

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

SAGINAW CHIPPEWA INDIAN
TRIBE OF MICHIGAN,

Petitioner/Cross-
Respondent,

NATIONAL LABOR RELATIONS
BOARD,

Respondent/Cross-Petitioner.

Nos. 13-1569, 13-1629

DECLARATION OF WILLIAM SZOTKOWSKI

[illegible]

1. My name is William Szotkowski, and I am the lead counsel in this appeal for Petitioner Saginaw Chippewa Indian Tribe of Michigan (the “Tribe”).
2. Attached hereto as Exhibit A is a true and correct copy of the Tribe’s Notice of Supplemental Authority filed in National Labor Relations Board (the “Board”) Case No. 07-CA-053586 on March 5, 2013.
3. Attached hereto as Exhibit B is a true and correct copy of a May 20, 2014 Petition filed with the Board seeking certification of a representative in *SPFPA v. Soaring Eagle Casino & Resort*, Case No. 07-RC-129013.

4. The Board will hold a representation hearing in Case No. 07-RC-129013 on August 5, 2014. At that hearing, the Tribe must once again re-present its jurisdictional challenge—including by offering expert and lay testimony—or waive it.
5. To the knowledge of counsel for the Tribe, Case No. 07-RC-12901 is the fifth time that the Board has attempted to assert jurisdiction over the Tribe and its wholly-owned Soaring Eagle Casino and Resort since 2007.
6. In response to this latest attempt by the Board to assert jurisdiction over the Tribe, and in another effort to forego duplicative efforts in Board proceedings that will certainly take months but could take years, counsel for the Tribe proposed that the Board stay the representation hearing in Case No. 07-RC-12901 until this Court has ruled on whether the Board has jurisdiction over the Tribe under the Act. The Board refused, and now the Tribe is in the middle of election preparations under the National Labor Relations Act in addition to litigating this case and preparations for the representation hearing in Case No. 07-RC-129013.
7. Attached hereto as Exhibit C is a true and correct copy of a February 23, 2008 article from The Morning Sun newspaper.

8. Attached hereto as Exhibit D is a true and correct copy of a Board press release dated August 5, 2010, which was downloaded from the Board's website on July 14, 2014 at <http://www.nlr.gov/news-outreach/news-releases>
9. I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 17, 2014

s/William A. Szotkowski
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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**SOARING EAGLE CASINO AND RESORT,
AN ENTERPRISE OF THE SAGINAW
CHIPPEWA INDIAN TRIBE OF MICHIGAN,**

Respondent,

Case No. 07-CA-053586

and

**INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE, AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW),**

Charging Party.

NOTICE OF SUPPLEMENTAL AUTHORITY

With this filing, Respondent Saginaw Chippewa Indian Tribe of Michigan respectfully notifies the Board that the decision of the D.C. Circuit Court of Appeals in *Canning v. NLRB*, __ F.3d __, 2013 WL 276024 (D.C. Cir. Jan. 25, 2013) suggests that the Board, as presently constituted, does not have jurisdiction to render a decision in this consolidated appeal, because it lacks a duly appointed quorum.

In *Canning*, the D.C. Circuit held that the appointments of Sharon Block, Terence F. Flynn, and Richard F. Griffin to the Board, purportedly made by President Obama on January 4, 2012, were invalid from inception because they were made in violation of the Recess Appointments Clause of the Constitution, U.S. CONST. art II, § 2, cl. 3. The Recess Appointment Clause provides that: “[t]he President shall have Power to fill up all Vacancies that may happen

during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.” *Id.* art. II, § 2, cl. 3. *Canning*, 2013 WL 276024 at *7, *16 (the term “the Recess” is limited to the intersession recess, and none of the three appointments at issue were made during that time), *21-23 (the word “happen” permits only the filing of vacancies that arise during the recess, and none of the vacancies at issue in the case did so). Because those appointments were invalid, the Circuit reasoned, the Board lacked a quorum on the day it issued the *Canning* decision, and that decision was therefore void. *Id.*

In light of the D.C. Circuit decision in *Canning*, the Board may want to consider suspending a decision on the instant appeal until either other courts, including the Sixth Circuit, Court of Appeals or the Supreme Court, have spoken to the issue, or the President and Congress have taken the actions which the Court of Appeals in *Canning* indicated would be necessary to secure the Board’s jurisdiction in the matter.

Respectfully submitted this 5th day of March, 2013

s/ William A. Szotkowski
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Attorney for Respondent

05/20/2014 13:44 1-586-772-9644

SPFPA INT.UNION

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INTERNET
FORM NLRB-502
(2-09)UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

FORM EXEMPT UNDER 44 U.S.C.

