

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Soaring Eagle Casino and Resort,

Respondent,

and

Case No. 07-CA-053586

International Union, Security, Police And Fire  
Professionals of America (SPFPA),

Charging Union.

**Motion of Respondent Soaring Eagle Casino and Resort to Expedite  
Disposition Upon Remand**

The Respondent Saginaw Chippewa Indian Tribe of Michigan d/b/a Soaring Eagle Casino and Resort (the “Tribe”) hereby moves for expedited disposition of this case now that it has been remanded from the Sixth Circuit. The case is fully ready for decision, and the Board should expedite this case on its docket.

- 1. This case, which attacks the tribe’s governmental authority and violates its inherent and treaty-protected rights, has gone on for years.**

This case began three years ago with an unfair labor practices charge against the Tribe. In the years that followed, the Tribe dutifully endured the all-but-predetermined<sup>1</sup> Board proceedings challenging the Board’s illegal assertion of jurisdiction over the Tribe and its wholly-owned business the Soaring Eagle Casino and Resort. The Board purported to affirm its assertion of jurisdiction in its April 16, 2013 Decision and Order

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<sup>1</sup> See April 16, 2013 Order Decision and Order (“April 16, 2013 Order”) (describing earlier assertions of Board jurisdiction).

determining that the National Labor Relations Act<sup>2</sup> applies to the Tribe, and ordering the Tribe to cease and desist from enactment and enforcement of its no-solicitation policy (a law passed by the Tribe's governing body). The Tribe appealed the decision to the Sixth Circuit, and the Board cross petitioned for enforcement of the April 16, 2013 Order. The parties fully briefed the appeal and appeared for oral argument on June 26, 2014. Shortly before oral argument on the morning of June 26, 2014, the United States Supreme Court issued its opinion in *NLRB v. Noel Canning*.<sup>3</sup>

*Noel Canning* held that the President's appointment of three Board members in January of 2012 was not a constitutional exercise of power.<sup>4</sup> The underlying Charge and Administrative Law Judge hearing in this case both occurred while the Board was duly constituted, before the unconstitutional appointments were seated. But the Board issued its April 16, 2013 Order while the quorum included unconstitutional appointments, such that, under *Noel Canning*, the Board lacked authority to act at the time it considered the record and ruled in this matter. On August 5, 2014, the Sixth Circuit vacated and remanded the case to the Board for further review by the now-Constitutional Board.

Meanwhile, as this case enters its second round of Board proceedings, the Tribe faces additional Board action at its Soaring Eagle Casino and Resort. On May 20, 2014, the Board served the Tribe with a Petition seeking certification of a representative election.<sup>5</sup> In this, the fifth improper assertion of Board jurisdiction over the Tribe in approximately eight years, the Board held a representation hearing on August 5, 2014

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<sup>2</sup> 29 U.S.C. § 151 *et seq.* (the "Act").

<sup>3</sup> No. 12-1281, \_\_\_ S.Ct. \_\_\_, 2014 WL 2882090.

<sup>4</sup> *Id.* at \*5.

<sup>5</sup> Board Case No. 07-RC-129013. This is the second petition filed by the International Union of Security, Police and Fire Professionals of American (SPFPA).

(“Fifth Board Proceeding”). At that hearing, the Tribe had to once again re-present its jurisdictional challenge defense. And as it stands, there is nothing preventing additional Board proceedings levied against the Tribe while the Board reconsiders the April 16, 2013 Order and a likely re-appeal ensues.

Each unlawful assertion of Board jurisdiction efforts bleed Tribal time and resources away from Tribal governmental operations, governmental services, and members. Each day that the question of the Board’s assertion of jurisdiction remains unanswered exposes the Tribe to further expense and uncertainty and continued violation of its inherent sovereign and treaty-protected rights.

**2. The Board has committed to considering this case simultaneously with two other expedited Tribal cases currently before it on remand.**

The Board has two other cases on its docket concerning tribal challenges to the Board’s exercise of jurisdiction in violation of inherent and treaty-protected rights to self-govern and exclude unwanted persons from their territory: *Little River Band of Ottawa Indians Tribal Government*, Case No. 07-CA-051156, and *Chickasaw Nation v. International Brotherhood of Teamsters Local 886*, Case Nos. 17-CA-25031 and 17-CA-251231. Both have been remanded in the wake of *Noel Canning* for consideration by the now duly-appointed Board.

In 2012, the Board entered an order granting the stipulated request of the Chickasaw Nation **and** the Board’s representation to expedite consideration and to simultaneously consider the Chickasaw case with both this proceeding and the Little River proceeding.<sup>6</sup> Furthermore, in the Sixth Circuit’s remand order in the *Little River*

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<sup>6</sup> Board’s September 5, 2012 Order granting the parties’ July 19, 2012 Joint Motion (Case Nos. 17-CA-25031 and 17-CA-251231).

case, the Circuit stated that “we expect that the NLRB will also proceed expeditiously on remand.”<sup>7</sup> Given that the Board has committed to considering these Indian-law cases simultaneously,<sup>8</sup> that the Board has committed to expedited review in the Chickasaw Nation proceeding, and that the Sixth Circuit has directed the Board to proceed expeditiously in the Little River proceeding, this case is likewise entitled to expedited consideration.

