any person who intentionally makes a false statement to the Gaming Commission shall be deemed to be in violation of this Article XVI.

16.09 Appropriate Bargaining Units.

An appropriate bargaining unit of public employees may be established under the terms of an agreement entered into by the Band with a labor union that comports with the terms of the Model Band-Union Elections Procedures Agreement.

16.10 Union Elections.

An election for a labor union to become the exclusive representative of an appropriate bargaining

unit of public employees may proceed under the terms of an agreement entered into by the Band that comports with the terms of the Model Band-Union Elections Procedures Agreement.

16.11 Bargaining Unit and Election Dispute Resolution.

Disputes between management and a labor organization seeking to represent public employees with respect to (1) the appropriateness of a bargaining unit or (2) election procedures may be resolved under the terms of an agreement entered into by the Band that comports with the terms of the Model Band-Union Elections Procedures Agreement.

16.12 Duty to Bargain in Good Faith.

(a) Except as otherwise provided by this Article XVI, if a labor organization is lawfully elected to be the exclusive bargaining representative of a bargaining unit of public employees, management and the exclusive bargaining representative shall

(1) bargain in good faith on wages, hours and other terms and conditions of employment , *provided that* (A) neither management nor the exclusive representative shall be required to agree to a proposal or to make a concession and (B) management decisions to hire, to layoff, to recall, or to reorganize duties shall not constitute "other terms and conditions of employment" under this paragraph, and

(2) enter into written collective bargaining agreements covering employment relations.

(b) The obligation to bargain collectively imposed by this section shall not be construed to require management and an exclusive representative to negotiate over matters that would conflict with the provisions of any other laws of the Tribe, and in the event of a conflict between the provisions of any other laws of the Tribe and an agreement entered into by a public employer and the exclusive representative in collective bargaining, the laws of the Tribe shall prevail.

16.13 Fair Share Provisions for Nonmember Public Employees; Deauthorization of Fair share provisions; Payroll Deductions

(a) Management and the exclusive bargaining representative may bargain over fair share provisions for nonmember public employees, provided that such a provision requires:

(1) any such nonmember public employee to pay only for a fair proportion of costs of negotiating a collective bargaining agreement and contract administration;

(2) fair share contributions by all nonmember public employees in the bargaining unit, with pro-rata reductions for nonmember public employees who hold part-time positions;

(3) the exclusive bargaining representative to notify all nonmember public employees within the bargaining unit (i) that they have the right to be a nonmember, (ii) that they have the right to object to paying for labor organization activities not germane to negotiating a collective bargaining agreement or administering an agreement and to obtain a reduction in fees for such nongermane activities, (iii) of sufficient information to enable them to intelligently decide whether or not to object, (iv) about procedures for filing objections, and (v) that if a nonmember public employee objects, the labor organization must explain to such employee the basis for the calculation of the fair share charged to the employee and that the employee

has the right to challenge the calculation before an arbitrator.

(b) Subject to subsection (d), the exclusive bargaining representative's notice and procedures under subsection (a)(3) shall comply with *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986) and its progeny.

(c) Public employers shall have no duty to assure that a labor organization provides the notice set forth in subsection (a)(3) prior to deducting fair share amounts from a public employee paycheck if such a deduction is agreed to in a collective bargaining agreement pursuant to subsection (f).

(d) If a nonmember public employee objects to a fair share payment, and such employee and the exclusive bargaining representative cannot resolve the objection, either party shall notify the Neutral Election Official, who shall appoint an arbitrator to resolve the dispute. Such arbitrator shall have experience in public sector labor relations, shall be familiar with the issue of fair share contributions by public sector employees to labor organizations, and shall be a member of the National Academy of Arbitrators. The arbitrator shall hold such hearing and receive such evidence as the arbitrator sees fit to resolve the dispute and shall apply legal standards governing public sector labor relations, including *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986) and its progeny. The decision of the arbitrator shall be binding upon the employee and the labor organization. The fees and costs of the arbitrator shall be borne by the labor organization.

(e) Within 90-days after a public employer and a labor organization execute a collective bargaining agreement containing a fair share provision, one or more public employees within the bargaining unit may file with the Neutral Election Official a petition to have the fair share provision rescinded. The petition must be in writing and accompanied by a statement signed by 30% or more of the employees in the bargaining unit, stating that they wish to rescind the fair share agreement. The Neutral Election Official shall, within 5 days of receipt of such petition, determine whether the petition is properly supported and timely filed, and, if it is, he shall, within 14 days of such determination, direct a secret ballot election that comports with the mechanics for holding elections set forth in the Model Band-Union Election Procedures Agreement. If a majority of the votes cast in the election favor the fair share provision, it shall continue in effect. If there is no such majority, the Neutral Election Official shall certify deauthorization and the fair share agreement shall be deemed null and void as of the date of the petition, and the labor organization shall ensure the prompt refund of amounts withheld from nonmember employees, retroactive to the date of the petition, without interest.

