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7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10
11 UNITE HERE LOCAL 19,

12 Petitioner,

13 v.

14 PICAYUNE RANCHERIA OF
15 CHUKCHANSI INDIANS;
16 CHUKCHANSI ECONOMIC
17 DEVELOPMENT AUTHORITY; DOES
18 1-100,

19 Respondents.

No.

20 **PETITION TO CONFIRM ARBITRATION AWARD**

21 1. This is a petition to confirm an arbitration award issued under the Collective
22 Bargaining Agreement between Petitioner UNITE HERE Local 19 and Respondent Picayune
23 Rancheria of Chukchansi Indians, by and through the Chukchansi Economic Development
24 Authority (hereinafter, collectively, "Chukchansi"). The arbitration award directs that two
25 discharged employees of Chukchansi's casino are to be reinstated and made whole through
26 payments of back pay and front pay. To date, the two employees have not been reinstated and
27 have not received any backpay or front pay from Chukchansi.

28 **PARTIES**

2. Petitioner UNITE HERE Local 19 (hereinafter, "Local 19") is an affiliate of

1 UNITE HERE International Union and represents employee members in Madera County,
2 California. Local 19 is a labor organization that represents employees in industries affecting
3 commerce within the meaning of Section 301(a) of the Labor Management Relations Act
4 (“LMRA”), 29 U.S.C. §185(a).

5 3. Respondent Picayune Rancheria of Chukchansi Indians is an Indian tribe
6 (hereinafter, “the Tribe”) that owns and operates the Chukchansi Gold Resort and Casino in
7 Madera County, California (hereinafter, “the Casino”) through an entity called the Chukchansi
8 Economic Development Authority (hereinafter, “CEDA”). The Tribe is an employer within the
9 meaning of Section 301(a) of the LMRA, 29 U.S.C. § 185(a).

10 4. Respondent CEDA is wholly owned by the Tribe. CEDA is controlled by the
11 Tribe’s governing body, which is known as the Tribal Council. According to the Tribe’s law,
12 CEDA’s Board of Directors is comprised of all of the members of Tribal Council, and the Tribal
13 Council’s members are the only members of CEDA’s Board of Directors. CEDA is an employer
14 within the meaning of Section 301(a) of the LMRA, 29 U.S.C. § 185(a).

15 5. Local 19 is ignorant of the true names and capacities of respondents sued herein as
16 Does 1-100, inclusive, and therefore sues these respondents by such fictitious names. Local 19
17 will amend this complaint to allege their true names and capacities when ascertained. Local 19 is
18 informed and believed and thereon alleges that each of these fictitiously named respondents is
19 responsible in some manner for the failure of Chukchansi to comply with Arbitration Award.

20 **JURISDICTION AND VENUE**

21 6. This Court has jurisdiction pursuant to Section 301 of the LMRA, 29 U.S.C. §
22 185(c) and the Federal Arbitration Act, 9 U.S.C. § 1 et seq.

23 7. Venue lies within this judicial district pursuant to Section 301(a) of the LMRA, 29
24 U.S.C. §185(a), and also pursuant to 28 U.S.C. § 1391(b) and 9 U.S.C. § 9 because the arbitration
25 proceedings involved herein were held and the award was made in Madera and Fresno Counties.

26 **GENERAL ALLEGATIONS**

27 8. UNITE HERE International Union and the Tribe are parties to a Collective
28 Bargaining Agreement (hereinafter, “the Agreement”). The Tribe entered into the Agreement by

1 and through CEDA. Local 19 negotiated, administered and enforced the Agreement on behalf of
2 UNITE HERE International Union. A true and correct copy of the Agreement is attached as
3 Exhibit A to this Petition.

4 9. The Agreement contains a grievance procedure set forth in Section 29, which
5 defines a “grievance” as a “dispute between the Employer and the Union, involving the meaning,
6 or application of this Agreement, or the alleged violation of any provision of this Agreement by
7 the Employer or the Union.” Throughout the Agreement, the words “the Employer” are used to
8 refer to the Tribe, and the words “the Union” are used to refer to UNITE HERE International
9 Union.

10 10. Step 5 of the grievance process set forth in Section 29 of the Agreement provides
11 for arbitration of grievances before an arbitrator chosen from a panel provided by the Federal
12 Mediation and Conciliation Service.

13 11. Section 29(6) of the Agreement provides, in part, “For the sole purpose of enabling
14 a suit to compel arbitration or to confirm an arbitration award under this Agreement or the
15 Employer’s Tribal Labor Relations Ordinance, the Employer agrees to a limited waiver of
16 sovereign immunity and consents to be sued in federal court, without exhausting tribal remedies.”

17 12. Jarrod Woodcock and May Pitman were employed at the Casino and were
18 represented by Local 19 until various dates in 2012 when they were discharged. Section 23 of the
19 Agreement provides, in part, that “The Employer shall only discipline, suspend or discharge
20 employees for reasons of just cause.” During the term of the Agreement, Local 19 had disputes
21 with Chukchansi regarding whether Jarrod Woodcock and May Pitman were discharged for just
22 cause (hereinafter collectively, “the Grievances”).

23 13. Local 19 and Chukchansi agreed to submit the Grievances to arbitration in a
24 single, combined arbitration proceeding under Section 29 of the Agreement. Local 19 and
25 Chukchansi selected Arbitrator Patrick Halter, from among a panel of arbitrators provided by the
26 Federal Mediation and Conciliation Service, to arbitrate the Grievances.

27 14. Local 19 and Chukchansi agreed to hold the arbitration hearing on September 4,
28 2013. The arbitration hearing began on September 4, 2013, but did not conclude that day. Local

1 19 and Chukchansi agreed to continue the arbitration hearing on October 3, 2013. The arbitration
2 hearing was held and concluded on October 3, 2013. Arbitrator Halter provided Local 19 and
3 Chukchansi with an opportunity to submit post-hearing briefs by December 2, 2013, which both
4 Local 19 and Chukchansi did.

5 15. On or about February 24, 2014, Arbitrator Halter issued an arbitration award in the
6 Grievances (hereinafter, "the Arbitration Award"), which Arbitrator Halter provided to counsel
7 for Local 19 and Chukchansi by email on February 24, 2014. A true and correct copy of the
8 Arbitration Award is attached as Exhibit B to this Petition.

9 16. The Arbitration Award provides, "In sum, grievants Woodcock and Pitman were
10 suspended and discharged without just cause. The remedy to cure the numerous violations of the
11 CBA is reinstatement with a make whole remedy that includes backpay with interest, tips for
12 Woodcock, restoration of seniority, contributions to retirement, reimbursement of health
13 insurance premiums and expenses, and any other employment benefits unjustly denied due to
14 their wrongful suspensions and discharges. Front pay is also awarded should the Tribe Employer
15 not reinstate the grievants. In other words, the Union's requested remedy is granted."

16 17. Chukchansi has not reinstated Jarod Woodcock or May Pitman. Chukchansi has
17 not paid any money to, or on behalf of, Jarod Woodcock or May Pitman as backpay, front pay,
18 interest, tips, retirement contributions, reimbursement of health insurance premiums or expenses,
19 or any other employment benefits to comply with the Arbitration Award or since the Arbitration
20 Award was issued.

21 **CAUSE OF ACTION – Order Compelling Arbitration**

22 18. Local 19 incorporates by reference the allegations contained in Paragraphs 1 to 17
23 as if fully set forth herein.

24 19. The Arbitration Award is final and binding upon Chukchansi.

25 20. Chukchansi has failed and refused to comply with the Arbitration Award.

26 **REQUEST FOR RELIEF**

27 Wherefore, Local 19 prays that this Court:

28 a. Enter a judgment in Local 19's favor confirming the Arbitration Award and

1 enforcing said award as a judgment of the Court;

2 b. Award Local 19 its costs and reasonable attorneys fees expended in bringing this
3 petition;

4 c. Award to Local 19 any and all other relief as this Court deems just and proper.

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6 Dated: July 18, 2014

Respectfully submitted,

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COLLECTIVE BARGAINING AGREEMENT

Between

**THE PICAYUNE RANCHERIA OF
CHUKCHANSI INDIANS
OF CALIFORNIA**

**By and Through Its Authorized
Government Agency, The Chukchansi
Economic Development Authority**

and

UNITE HERE, INTERNATIONAL UNION



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Collective Bargaining Agreement

This Agreement is made and entered into by and between Picayune Rancheria of Chukchansi Indians, by and through its authorized government agency, the Chukchansi Economic Development Authority, hereinafter referred to as the "Employer" and the UNITE HERE International Union, hereinafter referred to as "Union." The Employer and the Union agree that the Tribal Labor Relations Ordinance (TLRO) adopted by the Employer as a requirement of the Tribal/State Compact between the Employer and the State of California is the applicable law with regard to labor relations within the jurisdiction of the Employer.

Section 1. Term

This Agreement shall be in effect the period commencing midnight April 20, 2010 and continuing through and including 11:59 p.m., April 19, 2014, hereinafter the "Termination Date". At least ninety (90) days, but not more than one hundred fifty (150) days before the Termination Date, either party may serve notice upon the other by Certified Mail, of a desire to terminate, change or modify this Agreement, or any part thereof. In the event no such notice is given, this Agreement shall be renewed from year to year after the expiration date herein, subject to written notice of termination or modification at least ninety (90) days, but not more than one hundred fifty (150) days, prior to any subsequent anniversary date of this Agreement. If, prior to the expiration date, following submission of such notice, unless time is mutually extended, the parties fail to reach an agreement, then either party shall be free to strike or lockout, upon or after such expiration date.

Section 2. Recognition

The Union shall be recognized as the sole Collective Bargaining Agent for all employees employed by the Employer, in the bargaining unit described in Appendix A, performing work at Chukchansi Gold Resort and Casino, 711 Lucky Lane, Coarsegold, California, consisting of the employee job classifications in use by the Employer on November 19, 2004.

Section 3. Management Rights

Subject only to limitations as may be imposed by this agreement, the Union recognizes that the management of the business and the direction of the working force is vested exclusively in the Employer, including but not limited to the right reasonably: to schedule work; to determine whether a position is to be filled by a full time or part time employee; to assign work and working hours to employees; to decide the work amount and location; to determine the type of services performed; to establish reasonable quality and performance standards; to require from every employee compliance with normal operating procedures; to formulate and enforce employer rules and regulations now in effect or hereinafter enacted; to hire, suspend, promote, demote, transfer, discharge, discipline for cause, or relieve employees from duty because of lack of work or for other legitimate reasons; to maintain discipline and efficiency of employees; to judge skill, ability, and physical fitness; to create, eliminate or consolidate job classifications; to control and regulate the use of all equipment and other property of the Employer; and to subcontract work. The above listed rights reserved to the Employer are not intended to deny or limit the Employer in relation to other managerial rights which are not covered by this agreement

and which have been previously exercised.

Section 4. Native American Preference

The Employer operates on land owned or entrusted to the Picayune Rancheria of Chukchansi Indians. Therefore, Chukchansi Tribal members, their spouses and children, and enrolled members of federally recognized tribes will have preference with respect to personnel decisions over layoffs, recalls, promotions, transfers, training and hiring. For purposes of hiring and promotions, all candidates must possess the "basic qualifications". Basic qualifications are defined as those entry-level qualifications essential to the performance of the basic responsibilities for each job category, including but not limited to education, training, specific work experience, employment record and physical skills (where applicable).