**3. Expedited disposition of this case is consistent with federal policy and mandate.**

This case presents grave concerns for the Tribe about violation of its inherent sovereign rights, exercise of its treaty-protected rights, and its essential governmental function. These are of the highest order for the Tribe, as the Soaring Eagle Casino and Resort at issue in this case is the monetary lifeblood of the Tribe’s government, governmental services and the health and welfare of its members along with support it provides to local governments and communities. But competing federal interests reinforce the need for expedited disposition.

Congress confirms that “[t]he United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government,” and “through statutes, treaties, and the exercise of administrative authorities, [Congress] has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes.”<sup>9</sup> The Supreme Court consistently recognizes

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<sup>7</sup> Sixth Circuit Case No. 13-1464, Docket No. 128-2 at 1.

<sup>8</sup> The Board also recently indicated its interest in simultaneous consideration of the three Indian law cases in the Board’s appellate filings for vacate and remand. See Sixth Circuit Case No. 13-1569, Docket No. 89 at p. 6.

<sup>9</sup> 25 U.S.C. § 2601(2)-(3) (2001).

Congress's commitment to "a policy of supporting tribal self-government and self-determination."<sup>10</sup> The executive branch has likewise been vocal about its commitment to the relationship between the federal government and Indian governments.<sup>11</sup>

The relationship that each branch of the federal government affords to tribes should likewise be reflected in the manner by which the Board treats a case that challenges the Tribe's exercise of inherent sovereign rights and treaty-protected rights. Consistent with the issues the federal government's relationship to Indian nations, and given the importance of the issues presented in this case, now entering into its fourth year, should receive high priority for an expedited disposition.

### **Conclusion**

For all of these reasons, the Band respectfully asks the Board to grant this motion and expedite decision in this case.

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<sup>10</sup> *E.g.*, *National Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 856 (1985); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14 & n.5 (1987).

<sup>11</sup> See, 74 Fed. Reg. 57,881 (Nov. 9, 2009), President's November 5, 2009 Memorandum for the Heads of Executive Departments and Agencies ("The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions."); Exec. Order No. 13,175, § 2 (a)-(c), 65 Fed. Reg. 67,249 (Nov. 9, 2000) (affirming the sovereign authority of Indian Tribes and emphasizing that "[t]he United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.").

Dated: August 13, 2014

Respectfully Submitted,

s/William A. Szotkowski

William A. Szotkowski  
Jessica Intermill  
Jessica Stomski Seim  
Hogen Adams PLLC  
1935 W. County Road B2, Suite 460  
St. Paul, Minnesota 55113  
Tele: (651) 842-9100  
bszotkowski@hogenadams.com  
jintermill@hogenadams.com  
jseim@hogenadams.com

Sean Reed  
General Counsel  
Saginaw Chippewa Indian Tribe  
7070 East Broadway  
Mt. Pleasant, Michigan 48858  
Tele: (989) 775-4032  
Fax: (989) 773-4614  
E-mail: sreed@sagchip.org

## **STATEMENT OF SERVICE**

Copies of this Motion have this day been served upon the following by electronic mail to the email addresses shown:

Ms. Linda Dreeben  
National Labor Relations Board  
Appellate Court Branch  
1099 14th Street, NW, Ste. 8100  
Washington, DC 20570  
Direct Phone: (202) 273-2960  
Email: linda.dreeben@Board.gov  
appellatecourt@Board.gov

Ms. Kira Dellinger Vol  
National Labor Relations Board  
Appellate Court Branch  
1099 14th Street, NW, Ste. 8100  
Washington, DC 20570  
Direct Phone: (202) 273-0656  
Email: kira.vol@Board.gov  
appellatecourt@Board.gov

Ms. Jill Griffin  
National Labor Relations Board  
Injunction Litigation Branch  
1099 14th Street, NW, Ste. 8200  
Washington, DC 20570  
Direct Phone: (202) 273-2949  
Email: jill.griffen@Board.gov

This Motion has this day been electronically filed with the Executive Secretary of the National Labor Relations Board.

Dated: August 13, 2014

/s/William A. Szotkowski  
William A. Szotkowski  
Jessica Intermill  
Jessica Stomski Seim  
Hogen Adams PLLC  
1935 W. County Road B2, Suite 460  
St. Paul, Minnesota 55113  
Tele: (651) 842-9100  
bszotkowski@hogenadams.com

**Counsel for Saginaw Chippewa Indian  
Tribe of Michigan**