(f) Payroll deduction of (i) the exclusive representative's membership dues for public employees who are members of a labor organization and (ii) fair share contributions of nonmember public employees shall be a mandatory subject of bargaining if either party chooses to negotiate the issue. The amount of the dues and, in the case of nonmember public employees, the amount of the fair-share contributions, shall be certified in writing by an official of the labor organization and shall not include special assessments, penalties or fines of any type. A public employer shall honor payroll deductions until the authorization is revoked in writing by the public employee in accordance with the negotiated agreement and for so long as the labor organization is certified as the exclusive representative. During the time that a certification of a labor union by the Neutral Election Official is in effect for a particular appropriate bargaining unit, a public employer shall not deduct dues for any other labor organization.

16.14 Rights of Public Employees

It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

Public employees also have the right to refuse to join or participate in the activities of labor organizations and to represent themselves individually in their employment relations with public employers.

16.15 Unfair Labor Practices.

(a) A public employer is prohibited from:

- (1) Interfering with, restraining, or coercing public employees in the exercise of their rights guaranteed under section 16.14.
- (2) Encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, tenure, or other conditions of employment.
- (3) Refusing to bargain collectively, failing to bargain collectively in good faith, or refusing to sign a final agreement agreed upon with the exclusive bargaining representative.
- (4) Discharging or discriminating against a public employee because he or she has exercised rights guaranteed under section 16.14 or signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceeding provided by this Article XVI.
- (5) Dominating, interfering with, or assisting in the formation, existence, or administration of, any labor organization or contributing financial support to such an organization.
- (6) Refusing to discuss grievances in good faith pursuant to the terms of the collective bargaining agreement with either the exclusive bargaining representative or the employee involved.

(b) A labor organization or anyone acting in its behalf or its officers, representatives, agents, or members are prohibited from:

- (1) Interfering with, restraining, or coercing public employees in the exercise of any rights guaranteed them under this Article XVI or interfering with, restraining, or coercing management by reason of its performance of duties or other activities undertaken in the interests of the Governmental Operations of the Band.
- (2) Causing or attempting to cause a public employer to discriminate against a public employee because of the employee's membership or nonmembership in a labor organization or attempting to cause a public employer to violate any of the provisions of this Article XVI.
- (3) Refusing to bargain collectively or failing to bargain collectively in good faith with management.

(4) Discriminating against a public employee because he or she has exercised rights guaranteed under section 16.14 or signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceeding provided for in this Article XVI.

(5) Participating in a strike against the Governmental Operations of the Band by instigating or supporting, in any positive manner, a strike. Any violation of this paragraph shall subject the violator to the civil penalties provided in this Article XVI.

(c) Notwithstanding the provisions of subsections (a) and (b), the parties' shall have the right to voice their views consistent with the protections afforded by the Tribe's Constitution, and the expression of any arguments or opinions shall not constitute, or be evidence of, an unfair labor practice or of any other violation of this Article XVI, if such expression contains no promise of benefits or threat of reprisal or force.

16.16 Resolution of Charges of Unfair Labor Practices; Breach of Duty of Fair Representation

(a) Charges Involving Management or an Exclusive Representative

(1) Charges, Notice, Good Faith Effort to Reach Early Resolution

(A) Should either management or an exclusive representative become aware of perceived conduct constituting an unfair labor practice, it shall notify the other party, in writing (which shall be transmitted electronically or by telecopier as well as via hard copy), of the charge and the alleged factual basis for the charge. The recipient party shall respond in writing (which shall be transmitted electronically or by telecopier as well as via hard copy), within 10 days of receipt of such written allegations. Management and the exclusive bargaining representative shall then make a good faith effort to resolve the alleged violation. This good faith effort shall include each party providing the other with unprivileged information relevant to the charge upon request.

(B) If such good faith efforts do not result in resolution of the charge, the objecting party may proceed to request arbitration.

(2) Arbitration

(A) If a claim is not resolved under subsection (a), charges of violations of unfair labor practices, including the duty to bargain in good faith, provided by this Article XVI shall, within 15 days of the receipt by either party of a written demand for arbitration (or such later time as the arbitrator may promptly schedule a hearing) be brought before an arbitrator, mutually agreed to by the exclusive bargaining representative and the public employer. If the parties are unable to agree upon an arbitrator, they shall use the American Arbitration Association (AAA) labor arbitrator selection procedure, provided that any arbitrator selected through the AAA labor arbitrator selection procedure shall be a member of the National Academy of Arbitrators.

(B) The selected arbitrator shall apply the law of the Band to resolve the charge, but in the absence of such law, the arbitrator shall apply persuasive authority

governing public sector labor relations.

- (C) The arbitrator's decision shall be in writing and mailed to the parties, return receipt requested within 30 days of the completion of arbitration. Except as provided by subsection (3), the arbitrator's decision shall be final and binding upon the parties.
- (D) Unless otherwise agreed to in writing by the public employer and the exclusive bargaining representative, if the arbitrator's decision is in favor of the public employer on every issue, the exclusive bargaining representative shall pay the fee of the arbitrator and if the arbitrator's decision is in favor of the exclusive bargaining representative on every issue, the public employer shall pay the fee of the arbitrator. Otherwise, the arbitrator shall allocate the cost of the arbitrator's services between the parties in accordance with the issues on which they have prevailed or not prevailed, and they shall pay their respective share of the arbitrator's fee in accordance with the arbitrator's decision.