Section 5. Union Activity

1. There shall be no discrimination against any employee who chooses to engage in or refrain from Union activity.
2. The Employer shall not penalize an employee in any way as a result of an employee filing a grievance or complaint in good faith against the Employer or the Union.
3. Neither the Union nor the Employer will solicit grievances, pressure workers to participate in grievance proceedings or to give written statements. This shall not be construed as limiting requests by either party to secure witnesses and evidence for grievance proceedings or arbitrations

Section 6. No Strike/No Lockout

During the term of this Agreement, neither the Union nor its members, agents, representatives, or employees shall encourage, direct, authorize, condone, participate in, observe, threaten or sanction any strike, including any sympathy strikes, intentional slowdowns, suspension of work, work stoppage, concerted mass sickness or absence, or other action which shall interrupt or interfere with work, and the Employer will not engage in any lockout of employees.

Section 7. Discrimination

The provisions of this Agreement shall be applied without discrimination regarding race, gender, religion, color, age, disability (including pregnancy and workers compensation related issues), national origin, or sexual orientation. Whenever in the Agreement the masculine gender is used, it shall be deemed to include the feminine gender, and such is the case in reverse.

Section 8. Interviews

Properly authorized Representatives of the Union shall be permitted access to unit employees' work areas and in the employees' break rooms. Properly authorized Union representatives may inspect work areas during work and/or non-work time, subject to the permission of the Employer. Such permission will not be unreasonably withheld.



The Union agrees that discussions between Union representatives and employees will normally be conducted during non working time and in non working areas such as the Employee Cafeteria and break rooms.

Section 9. Union Committee

1. The Employer agrees to recognize the Union Committee whose members shall function as shop stewards. The Union shall notify the Employer, in writing, of the names of the authorized Union Committee Members. The Employer will recognize ten shop stewards. Such shop stewards are not considered properly authorized representatives of the Union as defined in Section 8, Interviews.
2. A Union Committee Member shall be permitted to participate in all steps of the Grievance and Arbitration Procedure. It is understood that the Employer has the right to schedule grievance meetings during the Union Committee Member's non-work time. The Employer will have no obligation to pay a Union Committee Member for time spent in the grievance and arbitration procedure or any Union-related business that may occur during non-working time.

Section 10. Union Membership and Hiring

1. All employees, as a condition of continued employment, shall become members of the Union within thirty-one (31) days from the date of their employment or the date of this Agreement whichever is later, and thereafter shall remain members in good standing with the Union. "Members in good standing" shall be interpreted to include anyone who pays initiation fees and regular monthly dues, or an equivalent service fee. In the event any employee neglects, fails, or refuses to comply with the provisions of this Agreement by the timely tender of periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union the Employer agrees, upon the written request of the Union, to discontinue the employment of any such employee. It is the Union's practice, on a one-time basis, to waive initiation fees for all employees employed by the Employer at the time of the ratification of a first time collective bargaining agreement. It is agreed between the Union and the Employer that members of the Picayune Rancheria of Chukchansi Indians, their spouses and children have no obligation to comply with the terms of this Article.
2. The Union shall establish and maintain open a non-discriminatory employment list for referral of employees covered by this Agreement. The Employer will use best efforts to notify the Union of all vacancies so that the Union may refer qualified applicants. The Employer shall have no obligation to hire applicants referred by the Union. The Employer shall have the right to employ help from any source at the regular wage rates herein specified. The Union agrees to accept such persons for membership upon the same terms and conditions applicable to other applicants or existing members of the Union at that time.
3. Whenever the Employer hires an employee, it will at once inform the employee of



the terms and provisions of this Agreement and of the obligations of the employee thereunder, and will also notify the Union in writing of such employment within fourteen (14) days after employee orientation, giving the name, address, and social security number of the employee, the date of employment, and the job classification under which such employee is employed. However, such a notification will not exceed 21 days after date of hire of the employee. If the Employer fails to supply such information to the Union, the Union shall have the right to file a grievance as prescribed in Section 29, Grievance Procedure of this Agreement.

Section 11. Deductions and Donations

1. No deductions from an employee's wages, except as may be allowed by law or this Collective Bargaining Agreement, shall be made without the written authorization of such employee.
2. No employee shall be required to subscribe to any form of insurance as a condition of employment.
3. The Employer shall not require nor knowingly allow any employees to make any contribution to any representative of management or others with authority to hire, fire or discipline.
4. No employee shall be held financially responsible for any cash shortage, breakage or loss of equipment, unless caused by the gross negligence or intentional conduct of the employee.
5. Employees in the restaurants shall not be held financially responsible for "walkouts" provided they notify management of the "walkout" immediately upon discovery of its occurrence.
6. The Employer shall pay, for all newly hired employees, the full cost of any "background check" or licensing required by the Employer or the State of California as a condition of employment in the Casino.

Section 12. Dues Checkoff

The Employer agrees to a check off system of Union dues and initiation fees on forms furnished by the Union and duly executed by the employees specifying the amount (or amounts) to be deducted and the pay periods in which such deductions shall be made. The Employer will remit all such dues monthly, with a list of all current employees for whom deductions are made, not later than fifteen (15) days from the date the deduction was made. The check off procedure shall be in accordance with applicable federal law.

The Union shall indemnify, defend and save the Employer harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason for actions taken by the Employer in reliance upon payroll authorization cards submitted to the Employer.



Section 13. Voluntary Political Checkoff

The Employer agrees to honor political deduction authorizations from its employees, in the following form:

"I hereby authorize the Employer to deduct from my pay the sum of \$2.00 per month and to forward that amount to the Hotel Employees and Restaurant Employees International Union Tip (To Insure Progress) Fund. This authorization is signed voluntarily and with the understanding that the Hotel Employees and Restaurant Employees International Union Tip Fund will use this deduction to make political contributions and expenditures in connection with federal elections. I am aware that this deduction is completely and entirely voluntary and can refuse or revoke this deduction without reprisal. This authorization may be revoked by mailing notices of revocation to the Treasurer, UNITE HERE International Union Tip Fund, 275 Seventh Avenue, New York, NY, 10001, and to the Employer."

The political contribution deduction shall be made once each month during which an employee who has performed compensated service has in effect a voluntary executed political contribution authorization. The deduction shall be remitted within thirty (30) days after the last day of the month in which the deduction was made to the UNITE HERE International Union Tip Fund, 275 Seventh Avenue, New York, NY, 10001, accompanied by a form stating the name and social security number of each employee for whom a deduction has been made, and the amount deducted.

The Union shall indemnify, defend and save the Employer harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Employer in reliance upon payroll authorization cards submitted to the Employer.

Section 14. Wage Payment

1. All wages of employees shall be paid bi-weekly.
2. Discharged employees shall be paid at the time of their termination, unless business necessity prevents such payment. However, no more than 3 business days from termination.
3. When the Employer fails to notify an employee of suspension or discharge, and the employee reports to work on his next scheduled shift and is not allowed to work, the employee shall receive half (1/2) of the employee's regularly scheduled shift, but not to exceed more than four (4) hours pay for reporting.
4. When an employee is shorted wages or overtime in a paycheck he shall notify his immediate supervisor. The Employer shall pay the employee any wages or overtime owed within three (3) business days if such amount exceed fifteen dollars (\$15) unless caused by the negligence of the employee.
5. The scale of wages in this Agreement are minimum rates and do not prohibit an employee from receiving a higher rate of pay. All premium wages shall be based on hourly rates and shall not be based on a weekly salary. No employee shall

suffer a reduction of his/her rate of pay due to the signing of this Agreement. Conversion from piece rate to hourly rate will not constitute a violation of this Section.

Section 15. Reporting Pay

When the Employer or its representative orders an employee to report for work, or fails to notify a regularly scheduled employee not to report to work for any reason at the completion of the employee's last regular shift worked, and said employee is not allowed to work, the Employer shall pay the employee for one-half of the employee's regularly scheduled shift, not to exceed four (4) hours. Inaccuracies or omissions in the recording of Employee time shall not be a violation of the Employer's Attendance Policy if caused by mechanical failure of the Employer's timekeeping devices.

Section 16. Individual Contracts or Agreements

The Employer shall not enter into any individual contract or agreement with any individual employee concerning the conditions of employment or varying the conditions of employment contained in this Agreement. An employee receiving a wage rate higher than those listed in this Agreement will not be a violation of this section.

Section 17. Maximizing Employment Opportunities

It is recognized that the Employer and the Union have a common interest in protecting and maximizing opportunities for all employees covered by this Agreement. The Employer shall not displace bargaining unit members by subcontracting work as long as such work can be adequately performed by bargaining unit members. Nothing in this Section shall prevent the Employer from entering into a sublease arrangement with an outside vendor to provide goods and/or services on the premises of the Employer so long as such arrangement does not displace bargaining unit members.

Section 18. Savings Clause

Should any part hereof or herein contained in this Agreement be rendered or declared invalid for any reason in a final order of judgment by any federal or state court or agency of competent jurisdiction, the remaining portions of the Agreement shall remain in effect. However, upon such invalidation, the parties agree immediately to meet and negotiate such parts or provisions affected. Should the negotiations reach impasse then the impasse will be arbitrated pursuant to this section and Section 29, Grievance Procedure of this Agreement subject to the authority of the Arbitrator to fashion a substitute provision or otherwise remedy the invalid portions of the Agreement.

If, as a result of the enactment of new federal, state or local legislation (hereinafter "New Legislation") the wages or other economic benefits required to be paid or provided to eligible employees are increased to levels higher than would otherwise be in effect on a particular date, the amount of such legislatively required increases will be credited toward any increases otherwise due under this Agreement. The parties understand and agree that this provision is intended to eliminate "pyramiding" or compounding of legislatively required and contractually



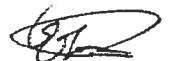
required increases in wages and other economic benefits.

In the event New Legislation increases wages and/or benefits above the levels set forth in this agreement, the parties agree to meet and bargain about the effect of such New Legislation on the overall economic cost of this Agreement.

Section 19. Seniority

Purpose: The purpose of seniority is to accord consideration to senior employees in recognition of their length of service to their Employer. Seniority is intended to provide maximum work opportunity to senior employees. Personnel decisions regarding promotions, transfers and for such other purposes unless limited by this Agreement, shall be made on the basis of job classification seniority, if, in the discretion of the Employer, qualifications and performance are equal. Job classification seniority shall otherwise apply to shift assignments, training, overtime, vacations, days off, recalls and layoff. This section is subject to Native American Preference as described in Section 4, above. The Employer will provide the Union with a list of the various Departments in the organization and advise the Union in writing concerning any reorganization, which could change the list of the departments.

1. Individual employees shall continue to accrue seniority during:
 - a. Union Leave and any other applicable statutory leave which requires the accrual of seniority.
 - b. Any period following the employee's termination which is later rescinded, or reversed and employee is reinstated unless modified pursuant to the terms of the Grievance Procedure.
 - c. Layoffs of less than thirty (30) consecutive days.
2. **Vacations:** The Employer, each year from January 1 to January 31 and from June 1 to June 30, will provide employees a calendar showing blackout dates. Employees will present vacation requests, which will be assigned on the basis of job classification seniority. Thereafter, vacation requests shall be presented on a first come, first served basis. Except for January 1 and Labor Day, one employee from each recognized Department will be exempt from blackout dates,
3. **Promotions and Transfers:**
 - a. **Posting of open positions.** When a position covered by this Agreement becomes available, it will be posted on the bulletin boards designated for such purpose. The posting will include a summary position description, listing of qualifications, the salary range and the location where the application should be submitted. Full position descriptions shall be available upon request. A deadline for submitting an application for the available position will be stated.
 - b. **Starting a new position:** A person approved for promotion or transfer will



assume the job duties in the new position as soon as practicable after Gaming Commission approval.