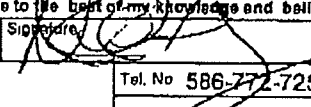
DO NOT WRITE IN THIS SPACE

Case No.
07-RC-129013 Date Filed
May 20, 2014

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
- ☒ RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Employer.
- ☐ RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) ☐ In unit not previously certified, ☐ In unit previously certified in Case No. _____
- ☐ AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2. Name of Employer Soaring Eagle Casino & Resort		Employer Representative to contact Joseph Sowmick	Tel. No. 989-775-4000
3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 7070 E Broadway, Mt. Pleasant, MI 48858		Fax No. 989-775-8383	
4a. Type of Establishment (Factory, mine, wholesaler, etc.) SECURITY	4b. Identify principal product or service SECURITY	Call No. e-Mail	
5. Unit involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.) Included SEE ATTACHMENT A		6a. Number of Employees in Unit Present 110 Proposed (By UC/AC)	
6b. Is this petition supported by 30% or more of the employees in the unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No *Not applicable in RM, UC, and AC			
7. (If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)			
7a. <input type="checkbox"/> Request for recognition as Bargaining Representative was made on (Date) NONE MADE and Employer declined recognition on or about (Date) _____ (If no reply received, so state).			
7b. <input type="checkbox"/> Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8. Name of Recognized or Certified Bargaining Agent (If none, so state) NONE		Affiliation	
Address		Tel. No.	Date of Recognition or Certification
		Cell No.	Fax No. e-Mail
9. Expiration Date of Current Contract, if any (Month, Day, Year) NONE		10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)	
11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		11b. If so, approximately how many employees are participating?	
11c. The Employer has been picketed by or on behalf of (Insert Name) _____, a labor organization, at (Insert Address) _____ Since (Month, Day, Year) _____			
12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state) NONE			
Name		Address	
Tel. No.		Fax No.	
Cell No.		e-Mail	
13. Full name of party filing petition (If labor organization, give full name, including local name and number) INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)			
14a. Address (street and number, city, state, and ZIP code) 25510 KELLY ROAD ROSEVILLE, MI 48066		14b. Tel. No. EXT 586-772-7250	14c. Fax No. 586-772-9644
		14d. Cell No.	14e. e-Mail
15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization) INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)			
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) David L. Hickey		Signature 	
Address (street and number, city, state, and ZIP code) 25510 KELLY ROAD ROSEVILLE, MI 48066		Title (if any) International President	
		Tel. No. 586-772-7250	Fax No. 586-772-9644
		Cell No.	e-Mail ORGANIZE@SPFPA.ORG

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT B

RECEIVED
NLRB REGION 7
2014 MAY 20 PM 1:40
DETROIT, MI

05/20/2014 13:44 1-586-772-9644

SPFPA INT.UNION

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Attachment A

ATTACHMENT TO PETITION:

ALL FULL-TIME AND REGULAR PART-TIME ARMED AND UNARMED SECURITY OFFICERS PERFORMING
GUARD DUTIES AS DEFINED IN SECTION 9 (b) (3) OF THE NATIONAL LABOR RELATIONS ACT, AS
AMENDED, EMPLOYED BY SAGINAW CHIPPEWA INDIAN TRIBE D/B/A SOARING EAGLE CASINO & RESORT
@ 6800 SOARING EAGLE BLVD., MT. PLEASANT, MI 48858.

The Morning Sun (<http://www.themorningsun.com>)

Security force may still have union vote

Saturday, February 23, 2008

The leader of the drive to organize security guards and surveillance workers at the Soaring Eagle Casino & Resort said his union fully expects another representation election in about six months.

"Our strategy all along was not to go forward with an election at this time," said Steve Maritas, organizing director for the International Union Security Police & Fire Professionals of America, "but rather to hold it six months from now."

Maritas, in an e-mail to the Morning Sun, said the union filed for an election even though it had signed representation cards from only 35 percent of the members of the proposed bargaining unit.

Typically, most unions won't file for a representation election until they have signed requests from about 70 percent of the people they want to represent. Maritas said his union's normal requirement is 80 percent.

But with the Soaring Eagle, the security union followed a different strategy.

Under federal labor law, an employer must turn over the names and addresses of all the members of a proposed bargaining unit to a union before an election. That allows the union to ensure that people who are supposed to vote in the representation election can vote, and people who aren't supposed to vote don't vote.