(3) **Judicial Review**

- (A) A party who claims that the arbitrator's decision is in violation of, or conflicts with, the laws of the Band or procured by corruption, fraud or other undue or illegal means, may, within 10 days of receipt of the arbitrator's decision, bring a petition for review of the arbitrator's decision to the Tribal Court for resolution by that member or the Tribal Court who is licensed to practice law.
- (B) In any such review, the Tribal Court shall be limited to review for errors of law and the issuance of an order affirming the arbitrator's decision or correcting it for legal error as is necessary to render it in compliance with the law of the Band.
- (C) Should the Tribal Court find that a party's petition for review is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the petition.
- (D) The decision of the Tribal Court shall be final and there shall be no right of appeal to the Court of Appeals.

(4) **Time Limits**

No unfair labor practice charge shall proceed to Arbitration or Judicial review under section 16.16(a) unless a demand is made under subsection 16.16(a)(2)(A) no later than 180 days after the alleged action constituting the alleged unfair labor practice.

(b) ***Charges of Discrimination by Public Employees***

A public employee who believes he or she has been subjected to unlawful discrimination in violation of section 16.15(a)(4) or section 16.15(b)(4) may proceed to seek relief for such

discrimination under the procedures and remedies provided by Article VI, provided, however, that (i) damages under 6.05(b) may not be awarded, (ii) in the event that the Charge is against a labor organization, the labor organization shall be treated in the same manner as an employer, subject to a Charge of Discrimination under Article VI, and (iii) no complaint may be filed in the Tribal Court unless a Charge of Discrimination has first been filed within 180 days of the asserted violation of section 16.15(a)(4) or section 16.15(b)(4).

(c) *Claims for Breach of Duty of Fair Representation*

(1) *Action in Tribal Court*

A public employee within a bargaining unit, who claims that an exclusive bargaining representative has breached its duty of fair representation, may bring an action in the Tribal Court, no later than 180 days after the alleged breach, against the exclusive bargaining representative.

(2) *Remedies*

If the Tribal Court finds that an exclusive bargaining representative has breached its duty of fair representation to a public employee, the Court shall award the employee such relief as will make the employee whole.

16.17 Resolution of Bargaining Impasse

(a) *Agreement to Resolve Negotiation Impasse.*

As the first step in the performance of their duty to bargain, management and the exclusive bargaining representative shall endeavor to agree upon impasse procedures. Such procedures shall define the conditions under which an impasse exists. Any such agreement with respect to the resolution of impasse issues shall not conflict with the provisions of this section.

(b) *Subjects Not Within Procedures for Resolving Bargaining Impasse.*

Nonmandatory subjects of bargaining shall not be subject to the impasse procedures of this section. Unless mutually agreed to by the parties, the impasse procedures of this section shall not be invoked during the pendency of any charge regarding the required scope of good faith bargaining under section 16.12.

(c) *Mediation and Fact Finding.*

(1) *Mediation.* Following the commencement of negotiations, if management and the exclusive bargaining representative reach an impasse, and they do not otherwise agree to proceed directly to fact finding, they shall jointly retain a mediator to assist them in resolving the impasse issues. In the absence of an agreement on the mediator, either party may request the Election Official to appoint a mediator, and the Election Official's appointment of such mediator shall be binding on the parties. It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree. Any appointed mediator shall be experienced in labor mediation, and shall be drawn from lists of such mediators maintained by the American Arbitration Association.

(2) *Fact Finding and Recommendation.* If the parties agree to proceed directly to fact finding in substitute for mediation or, if mediation under subsection (c)(1) does not result in an agreement on all impasse issues within 21 days of the appointment of the mediator, the parties shall jointly retain a fact finder. In the absence of an agreement on the fact finder, either party may request the Election Official to appoint a fact finder, and the Election Official's appointment of such fact finder shall be binding on the parties. The appointed fact finder shall be experienced in public sector labor relations, shall be drawn from lists of similar fact finders maintained by the American Arbitration Association, and shall be a member of the National Academy of Arbitrators.

Within 5 days of the appointment of the fact finder, the parties shall file with the fact finder a joint list of the issues as to which an impasse has been reached, provided that if such filing is not made jointly, each party shall file a list and serve a copy of the filing on the other party.

The fact finder shall conduct a hearing at a location agreed to by the parties or, failing agreement, at a location chosen by the fact finder that is convenient to the parties. The fact finder may administer oaths, may issue subpoenas (under the same terms that subpoenas may issue from the Tribal Court), and may petition the Tribal Court to enforce any subpoena compelling the attendance of witnesses and the production of records, subject to such protection order any party may obtain from the Tribal Court to protect against the disclosure of confidential or privileged information. The fact finder may request briefs, stipulations, or other written submissions from the parties to aid in reaching findings and recommendations. The fact finder shall make written findings of facts and recommendations for resolution of each dispute not later than 15 days from the close of hearing, and shall serve, by certified mail, return receipt requested, such findings upon the public employer, the exclusive bargaining representative, and the Election Official. In issuing said findings and recommendations, the fact finder shall redact any factual material deemed confidential pursuant to an agreement of the parties or pursuant to a protective order issued on behalf of a party.