- c. Training: If the position requires on-the-job training, such training will be provided by designated trainers.
 - d. Right to return to a previous position: Within thirty (30) days of the start of a new position (within or outside the Union's bargaining unit), a member of the bargaining unit, transferred or promoted, may, at the employee's option, return to the prior position if it is available, or to a similar position if or when the first opening occurs. Upon request, an employee will be informed of the range of "similar positions" which may be available should he choose to return to his prior position. Management may reject a person promoted or transferred to a new position outside the Union bargaining unit without cause within thirty (30) days of the first day of work and return the employee to his or her prior position, subject to availability.
4. Seniority in the Event of Layoff:
- a. Layoff. When it is necessary to layoff employees, the Employer shall provide at least twenty four (24) hours advance notice to the affected employees and those employees with the least amount of seniority in the job classification affected shall be laid off first. When the work force is increased within the classification, employees on layoff shall be recalled in order of their job classification seniority.
 - b. Recall: All regular employees who have been laid off shall be recalled by notice to their telephone number or address of the time of layoff or such other telephone number or address as the employee may later provide before the hiring of any new employees. Regular employees who have been laid off for more than thirty (30) consecutive days shall be notified by the Employer at least forty-eight (48) hours before they are scheduled to return to work, unless such notice is waived by the employee. Employees on layoff shall retain recall rights for a period of twelve (12) months.
 - c. In the event of a layoff the Employer will give preference to the laid off employee for assignments in other departments where job vacancies exist subject to job qualifications and performance.
5. Break in Seniority: Notwithstanding any of the foregoing provisions of this Section, all seniority rights and all other rights under this Agreement shall be lost and the employee will be terminated if any of the following occur:
- a. An employee quits of his own accord; or
 - b. An employee is discharged for cause; or



- c. An employee is absent from the payroll due to layoff continuously for six (6) consecutive months; or
- d. An employee fails to return to work at the end of a leave of absence; or
- e. An employee retires; or
- f. An employee fails to return to work within three (3) days of being notified of his recall at his last known telephone number and address.

6. Seniority Regarding Shifts, and Hours of Employment:

- a. Reductions of shifts or hours of work shall be based on job classification seniority. In the event the Employer changes the former work schedule, schedules and days off shall be bid in accordance with job classification seniority with the intent of providing senior employees with maximum work opportunity.
- b. All shift vacancies within the job classification shall be bid in accordance with job classification seniority. In the event work schedules do not change during the course of a year and no bidding is required for a new schedule the Employer will re-bid the work schedule a minimum of twice per year.
- c. Overtime: Overtime when available will be offered to employees according to job classification seniority from the highest to the lowest of the shift present. In the event senior employees are not assigned overtime, overtime will be assigned from the least senior employee in a job classification of the shift present to the highest until the need is filled.
- d. The process for offering early outs will be the same as for offering overtime.

7 Probationary Period: There shall be a probationary period of ninety (90) calendar days from the date of employment for all newly hired employees. The probationary period may be extended for up to an additional thirty (30) days by mutual agreement of the parties. An employee may be discharged during such probationary period without recourse to Grievance and Arbitration procedure of this Agreement.

8 For purposes of this Section 19 only, each venue of the Food and Beverage Department will be considered its own department and the stewarding staff will be considered a venue. Nothing in this Agreement will prohibit the Employer from selecting food and beverage employees to cover shifts in different food and beverage venues.

Section 20. Bargaining Unit Work

Only members of the Union will perform bargaining unit work. Supervisors and/or management personnel shall not perform bargaining unit work except in emergencies and/or as is incidental to their job duties. The parties agree that it shall not be a violation of this Agreement for a supervisor or other managerial employee to perform work that would otherwise be performed by a bargaining unit employee where the purpose of doing so is to provide the best possible service to the guest and no unit member is displaced or has his hours reduced

Section 21. Work Schedules

1. A new weekly schedule shall be posted in a conspicuous place seven (7) days before said schedule takes effect showing the following:
 - a. The full name and work classification of each employee.
 - b. The starting time and finish time of each shift.
 - c. The scheduled days off of each employee.
2. The Employer shall keep such schedules up to date. No change in work schedule shall be considered official unless such change has been posted at least forty eight (48) hours prior to such change in the work schedule. No change in starting times will be considered official unless such change is posted at least forty eight (48) hours in advance of the scheduled starting time. The time lines in this subsection are subject to unpredictable business conditions.
3. Employees affected by any changes in the posted schedule will be required to initial and date such change. Any employee whose days off fall on the scheduled posting day shall not be affected by the scheduled change unless notified prior to the completion of his last shift worked.
4. Vacancies due to PTO, absenteeism or extra work will be offered first to employees working less than forty (40) hours in a week and according to seniority before offering such work to employees already working a 40 hour week.

Section 22. New Classifications

Should any classification not listed in this Agreement be established during the term hereof that is substantially related to an existing classification covered by the terms of this Agreement, the parties agree that upon ten (10) days written notice, they will negotiate a mutually agreeable wage rate and job duties for such classification. The Employer will determine the new wage and job duties until such time as the parties mutually agree to the final wage rate. Disputes regarding this Section will be resolved by Section 29, Grievance Procedure.

Section 23. Discipline and Discharge

The Employer shall only discipline, suspend or discharge employees for reasons of just cause.



The Employer has the right to set reasonable rules and procedures for which discipline may be imposed.

1. Except in the event of egregious behavior (defined as those offenses listed in Group II of the Classifications of Rules and Regulations in the Chukchansi Team Member Handbook), discipline should be progressive in nature. Written disciplinary notices (written warnings, suspensions and terminations) issued to employees must specify the events or actions for which the notice is issued. Written disciplinary notices shall be issued to employees within fifteen (15) days of the event or action for which the written disciplinary notice is being issued or within fifteen (15) days after the Employer first became aware of such event or action. The Employer's failure to impose greater or any disciplinary action against an employee shall not be used as precedent on behalf of another employee.
2. A legible copy of any written disciplinary notice shall be given immediately to the employee. In the case of terminations, the Employer will forward notices of terminations to the Union within fourteen (14) days of the termination.
3. An employee may request the attendance of a Union Committee Member or Union Representative at an investigatory interview or meeting where the employee reasonably and in good faith believes discipline may result from such investigatory interview or where disciplinary measures may be taken.
4. If a "spotter" agency is used as a basis for any disciplinary action, the disciplinary action shall take place within ten (10) days of the receipt of the complete "spotter's" report.
5. Except in situations where it is not practicable, employees shall only be issued warning or suspension notices on the job during work time.
6. In the event an employee is on vacation, layoff, leave of absence or sick leave when a decision is made to terminate the employee, the termination notice shall be sent to the employee by certified mail with a certified copy sent to the Union.
7. Written warning notices shall be null and void after a period of twelve (12) consecutive months and shall not be used by the Employer in any subsequent discipline, discharge or promotion or transfer issue. Notices of suspension shall be null and void after a period of twelve (12) months and shall not be used by the Employer in any subsequent discipline, discharge or promotion or transfer issue.

Section 24. Rest Periods

The Employer shall schedule employees to take rest periods on the basis of fifteen (15) minutes accrued for each four (4) hours of work time. The Employer will make every effort to schedule breaks around the middle of each four (4) hours of work. No wage deductions shall be made for such rest periods.



Section 25. Meals

The Employer shall schedule a thirty (30) minute paid meal period for each employee's regularly scheduled shift. The Employer shall provide a selection of nutritious, balanced and wholesome food/meals for employees in the employee cafeteria that are similar in quality to the meals provide to the customers of the Employer's restaurant operations. Effective January 1, 2007, a limited selection of balanced and nutritious food/meals shall be provided free of charge to employees. No wage deductions shall be made for such food/meals that are free of charge.

A second paid thirty (30) minute meal period will be provide to employees who work ten (10) or more consecutive hours.

Section 26. Union Buttons and Bulletin Boards

1. The Union shall have the use of and access to a designated Bulletin Board for the posting of official Union notices in an area frequented by employees. The Union shall not post material that is considered defamatory, disparaging, and/or ridiculing of the Employer and/or other team members.
2. Members at all times while on duty may wear one Union working button (not to exceed two inches (2) in diameter) in a conspicuous place on their uniforms. The design of the button will be in good taste reflecting the spirit of the hospitality/casino industry.

Section 27. Mandatory Meetings

The Employer may schedule mandatory employee group meetings as needed. Dates for mandatory meetings will be posted at least seven days (7) in advance of the scheduled mandatory meeting. Such meetings will be compensated for at the employee's regular rate of pay. The employee will be guaranteed two (2) hours pay, if it is the employee's regularly scheduled day off or non-work time. Employees with prior legitimate commitments will be excused.

Section 28. Uniforms

When uniforms are required by the Employer as a condition of employment, such uniforms shall be provided and maintained by the Employer to the extent dry cleaning is required.

Section 29. Grievance Procedure

1. Definition: For purposes of this Agreement, a grievance is a dispute between the Employer and the Union, involving the meaning, or application of this Agreement, or the alleged violation of any provision of this Agreement by the Employer or the Union.
2. General Principles:
 - a. The Employer and the Union, upon request, shall make available to each

other relevant information necessary to resolve the subject grievance. This subsection may be waived by mutual written agreement of the Employer and the Union.

- b. It is the intention, through the Grievance Procedure, to reach an expeditious resolution of any disputes between the Employer and the Union. To that end, failure to meet the time limits by the grieving party at any step of the grievance procedure as outlined in this section shall be deemed to be an abandonment of the grievance. Failure to meet the time limits by the party against whom the grievance is filed at any step shall be deemed to be a waiver of the requirement of that step of the grievance procedure by both parties and the moving party may move on to the next step. Time limits may be waived by mutual agreement of the Employer and the Union.
 - c. Employees may request the presence of a Union representative or Union Committee Person at any or all steps of the Grievance Procedure.
3. Five-Step Grievance Procedure: Grievances shall be processed in the following manner:
- a. Step 1. Within five (5) calendar days of the incident or circumstances giving rise to the dispute, or knowledge thereof, the employee or the Union may discuss the matter with his most immediate supervisor authorized to resolve disputes. In the case of discipline, the meeting where the discipline is issued may be considered the step one grievance meeting.
 - b. Step 2. If the dispute is not resolved at Step 1, the employee or the Union may discuss the matter with the director or manager of his department. This meeting shall take place within ten (10) calendar days of the Step 1 meeting. The manager or director shall issue a decision within five (5) calendar days of the Step 2 meeting.
 - c. Step 3. If the dispute is not resolved in Step 2, the Union may file a written request for a meeting with the Employer's Human Resources Department within ten (10) calendar days of Step 2.
 - d. Step 4. If the dispute is not resolved in Step 3, the Union and/or the Employer may file a written request for an Adjustment Board Hearing within ten (10) days of Step 2. The written grievance shall set forth the facts giving rise to the dispute and designate the grievance as well as the remedy sought. The Adjustment Board Hearing shall be heard within thirty (30) calendar days of the written request. The Adjustment Board shall consist of two (2) representatives of the Employer and two (2) representatives of the Union. The grievant shall have a right to be present at the Adjustment Board hearing. The Employer representative involved



in the incident or circumstances giving rise to the dispute should be present at the Adjustment Board. The Employer and the Union shall be as forthcoming in their presentations and deliberations as possible with respect to the facts surrounding the issue. A simple majority of the Adjustment Board Members can vote on a resolution of the dispute which shall be binding on the parties.