The Tribe strongly disputes the jurisdiction of the National Labor Relations Board over Tribal employees, and the Tribal Council has passed a Tribal labor law that all but outlaws unions on the reservation. But the Tribe has been following federal labor law in an admitted effort to stave off potential legal challenges.

Maritas said by requesting the election, the union got what it wanted - the full mailing list - a valuable organizing tool. He said the union had just sent copies of union contracts at Detroit casinos to Soaring Eagle security employees.

"This strategy will now put Soaring Eagle on the defensive," Maritas said, "since our wage rates are at \$16 per hour, vs. the \$10 and \$11 wage rates."

Maritas said the scheduled election put casino management into what he termed "panic mode, hiring a union-busting firm" to conduct what he called "a fear campaign" he estimates cost several hundred thousand dollars.

"The strategy here was to allow the security officers to see what to expect from management and allow Soaring Eagle to shoot all their bullets in anticipation of an election," Maritas said. "Once the security officers are educated on union-busting tactics, management's fear campaign becomes ineffective."

Maritas said the security union organizing drive now will move into full force.

He plans to set up a local union with an interim executive board, assign a union representative to monitor grievances, provide legal assistance if necessary, and he wouldn't rule out picketing.

The Teamsters have been attempting to organize casino employees for more than a year, after a federal appeals court ruling said workers at Native-owned casinos owned by Tribes that pay per-capita payments could be organized.

The security union joined the organizing effort because security officials might have to deal with other employees. It would be a conflict of interest to have security and surveillance workers belong to the same union as other casino workers.

Late last year, the housekeeping staff at the Soaring Eagle soundly rejected membership in the Teamsters union after a strong anti-union campaign by casino management. The vote in that election was about 2 to 1 against joining the union.

Maritas said he expects a security union election - a real one - to take place some time in August. Teamsters leaders haven't said if they plan representation elections in other bargaining units, but have brought in organizers from additional locals for the organizing effort.

"Both the SPFPA and the Teamsters are here to stay," Maritas said.

URL: <http://www.themorningsun.com/20080223/security-force-may-still-have-union-vote>

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Press Release

National Labor Relations Board

August 5, 2010

Contact:

Office of Public Affairs
202-273-1991
publicinfo@nrlb.gov
www.nrlb.gov

NLRB issues first decisions involving returned two-member cases
Also posts database of all two-member Board decisions with status updates

The National Labor Relations Board today issued its first decisions in cases that were returned to it by the federal courts of appeals following a Supreme Court ruling that the Board was not authorized to decide cases when it had only two members, Chairman Wilma Liebman and Member Peter Schaumber.

Also today, the Agency made public a database of all contested cases that were decided by the two-member Board. The list of cases, available [here](#) and via the Agency website at www.nrlb.gov, includes links to original documents and case status updates that will be refreshed daily. A full data set of all the cases is also available in xml format for download.

From January 2008 to April 2010, the Board operated with three of its five seats vacant. During that 27-month period, the two remaining members issued nearly 600 decisions. On June 17, a divided Supreme Court ruled that the two-member Board was not authorized to issue decisions.

Since then, dozens of the two-member decisions that had been challenged in federal appellate courts have been returned to the Board for new consideration.

Meanwhile, hundreds of the other two-member cases were closed through compliance with the original Board decision, settlement, withdrawal or other means. Still more are in some stage of litigation or compliance stemming from the original decision. It is unclear how many of those rulings can or will be contested.

The four decisions issued today were in cases that had been pending in federal appeals courts at the time of the Supreme Court decision, and were returned to the Board.

The cases are: *SPE Utility Contractors, LLC*, 7-CA-50767 (unlawful discharge); *Chrysler, LLC*, 7-CA-51553 (refusal to provide information); *ADF, Inc.*, 1-CA-45068 (repudiation of collective bargaining agreement and withdrawal of recognition); and *Regal Health and Rehabilitation Center, 13-CA-44481, et al.* (unlawful conduct during organizing campaign, with bargaining order granted).

The Board is now at full strength with five members. As described in an earlier press release, each case returned to the Board will be considered by a three-member panel which will include Chairman Liebman and Board Member Schaumber. Consistent with Board practice, the two other Board members not on the panel will have the opportunity to participate in the case if they so desire.

The National Labor Relations Board is an independent federal agency vested with the power to safeguard employees' rights to organize and to determine whether to have unions as their bargaining representative. The agency also acts to prevent and remedy unfair labor practices committed by private sector employers and unions.

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