Management and the exclusive bargaining representative shall immediately agree to accept the fact finder's recommendations or, commence further negotiations in a good faith effort to reach agreement. If, upon the expiration of 20 days after the Election Official's receipt of the fact finder's recommendations, the parties fail to jointly inform the Election Official that they have fully resolved all impasse issues, the Election Official shall make the fact finder's findings and recommendations public to the membership of the Tribe by arranging for publication on the Tribe's website, in the Tribe's newsletter to members, or both

(d) *Binding Arbitration.*

If the parties fail to resolve their disputes within 30 days of receipt of the fact finder's findings and recommendations, they may mutually agree in writing to proceed to binding arbitration. Absent agreement, either party may request that the impasse issues proceed to resolution by binding arbitration, and such request shall be served upon the other party, in writing, return receipt requested.

Within 10 days of the parties' written agreement or the receipt by one party of a request for binding arbitration, the parties shall jointly select an arbitrator, who shall not be the same individual who served as the fact finder. If the parties fail to agree on an arbitrator within the 10

day period, the selection shall be made using the procedures under the voluntary labor arbitration rules of the American Arbitration Association. Any arbitrator shall be drawn from lists of such arbitrators maintained by the American Arbitration Association, and shall be a member of the National Academy of Arbitrators.

The submission of the impasse items to the arbitrator shall be limited to those issues that had been considered by the fact finder and upon which the parties have not reached agreement. Within 10 days of the appointment of the arbitrator, management and the exclusive bargaining representative shall each submit to the arbitrator their respective recommendations for settling the dispute on each unresolved issue, the draft collective bargaining agreement to the extent that agreement has been reached, and the fact finder's findings of fact and recommendations

The arbitrator shall conduct a hearing at a location agreed to by the parties or, failing agreement, at a location chosen by the arbitrator that is convenient to the parties. The arbitrator may administer oaths, may issue subpoenas (under the same terms that subpoenas may issue from the Tribal Court), and may petition the Tribal Court to enforce any subpoena compelling the attendance of witnesses and the production of records, subject to such protection order any party may obtain from the Tribal Court to protect against the disclosure of confidential or privileged information. The arbitrator shall issue a decision on each issue remaining at impasse not later than 30 days from the day of appointment. In issuing said findings and recommendations, the fact finder shall redact any factual material deemed confidential pursuant to an agreement of the parties or pursuant to a protective order issued on behalf of a party. The parties may continue to negotiate all offers until an agreement is reached or a decision is rendered by the arbitrator.

The arbitrator shall consider, in addition to any other relevant factors, the following factors:

- (1) Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- (2) Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

The arbitrator shall select the most reasonable offer of the parties' respective final offers on each impasse item or the recommendations of the fact finder on each impasse item. The arbitrator shall provide a written summary of the selected provisions and agreed-upon provisions to each party and to the Election Official, return receipt requested.

Said selections of the arbitrator, together with the items already agreed upon by the management and the exclusive bargaining representative shall be deemed to be the collective bargaining agreement between the parties, provided, however, that, subject to subsection (e), provisions related to the public employer's obligation to pay wages, salaries, bonuses, insurance, pension or retirement contributions shall not be binding upon the parties.

- (e) *Limited Review by Tribal Council of Economic Terms Recommended by Arbitrator Upon Rejection by Public Employer.*

If a public employer rejects an arbitrator's decision issued under section 16.17(d) regarding the public employer's obligation to pay wages, salaries, bonuses, insurance, pension or retirement

contributions, it shall so inform (i) the exclusive bargaining representative and (ii) the Tribal Council Speaker, in writing, within five (5) days of receipt of the arbitrator's decision.

Thereafter, the Tribal Council Recorder shall schedule a closed session meeting of the Tribal Council at which the public employer shall appear and show cause for why it has rejected the arbitrator's decision regarding its obligation to pay wages, salaries, bonuses, insurance, pension or retirement contributions. If the public employer is the Little River Casino Resort, any member of the Tribal Council that may have served on the Board of Directors of the Resort during the time that decisions were made about the Resort's bargaining position on any impasse issue addressed by an arbitrator's decision under section 16.17(d) shall abstain from voting and deliberating in accordance with the Tribe's Constitution and applicable law.

In advance of the Tribal Council meeting, the public employer shall submit to the Tribal Council the decision of the arbitrator, together with a written statement setting forth the reasons for its rejection of the decision, and it shall, at the same time, mail a copy of said written statement to the exclusive bargaining representative. In advance of the Tribal Council meeting, the exclusive bargaining representative shall be given the opportunity to submit a written statement setting forth the reasons why the Arbitrator's decision is appropriate and, upon submission of such a written statement to the Tribal Council, the exclusive bargaining representative shall mail a copy to the public employer.

At the scheduled meeting of the Tribal Council, both the public employer and the exclusive bargaining representative shall have the opportunity to be heard.

The Tribal Council shall decide only whether (a) the public employer's final offer regarding any impasse over wages, salaries, bonuses, insurance, pension or retirement shall become part of the parties' collective bargaining agreement or (b) the arbitrator's decision on any such impasse issue shall become part of the parties' collective bargaining agreement.

(f) *Costs of Impasse Resolution Proceedings*

Unless otherwise agreed to in writing, the public employer and the exclusive bargaining representative shall share equally all fees and costs of mediation, neutral arbitration, and binding arbitration provided for by this section.