- e. **Step 5. Arbitration.** If the grievance is not resolved at Step 4, the grieving party may proceed to arbitration. The parties shall attempt to mutually agree upon an Arbitrator. If the parties are unable to agree upon an Arbitrator within ten (10) calendar days of the demand for Arbitration, they shall choose an Arbitrator from a panel provided by the Federal Mediation and Conciliation Service by ultimately striking names on the list. Such panel shall have no fewer than seven names. A coin toss will decide which party will have the first strike. The arbitrator shall not have the power to add to or modify any of the terms, conditions, sections or articles of this Agreement. Any award of back pay by the Arbitrator shall be reduced by the amount of employee interim earnings and/or the receipt of unemployment insurance benefits. His decision shall not go beyond what is necessary for the interpretation and application of the Agreement in the case of the specific grievance at issue. The fees and expenses of the Arbitrator shall be borne equally by the parties except where one of the parties to the Agreement requests a postponement of a previously scheduled Arbitration hearing which results in a postponement charge. The postponing party shall pay such charge unless such postponement results in a settlement of the grievance, in which case the postponement charge shall be borne equally by the parties. A joint postponement request shall be borne equally by the parties.
4. **Expedited Arbitration:** Any individual discharge case, by mutual agreement of the Union and the Employer, shall be submitted to expedited arbitration whereby both parties shall waive their rights to the submission of any briefs or stenographic recordings. The arbitrator shall issue a decision within twenty-four (24) hours following the close of the hearing, followed by a written decision within seven (7) calendar days of the close of the hearing. The parties hereby adopt and incorporate by reference the then current Expedited Labor Arbitration Rules of the American Arbitration Association for arbitrations held under this paragraph 4.
5. If the Employer files a grievance against the Union, the first step shall be a meeting between the HR Department of the Employer and the designated Union representative. If the grievance is not settled at this step, the procedures followed in Steps 4 and 5 as stated herein shall be followed.
6. For the sole purpose of enabling a suit to compel arbitration or to confirm an arbitration award under this Agreement or the Employer's Tribal Labor Relations Ordinance, the Employer agrees to a limited waiver of sovereign immunity and



consents to be sued in federal court, without exhausting tribal remedies. To the extent the federal court declines jurisdiction, for the sole purpose of enabling a suit to compel arbitration or to confirm an arbitration award, the Employer agrees to a limited waiver of sovereign immunity and consents to be sued in the appropriate state superior court, without exhausting tribal remedies. The limited waiver of sovereign immunity defined by this section does not apply to any other form of action, judicial or administrative.

Section 30. Labor-Management Partnership/Problem Solving

The parties agree to set up a joint Problem Solving Team consisting of a mutually agreed upon number of employees and managers. Both the Employer and the Union shall have the sole authority to determine who shall be their respective representatives on the Problem Solving Team. Participation and service of employees on the Problem Solving Team shall be on paid time. The appropriate compensation rate shall be agreed upon by the parties. All such compensation for Union representatives shall be paid for by the Union. Meetings shall occur as needed and be mutually agreed upon.

Both the Employer and the Union may raise whatever issues or problems they deem appropriate. However, the Problem Solving Team cannot be used to supplant or to replace the Grievance Procedure and the parties retain all of their rights and at their sole discretion to file grievances over alleged violations of the Agreement. Contractual provisions shall not be modified or replaced with new language without the mutual agreement of the parties.

It is understood by both parties that neither party is waiving any rights it may have under this Agreement or under law and a willingness to discuss any issue does not constitute a waiver of any rights afforded the respective parties under this Agreement or the law. Oral statements made at meetings occurring subject to this section will not be admissible in any subsequent arbitration hearing conducted under the terms of this Agreement.

Section 31. Job Duties

Except in emergencies and/or as is incidental to their work, all employees shall perform only such duties as are customarily performed by employees in their classifications. Nothing contained in this Agreement shall be construed to permit an employee to refuse to perform duties that are not customarily performed by employees in his or her classification where the new duties are assigned on a temporary basis for the purpose of providing the best possible guest service.

Section 32. Policy Communications

It is understood between the parties that all existing personnel policies and procedures of the Employer existing at the time of this Agreement shall remain in effect unless they expressly conflict with this Agreement. New policies or policy changes will not conflict with this Agreement.



Section 33. Change in Technology

The Union understands that there will be changes in operating techniques and technological improvements in the various departments of the Employer's operations. Accordingly, in the event the Employer intends to introduce technological changes and, as a result, job terminations or job changes may occur, the Employer agrees to meet with the Union at least thirty (30) days in advance of its intention to implement those changes and discuss training and transfers for the affected employees.

Section 34. Parking

1. Parking shall be provided at no cost to the employee
2. Any employee who is registered as a Handicapped Driver may park in a Handicap Parking space. If an employee becomes temporarily disabled, s/he may make arrangements with the Security Department for temporary parking privileges closer to the building.
3. The Employer will continue its current level of support for the Van Subsidy program as long as it continues to receive at least the same level of financial support from government subsidies as it presently receives and all other presently existing circumstances remain unchanged.

Section 35. Drug and Alcohol Testing

The Employer and the Union both recognize the importance of a drug and alcohol free work environment. Employees are encouraged to self-report to management, prior to any request to be tested, any problems they may have with drugs or alcohol. The Employer will offer "reasonable accommodation" for time off for treatment for any employee who self-reports such a problem prior to being required to submit to testing in order for said employee to seek drug or alcohol treatment. Such employee shall not be subject to discipline for disclosing their drug or alcohol problem. However, such employee may be required to undergo alcohol or drug testing upon return from treatment, at the discretion of the Employer. The Employer's current policies regarding drug and alcohol testing shall remain in effect.

Section 36. Copies of Contract

The Employer and the Union will equally share the cost of the printing of a reasonable number of copies of this Agreement as well as the cost of translating the contract into Spanish. The selection of an interpreter or translator shall be by the mutual agreement of the parties.

Section 37. Paid Time Off (PTO)

Based on months of service, Benefit-eligible full time employees will earn Paid Time Off each month, based on the following schedule to be used for a variety of situations in which time off should be paid. Employees may use PTO for vacations, sick days, holidays (including Native American Observances) of personal choice, or personal business that cannot be handled during non-working hours.



<u>Months of Service</u>	<u>Hours Earned Per Pay Period</u>	<u>Days Earned Per Year</u>
1-12 months	2.46 hours	8 days
13-24	4.31	14
25-60	6.46	21
61+	7.69	25

This agreement provides pay for recognized holidays, approved funeral leave, and jury duty. As such, employees do not need to use PTO for these. Part time employees earn and accrue PTO on a prorated basis according to the ratio of the number of their hours to forty (40) hours.

PTO that is not used during the calendar year in which it is earned may be carried over to the following year up to a maximum of 40 days (320 hours). Employees may cash-out any or all of their accrued PTO hours two times during the year. Cash-outs must be requested two weeks prior to a pay period and the employee must have at least twenty-four (24) hours of accrued PTO. Upon termination any PTO balances will be paid to the employee less any monies the employee may owe the Employer. All payments for PTO are treated as taxable income.

PTO is paid at the employee's regular, straight time rate of pay, excluding overtime, tips/tokens, and bonuses, etc.

Whenever possible, an employee should schedule any known absence with their supervisor at least two (2) weeks in advance, i.e., time to be used as vacation, time needed to conduct personal business, etc. The supervisor will make an effort to accommodate the request but may not be able to honor all requests. Employees may take PTO in a minimum of two (2) hour increments. Employees may not go into a deficit situation in PTO. As such, if an employee does not have PTO available, time taken off will be unpaid. Employees who otherwise qualify for PTO may request such PTO while absent from work. If an employee does not have a PTO balance, the absence will be unpaid. PTO time does not count toward the calculation of overtime.

In exceptional circumstances the Employer at their discretion will allow employees to take time off without their PTO account being charged.

Section 38. Bereavement Leave

Employees will be allowed up to three (3) working days off, with pay, in order to attend the funeral of any member of their immediate family. The "immediate family" includes the employee's spouse, mother, father, sisters, brothers, children, including "step", "in laws" and "grand" variations. Verification of funeral will be required. If additional time off is required, employees can use PTO. In the unfortunate death of an employee, the employer will make a \$200 donation to the immediate family (spouse, parent or adult child).

Section 39. Jury Duty

Jury Duty leave will be granted to employees with pay for up to 2 weeks, unless other payments are required by law. If appropriate, the Employer will adjust the employee's paychecks after they

complete their jury duty to deduct any compensation they received for serving as a juror. This deduction will not include monies intended to cover expenses incurred while serving as a juror. To ensure proper payment, employees should give their supervisor a copy of the statement showing the daily compensation they received and any other documents received with respect to their jury service. Verification of jury attendance is required.

Section 40. Union Leave

1. With mutual agreement of the Employer, employees may be granted union leave without loss of seniority to perform union related duties.
2. Members of the Executive Board of the Union shall be allowed time off work, without pay, to attend Executive Board meetings upon seven days' notice by the Union to the Employer. Excused absence for the purpose of attending Executive Board meetings shall not exceed twelve (12) days per year per Executive Board Member. This provision shall be limited to ten (10) employees in any calendar year and no more than two (2) employees per department.
3. Members of the Union Committee shall be allowed time off work, without pay, to attend Negotiation Meetings involving the Employer and Union Trainings upon seven (7) days' notice to the Employer.

Section 41. Other Leaves of Absence

The Employer shall continue to offer other leaves of absence as was the practice before January 1, 2005 over and above the ones stated in this agreement. "Other leaves" are defined as those listed in the Team Member Handbook and include Family Medical Leave (FMLA) and leaves for military service.

Section 42. Overtime/Work Day/Work Week

1. All work performed in excess of forty (40) hours in a week shall be compensated at the rate of time and one half (1½) of their regular rate of pay.
2. Employees shall not be sent home early from their shifts to avoid payment of overtime. No schedules shall be changed during a workweek to avoid payment of overtime.
3. Nothing in this Section 42 shall limit schedule changes with the consent of the impacted employees. Nor shall anything in this Section limit the Employer from sending employees home early from their shifts because work is slow although the result may be a loss of overtime.

Section 43. Health and Welfare, Pension, Training, Health Insurance, and 401K Benefits

During the term of this Agreement, the Employer will provide coverage of medical benefits as described in Attachment "C". During the term of this Agreement, the Employer shall also



provide employee-only Dental and Vision coverage. Eligibility requirements for participation in these insurance programs will be the same as those in effect under the prior agreement

401(k) Plan

Employer will continue 401(k) plan on the same terms and conditions for the duration of this Agreement as in effect upon date of signing.

Section 44. Wage Agreement

See Attachment A.

Section 45. Banquet Service Charges

All banquets and private parties will have a minimum of 19% Service Charge added to their bill. For Tribal and/or In-House events, the Service Charge shall be 12%. Said Service Charges shall be distributed equally between the servers working the function.

The employer may increase the amount of the service charge at any time, in its sole discretion. In the event of such an increase, the Employer will be entitled to retain all sums in excess of the contractually required 19% or 12%.

Section 46. Holidays

The Employer recognizes Thanksgiving and Christmas Day as paid holidays. The Employer will operate on these holidays and all full-time hourly employees will receive eight (8) hours holiday pay, provided the employee works his regularly scheduled day immediately before and after the holiday. If the employee is required to work on an Employer-recognized holiday, the employee will receive straight time compensation for the actual hours worked on the holiday in addition to eight (8) hours holiday pay. Holiday pay does not count as hours worked for overtime calculation purposes.

Section 47. Room Service

An 18% service charge will be added to all room service orders to be distributed to the server delivering the order.



Attachment A. Wage Scales

Effective midnight April 20, 2010 and likewise on midnight of April 20 in 2011, 2012 and 2013 wage rates shall be increased as follows: 2010 two percent (2%); 2011 two percent (2%); 2012 three percent (3%) and 2013 four percent (4%).

The following are minimum wage scales for each classification and do not limit the Employer's ability to pay employees over the minimum scales below. Employees earning above the minimum rates will receive the same increases as the minimum increase in their respective classifications.

	<u>4/20/2010</u>	<u>4/20/2011</u>	<u>4/20/2012</u>	<u>4/20/2013</u>
	2%	2%	3%	4%
Beverage Server *	\$8.98	\$9.16	\$9.43	\$9.81
Food Server *	\$8.98	\$9.16	\$9.43	\$9.81
High Limit Server *	\$8.98	\$9.16	\$9.43	\$9.81
Banquet Server *	\$8.98	\$9.16	\$9.43	\$9.81
Barback *	\$9.23	\$9.42	\$9.70	\$10.09
Bus Person *	\$9.23	\$9.42	\$9.70	\$10.09
Runner	\$10.40	\$10.61	\$10.93	\$11.37
Bartender *	\$9.84	\$10.04	\$10.34	\$10.75
	\$9.84/	\$10.04/	\$10.34/	\$10.75/
Dual Rate-Bartender/Server	\$8.98	\$9.16	\$9.43	\$9.81
Lead Bartender *	\$11.53	\$11.76	\$12.11	\$12.59
Cashier/Host	\$10.51	\$10.72	\$11.04	\$11.48
Carver	\$10.81	\$11.03	\$11.36	\$11.81
Dishwasher	\$10.81	\$11.03	\$11.36	\$11.81
Night Cleaner	\$11.63	\$11.86	\$12.22	\$12.71
Lead Night Cleaner	\$12.65	\$12.90	\$13.29	\$13.82
Steward	\$11.83	\$12.07	\$12.43	\$12.93
Beverage Steward	\$11.83	\$12.07	\$12.43	\$12.93
Lead Steward	\$12.65	\$12.90	\$13.29	\$13.82
Cafeteria Attendant	\$11.83	\$12.07	\$12.43	\$12.93
Prep Cook	\$11.88	\$12.12	\$12.48	\$12.98
Line Cook	\$12.90	\$13.16	\$13.56	\$14.10
Lead Line Cook	\$13.92	\$14.20	\$14.63	\$15.21
Noodle Bar Sushi Chef	\$14.94	\$15.24	\$15.70	\$16.33
Shuttle & Golf Cart Driver	\$10.91	\$11.13	\$11.47	\$11.92
Professional Driver	\$12.11	\$12.35	\$12.72	\$13.23
Valet *	\$8.98	\$9.16	\$9.43	\$9.81
Lead Valet *	\$9.84	\$10.04	\$10.34	\$10.75
Hotel Bell Person *	\$9.44	\$9.62	\$9.91	\$10.31
PBX Operator	\$9.69	\$9.88	\$10.18	\$10.59
Central Services Representative	\$10.71	\$10.92	\$11.25	\$11.70
Senior Central Services Representative	\$11.73	\$11.96	\$12.32	\$12.82

Hotel Front Desk Representative	\$10.71	\$10.92	\$11.25	\$11.70
Night Auditor	\$11.73	\$11.96	\$12.32	\$12.82
Dual Rate-Hotel Front Desk Rep/ Night Auditor	\$10.71/ \$11.73	\$10.92/ \$11.96	\$11.25/ \$12.32	\$11.70/ \$12.82
Retail Clerk	\$10.51	\$10.72	\$11.04	\$11.48
Hotel Linen Attendant	\$10.61	\$10.82	\$11.14	\$11.59
House Person I	\$10.86	\$11.08	\$11.41	\$11.87
House Person II	\$11.99	\$12.22	\$12.59	\$13.10
Hotel Guest Room Attendant	\$11.22	\$11.44	\$11.79	\$12.26
Dual Rate Guest Room Attendant/Floor Supervisor	\$11.22	\$11.44	\$11.79	\$12.26
Uniform Attendant	\$10.51	\$10.72	\$11.04	\$11.48
Seamstress	\$12.24	\$12.48	\$12.86	\$13.37
EVS Attendant	\$10.61	\$10.82	\$11.14	\$11.59
Lead EVS Attendant	\$11.53	\$11.76	\$12.11	\$12.59
Warehouse/Receiving Clerk	\$11.12	\$11.34	\$11.68	\$12.15
Shipping & Receiving Clerk	\$13.77	\$14.05	\$14.47	\$15.05
Groundskeeper	\$11.07	\$11.29	\$11.63	\$12.09
Groundskeeper/Irrigation Technician	\$12.75	\$13.01	\$13.40	\$13.93
WWTPO	\$12.75	\$13.01	\$13.40	\$13.93
Lead Facilities Maintenance Engineer	\$17.34	\$17.69	\$18.22	\$18.95
Facilities Maintenance Engineer	\$16.32	\$16.65	\$17.15	\$17.83
Facilities Plumbing Engineer	\$19.38	\$19.77	\$20.36	\$21.18
Facilities Plumbing Engineer- Journeyman	\$23.46	\$23.93	\$24.65	\$25.63
Facilities Kitchen Equipment Engineer	\$23.46	\$23.93	\$24.65	\$25.63
Facilities Electrical Engineer	\$23.46	\$23.93	\$24.65	\$25.63
Facilities HVAC Engineer	\$23.46	\$23.93	\$24.65	\$25.63
Slot Floor Person	\$12.65	\$12.90	\$13.29	\$13.82
Slot Floor Person II-High Limit	\$13.67	\$13.94	\$14.36	\$14.93
Slot Technician Trainee	\$12.65	\$12.90	\$13.29	\$13.82
Slot Technician I	\$17.34	\$17.69	\$18.22	\$18.95
Slot Technician II	\$20.40	\$20.81	\$21.43	\$22.29
Bench Technician	\$17.34	\$17.69	\$18.22	\$18.95

* tipped employees

Attachment B. Room Attendants

As shown in Attachment A, Room Attendants will begin with this contract to receive pay per hour.

Room Attendants shall clean a minimum of twelve (12) standard rooms per shift and comply with all other reasonable performance standards established by the Employer.

Suites shall count as two rooms.

Housekeepers shall not be required to perform janitorial, houseperson, or maintenance duties, including but not limited to wall washing (except for spot cleaning), carpet cleaning, window cleaning (except for vanity mirrors), emptying or repairing vacuums, and upholstery cleaning.

Housekeepers shall not be required to transport bulk linen from the laundry or main linen storage to room to restock the respective floor stations, nor shall housekeepers be required to leave their floors for linen.

A housekeeper who finishes her 12 room quota before the end of her shift may "buy" additional rooms at one half her straight time hourly rate for each room cleaned up to standard prior to the end of her regular shift.



Attachment C. Health Insurance

During the term of this agreement, eligible employees may elect to participate in any one of three different health insurance plans: Gold, Silver or Bronze, which are more fully described below and which will go into effect on or about July 1, 2010:

Chukchansi Gold Resort and Casino Medical Plan Options: July 2010 - June 2014

	"Gold" Plan		"Silver" Plan		"Bronze" Plan	
	Option 1		Option 2		Option 3	
Deductible	Network	Non-Network	Network	Non-Network	Network	Non-Network
- Individual	\$0	\$500	\$0	N/A	\$100	\$250
- Family	\$0	\$1,000	\$0	N/A	\$200	\$500
Annual Out of Pocket Max.						
- Individual	\$1,500	\$10,000	\$2,500	N/A	\$1,500	\$10,000
- Family	\$3,000	\$20,000	\$5,000	N/A	\$3,000	\$20,000
Co-Insurance (paid by carrier)	100%	70% UCR Paid	90%	N/A	80%	60% UCR Paid
Lifetime Maximum	\$5,000,000	\$5,000,000	\$5,000,000	N/A	\$5,000,000	\$5,000,000
Office Visit Copay	\$10	70% UCR Paid Not covered	\$20	N/A	\$20	60% UCR Paid
Adult Physical Well Woman Care	No Charge	covered Not covered	No Charge	N/A	No Charge	Not covered
Well Baby Care Lab/X-Ray	No Charge	covered Not covered	No Charge	N/A	No Charge	Not covered
	No Charge	covered 30%	No Charge	N/A	No Charge	Not covered
	\$25 copay- 12 visits/yr	70%. 12 visits/yr	\$25 copay- 12 visits/yr	N/A	\$20 copay	60% UCR Paid
Chiropractic					Not covered	Not covered
Hospital						
Inpatient	\$250 Copay	70% UCR Paid	\$250 Copay, then 90%	N/A	80% paid after ded	60% UCR Paid
Outpatient Surgery	\$100 Copay Not Covered	70% UCR Paid Not covered	\$100 Copay, then 90%	N/A	80% paid after ded	60% UCR Paid
Bariatric Surgery	Covered	covered	Not Covered	N/A	Not covered	Not Covered

Emergency Room	\$100 copay	\$100 copay	No Copay if admitted	N/A	No Copay if admitted	\$100 copay
Prescription Drugs						
Generic	\$10		\$10		\$10	
Brand	\$20		\$20		\$20	
Non Formulary	\$35		\$35		\$35	
Mental Health						
Inpatient	\$250 copay	70% UCR Paid	\$250 copay, then 90%	N/A	80% paid after ded.	60% UCR paid
Outpatient	\$10 copay	Not covered	\$20 copay	N/A	\$20 copay	Not covered
Miscellaneous						
Ambulance	\$50 copay	\$50 copay	\$50 copay	N/A	80% paid after ded.	60% UCR paid

Non-Network Benefits available in emergency only

Willis

Notes:

Cost for Employee Only Coverage on Silver Plan will be \$50 per month for the period July 2010-June 2014

Cost for Employee Only Coverage on Bronze Plan will be \$0 per month for the period July 2010-June 2014

Cost for Dependents on Silver plan will be 75% paid by Employer, 25% paid by Employee for July 2010 - June 2014

Cost for Dependents on Bronze plan will be 83% paid by Employer, 17% paid by Employee for July 2010 -

June 2014

The above is a summary for comparison purposes only. It does not outline all benefits covered by the plan. For a complete list of benefits, exclusions, limitations and other provisions of the plan, see plan documents


Employee Cost per Month: July 2010 - June 2011

	Gold	Silver	Bronze
Employee Only	\$175.00	\$50.00	\$0.00
Employee + One Dependent	\$350.00	\$188.01	\$122.91
Employee + Two or More Dependents	\$550.00	\$282.01	\$184.36

EXECUTION PAGE

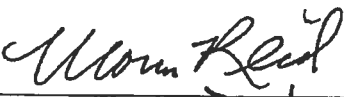
Executed, this 5th day of May, 2010.

UNITE HERE INTERNATIONAL UNION

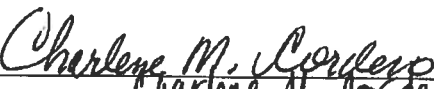
By: 

As its: Business Manager

**PICAYUNE RANCHERIA OF THE CHUKCHANSI INDIANS
BY AND THROUGH ITS AUTHORIZED GOVERNMENT AGENCY
THE CHUKCHANSI ECONOMIC DEVELOPMENT AUTHORITY**

By: 
Morris Reid

As its: Chairman

By: 
Charlene M. Cordery

As its: Secretary



Opinion & Award

In the Matter of Arbitration Between

UNITE HERE International Union Local 19

and

**The Picayune Rancheria of Chukchansi Indians
Coarsegold, California**

Grievants: Jarrod A. Woodcock & May R. Pitman

FMCS Case No. 13-50686-A

Patrick Halter, Arbitrator

Appearances

For the Union:

Kristin L. Martin
Davis, Cowell & Bowe, LLP

For the Employer:

Scott A. Wilson
Law Offices of Scott A. Wilson

Hearing

September 04, 2013
October 03, 2013

Briefs

December 02, 2013

Award

February 24, 2014

Issue

Discharge

Summary

Grievance Sustained

Background

A hearing convened on September 04, 2013, in this matter of arbitration between UNITE HERE International Union Local 19 (“Union”) and The Picayune Rancheria of Chukchansi Indians of California (“Employer”). The Union invoked arbitration over grievances involving the suspensions and discharges of Valet Attendant Jarrod A. Woodcock and Arcade Attendant May R. Pitman. The grievances were consolidated for purposes of hearing.

The Picayune Rancheria of Chukchansi Indians of California - - referred to as “the Tribe” in the Constitution of the Picayune Reservation - - is owner and operator of the Chukchansi Gold Resort and Casino (“Casino”) where it is the Employer for approximately six hundred (600) bargaining-unit employees of which fifty-six (56) are tribal members.