(g) *Status of Terms and Conditions of Employment Pending Impasse Resolution*

At all times when an impasse remains unresolved, the status quo regarding wages and working conditions shall remain in effect even if a prior collective bargaining agreement governing the bargaining unit has expired. In such event, the status quo or the terms of any prior collective bargaining agreement shall continue in force and effect, until a new agreement shall be executed; provided, however, that for the purposes of this paragraph, the status quo, or continuing terms, shall not include fair share provisions, or increases to wages, increases in employer contributions to insurance, or increases in employer contributions to pensions.

(h) *Judicial Review*

- (1) A party who claims that the arbitrator's decision is in violation of, or conflicts with, the laws of the Band or procured by corruption, fraud or other undue or illegal means, may, within 10 days of receipt of the arbitrator's decision, bring a petition for review

of the arbitrator's decision to the Tribal Court for resolution by that member or the Tribal Court who is licensed to practice law.

- (2) In any such review, the Tribal Court shall be limited to review for errors of law and the issuance of an order affirming the arbitrator's decision or correcting it for legal error as is necessary to render it in compliance with the law of the Band.
- (3) Should the Tribal Court find that a party's petition for review is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the petition.
- (4) The decision of the Tribal Court shall be final and there shall be no right of appeal to the Court of Appeals.

16.18 Duration of Collective Bargaining Agreements for Public Employees.

Collective bargaining agreements entered into by the public employer and an exclusive bargaining representative shall have terms of three years or less.

16.19 Decertification of Exclusive Representative.

(a) A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative of a bargaining unit if thirty percent (30%) of the public employees in the bargaining unit make a written request to the Neutral Election Official for a decertification election. Decertification elections may be held in a manner prescribed by the Neutral Election Official so long as they are in accord with the mechanics for holding elections set forth in the Model Band-Union Election Procedures Agreement. A decertification election shall only be valid if forty percent (40%) of the eligible employees in the bargaining unit vote in the election.

(b) When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Neutral Election Official no earlier than 120 days and no later than 90 days before the expiration of the collective bargaining agreement.

(c) When, within the time period prescribed in subsection (b) of this section, a competing labor organization files a petition containing signatures of at least thirty percent (30%) of the public employees in the appropriate bargaining unit pursuant to an agreement entered into by the Band with such labor organization that comports with the terms of the Model Band-Union Elections Procedures Agreement, a representation election, rather than a decertification election, shall be conducted in accordance with the election procedures of such agreement.

(d) When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Neutral Election Official shall not accept a request for a decertification election earlier than twelve months subsequent to a labor organization's certification as the exclusive representative

16.20 Policies of Public Employers Addressing Abuse of Alcohol and Drugs Not Subject to Collective Bargaining.

- (a) *Declaration and Findings.* The abuse of alcohol and both legal and illegal drugs within

the public employers harms the health, safety and welfare of the Band and its members. Tribal communities, including that of the Band, are particularly vulnerable to drug and alcohol abuse, and the regulation of such abuse within public employers is critical to the health, safety, and welfare of the Band and its members.

(b) *Prohibition of Collective Bargaining Affecting Alcohol and Drug Testing Policies.* Public employers shall have the right to address the terms and conditions for testing public employees for alcohol and drug use, consistent with the laws of the Band, and such policies shall not be subject to bargaining with any labor organization.

16.21 Conflicts Between the Laws of the Band and Band-Union Election Procedures Agreement.

In the event of a conflict between any law of the Band and the provisions of the Model Band-Union Election Procedures Agreement or the provisions of an agreement entered into by the Band that comports with the terms of the Model Band-Union Elections Procedures Agreement, the laws of the Band shall control.

16.22 Conflicts Between Collective Bargaining Agreements and Personnel Policies.

Except as provided by 16.20, in the event of a conflict between the personnel policies or procedures of a public employer and the provisions of a collective bargaining agreement entered into by a public employer and a labor organization, the latter shall control.

16.23 Conflicts Between Collective Bargaining Agreements and Individual Contracts.

In the event of a conflict between the provisions of a collective bargaining agreement entered into by a public employer and a labor organization and the provisions of an individual contract of an employee within a bargaining unit, the terms of the collective bargaining agreement shall control.

16.24 Enforcement.

(a) *Strikes: Civil Actions, Penalties, Decertification and Exclusion* Any public employee or labor organization, and any employee or agent of any labor organization, that violates, or seeks to violate, the prohibition against strikes set forth in section 16.06 of Article XVI shall be subject to a civil action by the affected public employer for declaratory and injunctive relief in the Little River Band of Ottawa Indians Tribal Court. Upon a finding of any such violation by a labor organization or any person acting on behalf of a labor organization, the Court may impose a civil fine against the labor organization, not to exceed \$5,000 for each violation. Upon a finding of any such violation by a public employee, the Court may impose a civil fine against the employee not to exceed \$1,000 for each and the employer of such public employee shall have the right to suspend or terminate the employment of such public employee. Any labor organization found by the Tribal Court to be in violation of the prohibition against strikes shall be deemed decertified from representing any public employees and shall further be deemed not legally entitled to be present on tribal lands and subject to exclusion on a temporary or permanent basis.

(b) *Lock Outs: Civil Actions.* A public employee or labor organization shall have the right to seek declaratory and injunctive relief in the Little River Band of Ottawa Tribal Court against public employers to enforce the prohibition against lock outs set forth in Section 16.07 of this Article XVI.

Upon a finding by the Tribal Court that a public employer has violated section 16.07, the Tribal Court may award such employee or labor organization attorney fees and costs.