When the hearing convened in the Casino’s Acorn Room, the Employer presented its case-in-chief with testimony, subjected to cross-examination, and documentary evidence. Thereafter the Union and Employer agreed to reconvene on October 03, 2013, for presentation of the Union’s case-in-chief.

On September 30, 2013, the Tribe Employer notified the Union and arbitrator that it was cancelling the hearing scheduled for October 03, 2013, and withdrawing from further participation in the proceedings pursuant to a direct order or instruction issued by the Tribal Gaming Commission.

On October 01, 2013, the arbitrator notified the Employer and Union that the second day of hearing - - set for October 03, 2013 - - would begin at 10:00 a.m. at the Ramada Northwest, 5034 North Barcus Street, Fresno, California. The Employer was not present on October 03, 2013, at the scheduled time and location.

The record in this proceeding closed on December 02, 2013, with the Union’s and Employer’s submissions of post-hearing briefs. In the record are four (4) joint exhibits, 4 arbitrator exhibits, seventeen (17) Employer exhibits and thirty-eight (38) Union exhibits.

Findings

The Picayune Rancheria of Chukchansi Indians of California (hereafter referred to as the Tribe or Employer) is the owner and operator of the Chukchansi Gold Resort and Casino in Coarsegold, California. Class III Gaming is provided pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.* Aside from this Federal law, the Tribe entered into a Tribal State Compact with the State of California for Class III Gaming and enacted a Tribal Labor Relations Ordinance (TLRO) with provisions similar to provisions in the National Labor Relations Act (NLRA).

In accordance with the requirements of the Indian Gaming Act and Tribal State Compact, the Tribe enacted a Tribal Gaming Ordinance (TGO) which established a Tribal Gaming Commission (TGC). The Tribe’s governing body (Tribal Council) appoints the TGC’s Commissioners. Employment with the Tribe at the Casino requires an employee to obtain and maintain a license issued by TGC.

With respect to licensing, the TGC’s duties are performed by attorneys designated as hearing examiners. In addition to their duties for TGC, the attorneys provide litigation services for the Tribe, advice and counsel in tribal affairs and Casino operations to the Tribal Chairman, Tribal Council and tribal entities such as the Chukchansi Economic Development Authority (“CEDA”). The attorneys also represent CEDA and Tribal Chairman Lewis before Federal and State government agencies.

In 2006 the Tribe entered into a collective bargaining agreement (CBA) with the Union. In April 2010 the Union and Employer “By and Through Its Authorized Government Agency, The Chukchansi Economic Development Authority” entered into a successor collective bargaining agreement with a term of four years (April 20, 2010 - April 19, 2014). The TLRO is the applicable law for labor relations within the Tribe’s jurisdiction.

In October 2010 the Employer hired May Pitman into the bargaining-unit position of EVS Attendant wherein her duties consisted of cleaning restrooms and restaurants. She subsequently earned a promotion to Arcade Attendant with responsibilities to operate electronic games for children. Pitman’s son - - Jarrod Woodcock - - entered on duty on February 01, 2011, in the bargaining-unit position of Valet Attendant. Pitman and Woodcock were proud of their positions and tribal membership and such pride was reflected in the performance of their duties.

On their scheduled day off from work (December 26, 2011), Pitman and Woodcock attended a tribal membership meeting at the Butler Building which is located separately from the Casino, across Road 417. The Butler Building is part of the tribal compound housing tribal government offices. The purpose of the meeting was to install tribal members on the Tribal Council.

During this meeting Woodcock stated to Tribal Chairman Lewis that he should “be a man and step down” as Tribal Chairman and he engaged in silent protest by standing with his back to the Tribal Council. At some point during the meeting there was an effort by Alex Atkins - - employed at the Casino in engineering (maintenance) - - and other men to physically remove Dixie Jackson from the Tribal Council dais. When the attempted physical removal of Jackson occurred, Woodcock approached Security Lieutenant Laun Bowen to inquire whether security would intervene and Lt. Bowen stated he would lose his job if he intervened whereupon Woodcock commented that security was “fucking useless.” Shortly thereafter Pitman approached Lt. Bowen and apologized for her son’s comment about security. After the tribal meeting concluded, supporters of Tribal Chairman Lewis (“Lewis Faction”) and supporters of Morris Reid (“Reid Faction”) filed reports with the Madera County Sheriff’s Office alleging assaults against each other. [Un. Exh. 36]

The next day (December 27, 2011) Woodcock reported for duty and, upon seeing Lt. Bowen in the team dining room, apologized for his comment and offered his hand. Lt. Bowen did not respond. Later that day Woodcock was escorted by two security officers to the security office and informed he was suspended. The duration or length of the suspension was not specified and security officers provided no reason for his suspension. The “Personnel/Payroll Action Notice” form issued by the Employer’s human resources department does not identify any reason for the suspension. [Emp. Exh. 11]

On January 03, 2012, Union Shop Steward Cynthia Romero attempted to discuss Woodcock’s suspension with Ted Atkins, Director of Security and Transportation; however, Director Atkins told Steward Romero “there was no reason to meet with him as he was only doing as instructed by CEDA.” [Un. Exh. 11]

Two days later (January 05, 2012) Tribal Chairman Lewis issued a letter to Woodcock stating that the Tribal Council determined Woodcock violated the Tribe’s Anti-Violence Ordinance when he “facilitated others in the commission of assault and battery against other Tribal Members and Tribal Employees” on December 26, 2011. Based on these alleged violations, Woodcock was excluded from tribal meetings for five years, denied all tribal benefits and services for ten years and “ordered to pay restitution in an amount to be determined upon final calculation by the actions” attributed to Woodcock in Resolution No. 2012 - 13. [Un. Exhs. 27A, 27B]

On January 09, 2012, the Union filed a grievance over Woodcock's suspension and requested information from the Tribe Employer; the Union never received a response. [Un. Exhs. 2, 5]

After having been suspended by the Tribe Employer (December 27) and informed by Tribal Chairman Lewis that he had violated the Tribe's Anti-Violence Ordinance (January 05), Woodcock received notice from the TGC on January 11, 2012, of a "Temporary Suspension Notice and Order to Show Cause" which states as follows:

Based upon reliable information received by the [TGC], indicating you engaged in certain conduct, on or about December 26, 2011, at the Picayune Rancheria Chukchansi Indians, resulting in alleged violation(s) of the [Tribe's] Anti-Violence Ordinance, you are hereby notified that your gaming license is immediately suspended. ... You are further notified and ordered to show cause ... as to why your gaming license should not be temporarily suspended pending the completion of the [TGC's] investigation of the matters set forth above."

[Emp. Exh. 6]

On January 24, 2012 - - several weeks after Lt. Bowen had submitted his report of the events occurring on the evening of December 26, 2011 - - Lt. Bowen "updated" his report to include Woodcock's profane language but he omitted reference to Pitman's apology for her son's comments about security and he omitted Woodcock's apology offered on December 27, 2011. [Emp. Exh. 12]

As of February 27, 2012, Woodcock remained suspended from work. Around 6:00 a.m. on the 27th, Woodcock and other supporters of Morris Reid forcibly entered Building A (Butler Building) at the tribal compound to prepare for a meeting between Reid and officials with the U.S. Bureau of Indian Affairs (BIA). Around 6:30 a.m. Pitman and other women arrived and stood outside Building A waving posters stating "BIA is MIA" and "I am Chukchansi" and "I am sovereign." Sometime during the day supporters of Tribal Chairman Lewis arrived at the compound and entered another building that housed the tribal government offices.

During the day the "Lewis Faction" argued with the "Reid Faction" outside Building A but there was no violence. A CEDA board member (Jennifer Stanley) directed a supporter of Tribal Chairman Lewis to cutoff the water and electricity to the Butler Building. Alex Atkins - - present in his Casino uniform which displays his gaming license - - encouraged the person turning off the utilities to the building.

With evening hours approaching on the 27th, Woodcock and Pitman and others locked themselves in Building A. The following report, filed by Madera County Sheriff's Office, described the unfolding events:

... I observed a large crowd of the faction supporting the current sitting tribal Council [Lewis Faction] walk from their building and surround building A containing the faction supporting the newly elected members of the council [Reid Faction]. After surrounding the building, I observed numerous individuals from the [Lewis] faction ... begin smashing out the windows to building A. I then saw these individuals proceed to spray what appeared to be pepper spray or some other type of irritant into the interior of building A. At one point, it was reported to me that the individuals surrounding building A threw a flaming log from a camp fire into the interior of building A through a window. Eventually the dispute was calmed.

[Un. Exh. 36]

The next morning (February 28), Dixie Jackson and her grandson arrived with coffee and breakfast sandwiches for the Reid Faction supporters inside Butler Building. As Jackson and her grandson walked toward through the crowd towards the Butler Building, CEDA board member Nancy Ayala approached them and upset the box with the coffee and breakfast sandwiches thereby causing the coffee to spill on Jackson's grandson.

Law enforcement was present outside the Butler Building (building A) on the morning of the 28th; Woodcock determined it was safe to leave. He and others left the building whereupon the crowd of about twenty five (25) supporters of Tribal Chairman Lewis initiated physical contact with them. Woodcock recognized a cook from the Casino; the cook physically hit or punched Woodcock. Deputy Sheriffs intervened and a truce ensued between Lewis supporters and Reid supporters whereupon everyone departed the tribal compound.

Pitman was present on February 27 standing outside Building A with her poster-board sign and on February 28 she was inside the building. Her physician determined that the violent events rendered her unable to return to work. Pitman was on leave from work from March 01 through May 01, 2012 under the Family and Medical Leave Act (FMLA).

On March 02, 2012, TGC informed the Tribe Employer's Human Resources Manager Tara Ryan that Woodcock's license was suspended. There is no date on TGC's notice of suspension. [Un. Exh. 1]

Three days later (March 05), the TGC issued to Pitman a "Temporary Suspension Notice and Order to Show Cause" stating her license was suspended "pending the completion of [TGC's] investigation[.]"

Based upon reliable information, received by the [TGC], indicating you engaged in disorderly conduct, on or about February 27, 2012 and February 28, 2012, at the Tribal Government Complex ... resulted in extensive damage to tribal property ... personal injury to others, as well as bringing embarrassment and/or discredit upon the Tribe."

[Emp. Exh. 7]

TGC notified the Casino's General Manager (Matthew Olin) of Pitman's suspended license on March 05 and the next day (March 06) the Casino's "Personnel\Payroll Action Notice" form was generated indicating Pitman was suspended; this notice was not submitted to Pitman. [Emp. Exhs. 7, 8]

On March 15, 2012, General Manager Olin received notice from TGC that Woodcock's gaming license had been suspended on January 11, 2012. "The current status update is that his gaming license will remain suspended pending TGC investigation." [Emp. Exh. 3]

On April 17, 2012, the Tribe's General Manager was directed by the Tribal Council and CEDA to issue the following letter to Pitman:

Although you are on leave from work through May 1, 2012, under the Family Medical Leave Act, intervening events warrant your suspension from work pending an investigation. Specifically, after you began leave on March 1, 2012,

my staff received notice that, due to your involvement in violent activity that occurred at the Tribal Government Offices on February 27 and 28, your gaming license was temporarily suspended.

In following up on the circumstances surrounding the temporary suspension of your gaming license, there are serious concerns about your inclination towards violence and the safety of your co-workers and Casino guests. Consequently, effective immediately, pending additional investigation, you are suspended without pay for 30 days. Upon completion of the investigation, you will be notified of the outcome and what additional disciplinary measures, if any, will be taken.