(c) *Licenses: Civil Actions, Penalties, Exclusions.* Any labor organization that (1) engages in activities that require a license under this Article XVI without such a license or (2) violates the terms of a license issued by the Gaming Commission in accordance with this Article XVI shall be subject to an action in the Tribal Court by the Gaming Commission or by the Band, through its General Counsel, for declaratory and injunctive relief. Any labor organization found by the Tribal Court to have violated the licensing requirements of this Article XVI or the terms of a license shall be subject to such civil penalty, not to exceed \$5,000. Any labor organization found by the Tribal Court to be in violation the licensing requirements of this Article XVI or the terms of a license issued by the Gaming Commission shall be deemed not legally entitled to be present on tribal lands and subject to exclusion on a temporary or permanent basis.

(d) *Other Tribal Court Declaratory Authority.*

(1) Unresolved disputes between management and an exclusive bargaining representative over the duty to bargain in good faith, involving a controversy over whether a subject conflicts with the laws of the Tribe, may be brought by either party (or by the affected public employer or labor organization) to the Tribal Court for resolution by that member of the Tribal Court who is licensed to practice law by declaratory judgment.

(2) Unresolved disputes regarding an alleged conflict between a provision of a collective bargaining agreement and the laws of Tribe may brought by a party with standing (including the affected public employer or labor organization, an affected public employee, the Gaming Commission, the Tribal Council, or the Ogema) to the Tribal Court for resolution by that member of the Court who is licensed to practice law by declaratory judgment.

(3) Should the Tribal Court find that a party's request for declaratory judgment under subsection d(1) or d(2) of this section is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the action.

(4) A decision of the Tribal Court under subsection d(1) or d(2) of this section shall be final, and there shall be no right of appeal to the Court of Appeals.

16.25 Resolution of Jurisdictional Disputes.

In any case or proceeding commenced under this Article XVI, where the regulatory or adjudicatory jurisdiction of the Band or the Tribal Court is called into question, the Tribal Court shall address the jurisdictional question by means of a declaratory judgment.

16.26 Limited Waiver of Sovereign Immunity.

The waiver of sovereign immunity set forth in Article II, Sec. 2.06 is of no effect with respect to this Article XVI. With respect to this Article XVI, the Tribe hereby waives the sovereign immunity of public employers solely for (1) actions for declaratory and injunctive relief and attorney fees and costs under subsection 16.24(b) and 16.24(d); (2) actions for judicial review and for the specific remedies and sanctions provided for by subsections 16.16(a), 16.16(b), and 16.17(g); and (3) actions in the Little River Band Tribal Court to enforce a collective bargaining agreement.

16.27 Model Band-Union Election Procedures Agreement.

The Tribal Council has adopted, by Resolution Number 08-1015-350, a Model Band-Union Election Procedures Agreement, which may form the basis for future election procedures for a labor organization seeking to represent a bargaining unit within a public employer. The Tribal Council Executive Assistant shall provide a copy of the Model Band-Union Election Procedures Agreement upon written request of any person, organization or entity.

Article XVII. Integrity of Fair Employment Practices Code.

17.1 Findings

(a) The Little River Band of Ottawa Indians has enacted and implemented this Fair Employment Practices Code pursuant to its inherent sovereign authority, confirmed by the decisions of the United States Supreme Court, and pursuant to the Band's Constitution, which has been approved by the United States Secretary of the Interior in accordance with Congress's Act to Restore the Little River Band of Ottawa Indians, 25 U.S.C. §§ 1300k-1300k-7 and the Indian Reorganization Act, 25 U.S.C. § 476.

(b) In providing for procedures, rights, and remedies for employers, employees, and labor organizations under this Code, including those afforded through actions in the Little River Band of Ottawa Indians Tribal Court, the Tribal Council has carefully considered (and continues to consider) the values and interests of the Band in order to establish fair processes, rights, and remedies for the parties and interests at stake. This has included careful consideration of, amongst other things, (i) the time, costs, and inconvenience of parties and witnesses involved in proceedings to resolve controversies or to establish rights and remedies under this Code; (ii) the need to protect the governmental operations of the Band from undue burdens from litigation, while according fair treatment to employees within those operations; and (iii) methods to resolve disputes through early settlement, including mediation.

(c) The integrity of this Code is threatened if parties bypass the procedures, rights, and remedies established herein and seek, instead, to invoke procedures or remedies outside of this Code for controversies that this Code is designed to address and resolve in accordance with the unique public policies of the Band. Investigations or proceedings directed at employers, apart from those provided for by this Code, which seek to address controversies or rights covered by this Code, require the expenditure of time and resources to the detriment of those involved and, in many instances, to the governmental operations of the Band. Such investigations or proceedings also threaten duplicative witness testimony and production of documents already available, or undertaken, pursuant to the provisions of this Code.

17.2 Purpose

The purpose of this Article is to protect the integrity of the procedures, rights, and remedies established by this Code as described in the foregoing findings.

17.3 Definitions

As used in this Article, the following terms have the following meanings:

(a) Employee means any employee of an employer.

(b) Employer means any "employer," as defined in section 3.06 and any "public employer" as defined in section 16.03, and any agent, officer, or representative of such employer.

17.4 Prohibition of Employer Testimony and Documents Disclosure in External Proceedings When Employees Fail to Exhaust Tribal Remedies

(a) *Disclosures only with approval of Tribal Council.* Except with the express, written approval of the Tribal Council, employers are prohibited from giving testimony or witness statements of any kind or producing documents or other information of any kind in response to requests or subpoenas issued by outside authorities, other than those authorities expressly granted powers under this Code, engaged in investigations or proceedings on behalf of current or former employees, when such employees have failed to exhaust their remedies under this Code.

(b) *Examples of failure to exhaust remedies.* For the purposes of subsection 17.4(a), employees shall be deemed to have "failed to exhaust their remedies under this Code" if they have failed to exhaust the procedures, rights, remedies, and appeals (including opportunities to challenge jurisdiction) available under this Code or the procedures of the Little River Band of Ottawa Indians Tribal Court, and have, instead, invoked investigations or proceedings outside of those authorized by this Code to (i) address controversies or rights covered by this Code, such as discrimination (see Article VI), family medical leave (see Article VIII), minimum wages (see Article X), whistleblower protection (see Article XII), and unfair labor practices (see Article XVI, section 16.15) or (ii) challenge the assertion of jurisdiction under this Code.


17.5 Actions for Injunctive Relief to Prevent Disclosures.

The Little River Band of Ottawa Indians Tribal Court shall have authority to grant preliminary and permanent injunctions to prevent employer disclosures in violation of section 17.4, and the sovereign immunity of employers imbued with sovereign immunity from such actions is hereby waived.

17.6 Use of Reports of Fair Employment Practice Investigators.

Reports of Investigators prepared pursuant to sections 6.01-6.02 may be submitted in any proceedings or controversies related to an employee's failure to exhaust remedies under this Code as described in subsection 17.4(b), provided, however, that such reports shall remain subject to section 6.03(b) regarding their admissibility in Tribal Court for the purposes proving or disproving the merits of Charges of Discrimination filed under section 6.02.

I, Janine Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Fair Employment Practices Code adopted by the Tribal Council on July 28, 2010.



Janine Sam
Tribal Council Recorder

[Seal]

APPENDIX VI

ANSWER OF THE LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL GOVERNMENT

(January 6, 2011)

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

LITTLE RIVER BAND OF OTTAWA
INDIANS TRIBAL GOVERNMENT

Respondent

CASE 7-CA-51156

LOCAL 406, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Charging Union

**ANSWER OF THE
LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL GOVERNMENT**

Now comes the Little River Band of Ottawa Indians Tribal Government (*Gaá Ching Zilbi Daáwaa Aníshinaábek*) (the “Band”), through counsel, without waiving any defenses, and hereby sets forth its Answer to the Complaint, in specific reference to the paragraphs of the Complaint, as follows.

1. Admitted.
2. The assertion that the Band “has owned, operated, and managed” the Little River Casino Resort states legal conclusions, requiring no response, but insofar as it states factual allegations, they are denied. The gaming facility known as the Little River Casino Resort operates pursuant to the Indian Gaming Regulatory Act, and, pursuant to that Act, the Band must have the “sole proprietary interest” in the facility. The gaming facility is managed and operated in accordance with the Constitution and laws of the Band, the Indian Gaming Regulatory Act, and the Band’s compact with the State of Michigan.

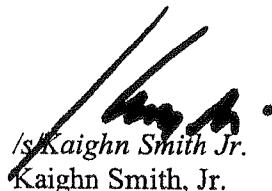
3. The Band admits that its gaming facility generated gross revenues described in paragraph 3. The assertions that the Band's gaming facility is a "business operation" or "place of business" state legal conclusions, requiring no response, but insofar as they state factual allegations, they are denied. The Little River Casino Resort exists only because the Band is a sovereign government and, pursuant to the Indian Gaming Regulatory Act, the gaming facility operates for a governmental purpose.
4. Paragraph 4 states a legal conclusion requiring no response, but insofar as it states factual allegations, they are denied.
5. Paragraph 5 states a legal conclusion requiring no response, but insofar as it states factual allegations, they are denied.
6. Admitted.
7. The Band admits that the FEP Code governs employees at the Little River Casino Resort. The assertion in paragraph 7 that said employees are "its employees" states a legal conclusion, requiring no response, but insofar as that assertion states a factual allegation, it is denied.
8. Paragraph 8, stating that the Band's FEP Code "interferes with, restrains, and coerces employees in the exercise of their rights guaranteed in Section 7 of the Act" states a legal conclusion requiring no response, but insofar as it states factual allegations, they are denied. As to the terms of the sections of the FEP Code recited in subparagraphs 8(a)-(q), which are attached to the Complaint as Exhibit 1, each section speaks for itself.
9. Paragraph 9 states a legal conclusion requiring no response, but insofar as it states factual allegations, they are denied.
10. Paragraph 10 states a legal conclusion requiring no response, but insofar as it states factual allegations, they are denied.

DEFENSES PRESERVED

The Band expressly preserves all defenses, none of which are waived by the filing of this Answer, including, but without limitation:

- A. That the Complaint must be dismissed for want of subject matter jurisdiction.
- B. That the Complaint must be dismissed for failure to state a claim upon which relief may be granted.
- C. That the Complaint must be dismissed on the ground of sovereign immunity.
- D. That the Complaint must be dismissed because the duly enacted laws of the Band may not be subject to challenge pursuant to section 10(a) of the National Labor Relations Act.