[Emp. Exh. 8]

Following issuance of this letter, General Manager Olin directed Ted Atkins, Director, Security and Transportation, to investigate Pitman's conduct on February 27 - 28, 2012. Director Atkins determined that Pitman was at the tribal complex on those dates and a fence was destroyed but he did not conclude that Pitman contributed to the damage. Director Atkins did not have access to the surveillance video because it was in the possession of TGC. The General Manager never contacted Pitman prior to issuance of the letter dated April 17 and no Tribe Employer representative contacted her as part of the investigation after April 17.

On April 30, 2012, the Union filed a grievance over Pitman's suspension and requested information from the Employer; the Union never received a response to its request. [Un. Exh. 2]

Pitman contacted Human Resources Manager Ryan on May 01, 2012, to return to work since her FMLA leave had expired. Manager Ryan was unable to arrange for Pitman's return to duty.

On June 28, 2012, the attorney\hearing examiners for TGC conducted hearings into Pitman's and Woodcock's temporarily suspended licenses. One of the attorney's serving as hearing examiner also represents Tribal Chairman Lewis, the Tribe Employer and CEDA. Woodcock and Pitman were not allowed representation of their choice, e.g., Union representation. The hearing examiners asked Woodcock and Pitman to identify Reid supporters at the Butler Building on February 27 - 28, 2012; the hearing examiners did not ask Woodcock or Pitman to identify Lewis supporter and they did not inquire about property damage caused by the bricks through the window, burning log and sprayed bear mace.

On July 11, 2012, the TGC revoked Woodcock's and Pitman's licenses. Reasons cited were their association with others on February 27 - 28 as demonstrating "lack of suitability for licensing by the [TGC]." [Emp. Exhs. 4, 5; Un. Exhs. 29, 30] Two days later (July 13) the Casino's Human Resources Manager Ryan received notice from TGC that Woodcock's and Pitman's licenses had been revoked. [Emp. Exhs. 8, 14]

Pitman never received the Human Resources Department's "Personnel/Payroll Action Notice" form dated July 16, 2012, stating she was terminated although TGC notified her on July 26, 2012, that she was permanently banned from the Casino. [Emp. Exh. 9]

On July 30, 2012, the Casino informed Woodcock his employment was terminated but he never received the "Personnel\Payroll Action Notice" form confirming his termination from the Tribe Employer. The notice states he was discharged for "24F - Failure to comply with company policy" and handwritten above that is "Per TGC Action." [Emp. Exh. 15]

Following a timely invocation of arbitration by the Union, the arbitration hearing convened on September 04, 2013. In short, the Tribe Employer's position was that Woodcock and Pitman - - the grievants - - were not eligible for continued employment after July 11, 2012, because their licenses had been revoked and the revocation of licenses by TGC is not subject to review in the grievance and arbitration forum. Following the conclusion of the Employer's case-in-chief, the hearing recessed until a later date.

On September 06, 2012, the Union submitted to the arbitrator a subpoena duces tecum seeking documents pertaining to grievants' revoked licenses. Three days later (September 09) the Tribe Employer filed a Motion to Quash asserting that the documents relating to TGC licensing decisions would not lead to admissible evidence because TGC's actions are not subject to the grievance and arbitration procedures in the CBA.

Following a telephone conference with the Union and Tribe Employer, the arbitrator granted the Union's subpoena on September 27, 2013. Thereafter the Tribe Employer informed the arbitrator that it assumed the Union would present evidence regarding TGC's licensing decisions when the hearing would reconvene.

On October 01, 2013, the Tribe Employer notified the arbitrator that it had been directed by TGC to cancel the arbitration. "The TGC hereby directs and orders that the Casino cease its participation in the arbitration regarding the dismissal of Ms. Pitman and Mr. Woodcock. The TGC further directs the Casino to cease paying the arbitrator and any costs of arbitration incurred after October 1, 2013." [Arb. Exh. 4 at 6]

At the hearing on Thursday, October 03, 2013, the Union presented its case-in-chief with grievants' testifying. According to the Union, grievants' licenses were revoked based on off-duty conduct where they appeared at a tribal meeting and did not support the incumbents.

Issue

The Union and Tribe Employer stipulated to the following issue for arbitration:

Were the grievants discharged for just cause? If not, what is the appropriate remedy?

Collective Bargaining Agreement

Section 23: Discipline and Discharge
Section 29: Grievance Procedure

Tribal Labor Relations Ordinance

Section 2: Definition of Eligible Employees
Section 3: Non-Interference with Regulatory or
Security Activities

Team Member Handbook

No Solicitation/Politics
Classification of Rules & Regulations

Summary of the Employer's Arguments

The Tribe Employer's post-hearing brief "is limited to the issue of jurisdiction" as noted below.

It is the position of the Employer that the grievance and arbitration procedure

in the Collective Bargaining Agreement does not permit (a) a review by an arbitrator of licensing decisions of the Tribal Gaming Commission (TGC) and (b) the arbitrator has no jurisdiction to award back pay liability against the [Casino] and/or order reinstatement of the grievants for any time period that they have not maintained a valid gaming license issued by the TGC. Arbitration under the Collective Bargaining Agreement is not the proper forum to adjudicate the types of issues being claimed by grievants.

[Br. at 1]

The controlling ordinances and gaming statute determine whether a TGC licensing decision is subject to grievance and arbitration procedure under the Collective Bargaining Agreement (CBA). For example, the Preamble in the CBA states that the Employer is “The Picayune Rancheria of Chukchansi Indians of California” acting through the “Chukchansi Economic Development Authority” and the governing or applicable law for labor relations within the Employer’s jurisdiction is the Tribal Labor Relations Ordinance (TLRO).

TGC is not subject to the CBA. The grievance and arbitration procedures apply only to the Employer and Union 29. The Employer notes, further, that the TLRO in Section 3 excludes the TGC from the “definition of Tribe and/or its agents” and stipulates that the TLRO will not interfere with the TGC’s duties authorized by Federal law (Indian Gaming Act).

Pursuant to the Tribal Gaming Ordinance (TGO), the TGC is a political subdivision of the Tribe and it requires every employee at the Casino to have a license as a condition of employment. Under the TGO, the TGC is authorized to suspend and/or revoke an employee’s license subject to notice and hearing. In accordance with the Tribal State Compact at Section 6.5.5, Suspension of Tribal License, an employee’s license may be suspended when the TGC determines that the employee is a threat to public health or safety.

The Casino terminated grievants from employment in response to the TGC’s decision revoking the grievants’ licenses on July 11, 2012. “The Employer concedes that prior to the final terminations [grievants] were suspended by the Employer and their licenses were also temporarily suspended.” Reinstating the grievants with back pay commencing July 11, 2012, would conflict with the TGC’s decision revoking their licenses and result in the Union litigating TGC’s decision which would be a violation of Section 3 in the TLRO. There is no evidence of collusion between TGC and the Casino. Rather, the Casino acted in response to TGC’s decision. Without a license, the Casino cannot employ grievants Jarrod Woodcock and May Pitman.

Should the Union contend there is a conflict of interest involving the TGC and its administration of the hearing leading to the revocation of grievants’ licenses, then the proper forum is under the the TGO and/or the Tribal State Compact but not under the CBA. The Tribe does not control the TGC. Since the TGC ensures that the Tribe complies with tribal and Federal laws and regulations, it performs a regulatory function which is distinctly different from the gaming enterprise. As the TGC does not engage in interstate commerce, it is not subject to the CBA. The “arbitrator should decline jurisdiction in this matter as the case is not arbitrable.” [Br. at 10]

Summary of the Union’s Arguments

The Tribe is the Employer at the Casino and entities within the Tribe must comply with CBA and this includes the TGC. Contrary to the Tribe’s assertion, TGC’s decisions can be set aside by the Tribal Council as shown by the Tribal Council overriding the TGC’s decision to charge the Union an excessive amount of money to obtain a license during the organizing campaign. [Un. Exh. 19]

As testified to by the Casino's General Manager, the Tribe and CEDA are one and the same because CEDA is a shell entity controlled by the Tribe. That is, the seven tribal members on the Tribal Council constitute CEDA's governing body. CEDA was created in 2001 and, thereafter, the Tribe enacted its Tribal Gaming Ordinance which contains no reference to CEDA. The initial CBA in 2006 did not mention CEDA and the current CBA includes CEDA as a formality. In this regard, the Tribal Chairman signed the CBA and signs employees' paychecks. The Tribal Council uses the Casino for tribal government functions and the Council deploys Casino security to monitor tribal council meetings. Tribal members and Casino management understand that Tribal Council and CEDA are identical.

When the Tribe contends that it does not control TGC or CEDA, then it has the burden to prove their independence. "Once the facts of breach are established, the defendant has the burden of pleading and proving any affirmative defense that legally excuses performance." [Br. at 38 quoting *23 Williston on Contracts* § 63.14 at 482 (4th ed. 2004). This includes a situation where the affirmative defense is a claim of impossibility or impracticability of performance. The Tribe engaged in no effort to abide by the CBA or compel the TGC to reinstate grievants' licenses. The Tribe is in possession of and controls the evidence about its authority over TGC's actions and decisions and it failed to present any testimony to support its claim that TGC is independent of the Tribe. An adverse inference should be drawn from its failure to present testimony on these matters.

The Preamble to the CBA does not allow the TGC to revoke an employee's license without just cause. Under the TLRO, TGC is cited once (Section 3) which states that the TLRO will not interfere with TGC's gaming operations and TGC's employees are excluded from the definition of Tribe and its agents. This exclusion serves one purpose and that is to insulate the Tribe from an unfair labor practice when its security conducts surveillance of employees at the Casino. Section 5(1) in the TLRO prohibits the Tribe from interfering with, restraining or coercing employees in the exercise of their rights under the TLRO. Section 5(1) is comparable to a provision in the NLRA and the NLRA provision has been construed by the National Labor Relations Board as violating the NLRA when an employer conducts surveillance of its employees. *NLRB v. J.P. Stevens & Co., Inc.*, 563 F.2d 8 (2d. Cir. 1977) Gaming security is not interfered with or obstructed by the application of the just cause standard to TGC decisions.

Furthermore, TGC's actions and decisions are not exempt from the just cause standard because TGC is not a general regulatory agency. Rather, it has one function and that is to issue licenses and those licenses are inextricably tied to employment. According to the Union, there is no Federal, state or tribal law that requires a gaming commission to require a license for every position, such as those in this bargaining-unit, at the Casino. Pitman was an Arcade Attendant and Woodcock was a Valet Attendant; these positions are not identified in the Tribal Gaming Ordinance as primary management officials or key employees. A license is not required for grievants to perform their bargaining-unit duties.

Arbitration awards establish that decisions by a tribal gaming commission are subject to the grievance and arbitration procedures. This ensures that employees are not arbitrarily terminated. In this grievance the Tribe argues that the TGC can revoke an employee's license for any reason or no reason because the TGC is not bound by the terms of the CBA. In 2003, Arbitrator McKay in *Barona Band of Mission Indians* concluded that the tribe sought to avoid complying with its tribal labor relations ordinance through the actions and decisions of its gaming commission. In a subsequent decision by Arbitrator McKay in 2008 involving the Pala Tribe, he concluded that the

tribe controlled the gaming commission's operations because decisions on a gaming license or decisions under the collective bargaining agreement were resolved by the tribal council.

A reason must be provided and proven by the Tribe for revoking grievants' licenses otherwise the Tribe engaged in an arbitrary and capricious act. Revocation of a license leads to termination of employment and, under the CBA, discharge is subject to just cause. Since the Tribe controls labor relations at the Casino, the Tribal Chairman signed the CBA and the Tribal Council controls the TGC, the Union concludes that TGC decisions must be for just cause. The Tribe stipulated that the issue for arbitration is whether there is just cause for grievants' discharge.