Dated: January 6, 2011

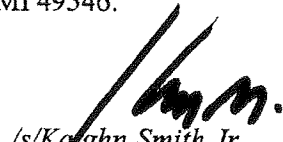

/s/ Kaighn Smith Jr.
Kaighn Smith, Jr.

Counsel for *Gaá Ching Zilbi Daáwaa*
Aniřhinaábek, Respondent

Drummond Woodsum MacMahon
84 Marginal Way, Suite 600
Portland, Maine 04101-2480
Tel: (207) 253-0559
Email: ksmith@dwmlaw.com

Statement of Service

I hereby certify that on January 6, 2011, I served the foregoing Answer upon Local 406, International Brotherhood of Teamsters, through its counsel, Mr. Ted M. Iorio, and to Mr. Ted M. Iorio, by sending the same via electronic mail to Mr. Ted. M. Iorio at titorchmi@aol.com and also by sending the same via Federal Express overnight delivery to Mr. Ted Iorio, Kahniz, Iorio & Feldstein, 4981 Cascade Rd. SE, Grand Rapids, MI 49546.


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

APPENDIX VII

**LETTER, FROM EDITH R. BLACKWELL,
ASSOCIATE SOLICITOR, U.S. DEPT. OF THE INTERIOR,
TO RONALD MEISBURG, GENERAL COUNSEL AND
JOHN E. HIGGINS, JR., DEPUTY GENERAL COUNSEL,
NATIONAL LABOR RELATIONS BOARD**

(January 15, 2009)



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

In reply, please address to:
Main Interior, Room 6513

Ronald Meisburg, General Counsel
John E. Higgins, Jr., Deputy General Counsel
National Labor Relations Board
1099 14th St. N.W.
Washington, D.C. 20570-0001

JAN 15 2009

Dear Messrs. Meisburg and Higgins:

At the request of the Little River Band of Ottawa Indians (Band) and in response to the expressed interest of the Regional Counsel in hearing the views of the Department of the Interior (DOI), I write to express DOI's disagreement with the position taken by the National Labor Relations Board's (NLRB or Board) Regional Director in Grand Rapids, Michigan in the matter of the Little River Band of Ottawa Indians (GR-7-CA-5116). In this matter the Board has issued subpoenas to the Band as part of an enforcement action which attacks the Band's constitution and labor ordinances as unfair labor practices. 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. The proper avenue for challenging the Band's constitution and labor ordinances is a direct preemption case brought by the Board in Federal district court, not an unfair labor practice charge.

The Little River Band of Ottawa Indians is a federally recognized Indian tribe, restored to federal recognition by Congress pursuant to 25 U.S.C. §§ 1300k-1300k-7. The Little River Band of Ottawa Indians Tribal Government (the "Tribal Government") is established pursuant to the Band's Constitution, which was promulgated under 25 U.S.C. § 1300k-6 and approved by the United States Department of the Interior, as provided by the Indian Reorganization Act, 25 U.S.C. § 476 ("IRA"). As a sovereign entity, the Band has authority to govern labor relations within its jurisdiction. Like any other sovereign, it cannot be charged with an unfair labor practice simply for the act of establishing labor laws. But that is exactly what has happened in this matter. The NLRB seeks to enforce the National Labor Relations Act (NLRA) against the Band solely on the basis of its constitution and labor ordinances. This fact is made clear by the words of the Charge against the Band.

Since on or about January 1, 2008, and prior thereto, the respondent 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 its 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.

The NLRB has a direct means to seek to establish that the Band's laws are preempted by the NLRA in 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); *NLRB v. State of North Dakota*, 504 F. Supp.2d 750 (D.N.D. 2007); *NLRB v. State of New York*, 436 F.Supp. 335 (E.D.N.Y.1977), *aff'd*, 591 F.2d 1331 (2nd Cir.1978). The NLRB cannot challenge the sovereign acts of the Band in adopting its constitution and promulgating its labor ordinances as if those acts were merely those of a private employer. Just as the NLRB cannot charge a state government with an unfair labor practice for promulgating state labor laws, it cannot charge a tribal government for promulgating tribal labor laws.

I urge you to contact the Grand Rapids Field Office to put an end to this enforcement action as soon as possible. Please feel free to contact Jane Smith (202-208-5808), the person on my staff handling this matter, should you have any questions or need additional information.

Sincerely,



Edith R. Blackwell
Associate Solicitor

cc: Hon. Don Koon, Tribal Council Speaker
Stephen M. Glasser, Regional Director, NLRB
Steven Carlson, Attorney NLRB

STATEMENT OF SERVICE

Copies of this Statement of Undisputed Facts and accompanying affidavits and exhibits have this day been served upon the following by electronic mail to the email addresses shown:

- ☐ Brad Howell, Esq., National Labor Relations Board (brad.howell@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)

This Statement of Undisputed Facts and accompanying affidavits and exhibits has this day been electronically filed with the Executive Secretary of the National Labor Relations Board.

Dated: March 4, 2011

/s/ Kaighn Smith, Jr.

Kaighn Smith, Jr.
Counsel for the Little River Band of
Ottawa Indians Tribal Government
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84 Marginal Way, Suite 600
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