Although the Tribe asserts that the grievants' conduct in support of the Morris Faction is not the reason for their termination, employees with the Lewis Faction participating in events of December 26, 2011 and February 27 - 28, 2012 were not discharged. For example two Lewis Faction supporters - - PBX operator Carmela Lopez and beverage server Gloria Lust - - participated in a fight in the women's restroom during the meeting on December 26; Lust received a 2-day suspension and Lopez - - hired on December 28 into a position at the Casino - - received no discipline. Another Lewis supporter (Alex Atkins) placed his hands on a Tribal Council member in an effort to physically remove her from the Council's dais on December 26 and on February 27 he openly advocated cutting off the water and power to the Tribal building where the Reid Faction supporters were present. While engaging in these activities, Atkins wore his Casino uniform with his gaming license; Atkins received no discipline and remains licensed by TGC. On the morning of February 28 a cook employed at the Casino physically attacked Woodcock; the cook was not disciplined and did not lose his license. Lewis supporter Faron Davis, a groundskeeper at the Casino, was present on February 27 - 28 but received no discipline or loss of license.

Grievants' cousin (Kristen Lowery), a Reid supporter, did not participate in activities on February 27 - 28 but her license was suspended and subsequently reinstated on the condition that she identify opposition to the Lewis Faction in the future. During grievants' hearings before the TGC, the hearing examiners asked them to identify Reid Faction supporters and did not ask them to identify Lewis Faction supporters. The hearing examiners posed no questions about the Lewis Faction supporters breaking the windows in the Butler Building, throwing a burning log through a window or spraying the interior of that building with bear mace.

The Lewis Faction is behind grievants Woodcock's and Pitman's discipline and discharge. Woodcock was suspended on December 29, 2011 and TGC suspended his license on January 11, 2012. TGC did not report Woodcock's suspended license to the Casino until March 02, 2012. Woodcock's manager (Security and Transportation Director Ted Atkins) informed the Union's steward (Cynthia Romero) that he was "doing as instructed by CEDA" when the shop steward inquired about Woodcock's suspension. Pitman's indefinite suspension and discharge are based on allegations of violent tendencies but there is no evidentiary record to support the allegations.

The Tribal Council has means other than revoking a license and discharging an employee to punish a tribal member. For example, the "Anti-Violence Ordinance" authorizes the Council to sanction tribe members committing assault and battery by denying them tribal benefits and services. Tribal Chairman Lewis concluded the Woodcock violated the Ordinance by his conduct at the December 26 meeting and penalized Woodcock by banning him from attending tribal meetings for five years and denying Woodcock any tribal services and benefits for ten years.

In view of the foregoing, there is no just cause for grievants' discharge. They were off-duty during the tribal meeting on December 26, 2011 and February 27 - 28, 2012. They were not on

the Casino's grounds and their off-duty conduct did not harm the Casino's business, affect grievants' abilities to perform the duties of their positions or result in other employees refusing to work with them. General Manager Olin stated on March 02, 2012, that revenues at the Casino had increased by five percent and there were no safety concerns for Casino patrons due to the events in February 2012. In other words, grievants did not present public safety concerns. [Un. Exh. 22]

The Tribe's employee handbook does not prohibit its members from participating in tribal politics. On prior occasions, the Tribe permitted Woodcock to attend tribal meetings while he was on duty time wearing his Casino uniform. There is no allegation by the Tribe that Woodcock's statements or actions at the tribal meeting violated Rule No. 4 which forbids a tribal employee from "[d]isparag[ing] the Tribal Council, Tribe, its entities, and its members and officials." [Jt. Exh. 2]

The Tribe failed to follow progressive discipline as noted in Section 23(1) of the CBA; grievants did not have any prior discipline. Section 23(1) requires disciplinary notices "must specify the events or actions for which the notice is issued" and "shall be issued to employees within 15 days of the event or action after the Employer first became aware of such event or action." Section 23(2) states that the notice shall be given immediately to the employee.

The Tribe violated Sections 23(1) and (2) because Woodcock was not issued a notice of suspension by the Tribe, the "Personnel/Payroll Action Notice" provides no reason for his suspension and he received no notice of discharge. The Casino's letter dated July 30, 2012, states that Woodcock was terminated for failure to maintain a license. This letter was issued seven months after the tribal meeting (December 2011), five months after the events in February 2012, nineteen (19) days after TGC revoked his license (July 11, 2012) and seventeen (17) days after TGC informed the Casino's human resources staff of his license revocation.

General Manager Olin sent Pitman a letter dated April 17, 2012, stating she was suspended for participating in or being present at the events of February 2012; this violates Section 23(1) as the letter is two months after the events. The letter stipulates a thirty (30) day suspension but the suspension continued beyond 30 days, indefinitely, without any explanation or notice by the Employer. Pitman did not receive a notice of termination.

Section 23(3) states that an employee may request the attendance of a Union representative when called to a meeting where there is reason to believe discipline may follow. Woodcock was denied Union representation on December 27, 2011, when security informed him of his suspension and grievants Woodcock and Pitman were denied representation in late June 2012 by TGC during its hearings.

The Tribe violated Section 29(2)(a) which states "[t]he Employer and the Union, upon request, shall make available to each other relevant information necessary to resolve the subject grievance." The Employer never responded to the Union's request for information about grievants' suspensions and it did not provide information collected by the General Manager about Pitman's "violent tendencies" as alleged in the letter dated April 17, 2012.

As a remedy, the Union requests that grievants "be reinstated and made whole for lost wages, benefits and tips beginning on December 29, 2011 when Woodcock was suspended and on May 1, 2012 when Pitman was scheduled to return from FMLA leave." Should the Tribe "refus[e] to issue gaming license to either of the grievants, the remedy should also include front pay and benefits until each of the grievants is given a license." [Br. at 31 - 32] The Tribe previously

awarded back pay to an employee when TGC wrongfully suspended the employee's license. [Br. at 31 - 32]

Conclusions

The Picayune Rancheria of Chukchansi Indians of California is "the Tribe" as stated in the Constitution of the Picayune Reservation and in Resolution No. 2011 - 11, A Resolution Creating the Chukchansi Economic Development Authority. The Tribe's governing body is the Tribal Council which is composed of seven tribal members. Tribal Council members also serve as board members for the Chukchansi Economic Development Authority. The Tribal Council and CEDA - - the Tribe's authorized agent to the Collective Bargaining Agreement - - are "one and the same" as they are controlled and populated by Tribal Council members.

The Picayune Rancheria of Chukchansi Indians - - the Tribe - - functions as the Employer under the Collective Bargaining Agreement through its ownership and operation of the Chukchansi Gold Resort and Casino. The Tribal Council controls labor relations at the Casino as evidenced by the Tribal Chairman's signature executing the Collective Bargaining Agreement and his signature on paychecks issued to employees at the Casino.

As presented by the Tribe Employer, since the parties to the CBA agreed in the Preamble "that the [TLRO] ... is the applicable law with regard to labor relations within the jurisdiction of the Employer" and the Tribal Gaming Commission (TGC) is not a party to the CBA, TGC decisions are not subject to review under grievance and arbitration procedures. Under the TLRO, TGC's employees are "specifically excluded from the definition of tribe and its agents." Thus, TGC operates independent of the CBA as confirmed in the TLRO at Section 3 which states that "[o]peration of this [TLRO] shall not interfere in any way with the duty of the Tribal Gaming Commission to regulate the gaming operation in accordance with the Tribe's National Gaming Commission-approved gaming ordinance."

TGC is not an independent operation. Rather, TGC's operations are subject to review and oversight by the Tribe through its Tribal Council. The Tribal Gaming Ordinance stipulates that the Tribal Council created the TGC "as a governmental subdivision of the Tribe" and TGC "is under the directive and control of the Tribal Council." [Jt. Exh. 4] TGC's regulations, policies and procedures are subject to review and approval by the Tribal Council. Commissioners at TGC are appointed by the Tribal Council; they meet on a monthly basis with the Tribal Council or more frequently when needed. The Tribal Council intervened and overruled a TGC decision involving labor relations at the Casino and the Union's organizing the bargaining unit. Another example where a TGC decision is final only until the Tribal Council decides otherwise is the matter of Kristen Lowery. TGC issued findings and a decision suspending Lowery's license citing the events of February 27 - 28. This decision was effectively overturned with the reinstatement of Lowery to employment and a make whole remedy of backpay. Finally, TGC's hearing examiners are attorneys that by and large serve the Tribal Council. The attorneys provide advice, counsel and legal representation in a variety of forums to the Tribal Council, Tribal Chairman and CEDA. The Tribe effectively controls the TGC.

TGC and the Tribe are "one and the same" for purposes of labor relations as demonstrated by their concerted action against the grievants and the Union. Specifically, TGC directed the Tribe as Employer at the Casino to cancel the arbitration hearing and withdraw from further participation and the Tribe acted accordingly. The Tribe uses the TGC in efforts to evade its contractual obligations under the CBA thereby denigrating the status of the Union in its role as the exclusive representative to represent employees.

There is no provision in the TLRO or TGO that states the Tribe Employer is freed from its contractual obligations under the CBA when it complies with, carries out or implements an order or decision issued by TGC. Tribe Employer - - not TGC - - discharged the grievants and, under the CBA, discharge is a grievable matter subject to arbitration.

TGC carried out its duties and issued its decisions revoking the grievants' licenses. The decision is TGC's final act. There is no wording in the TLRO that states TGC's final decision is excluded from third party review; the Tribe did not negotiate that kind of exclusion to the grievance procedure. The CBA and TLRO do not state that TGC's findings of fact and final decision has a preclusive and binding effect on matters that subsequently arise under the CBA.

Under the terms of the CBA, a grievance is defined as a "dispute between the Employer and the Union involving the meaning, or application of this Agreement, or the alleged violation of any provision of this Agreement by the Employer or the Union." The parties stipulated that the issue for arbitration is whether grievants' terminations from employment at the Casino was for just cause. In this regard, the CBA states at Section 23, Discipline and Discharge, that "[t]he Employer shall only discipline, suspend or discharge employees for reasons of just cause."

The CBA does not define "just cause"; however, arbitral jurisprudence clearly embraces the view that "just cause" encompasses due process in procedure and substance including the consideration of aggravating and mitigating factors. Sometimes parties to a collective bargaining agreement specify their agreed-upon items for due process under just cause and other times the contract is silent. Whether due process is enumerated or not in the collective bargaining agreement, just cause embodies notions and practices of fundamental fairness.

The just-cause standard has been framed into seven tests where a "no" answer to any one of the tests warrants sustaining the grievance. The tests are "the most specifically articulated analysis of the just cause standards as well as an extremely practical approach" and have been described as the "incisive codification" that "sets the standards for exploring the relationship between disciplinary due process and just cause."¹

Four of the seven tests focus on procedural due process such as whether the Tribe Employer conducted an investigation to confirm, before effecting discipline, that the employee in fact engaged in misconduct that violated a rule or order and whether the investigation was fairly and objectively conducted. Another aspect of the seven tests is whether the Tribe Employer interpreted and applied its rules, orders and penalties in an even-handed manner. The seven tests are considered in the context of the CBA and this grievance.

1. Woodcock's Suspension and Discharge

a. Woodcock's Suspension

Section 23 states that "[t]he Employer shall only discipline, suspend or discharge employees for reasons of just cause."

Section 23(1) states that "[e]xcept in the event of egregious behavior (identified as those offenses listed in Group II of the Classification of Rules and Regulations in the Chukchansi Team Member Handbook), discipline should be progressive in nature."

¹McPherson, "The Evolving Concept of Just Cause: Carroll R. Daugherty and the Requirement of Disciplinary Due Process," 38 Lab. L.J. 387 (July 1987).

Section 23(1) states, further, that “[w]ritten disciplinary notices (written warnings, suspension and terminations) issued to employees must specify the events or actions for which the notice is issued” and “[w]ritten disciplinary notices shall be issued to employees within fifteen (15) days of the event or action for which the written disciplinary notice is being issued or within fifteen (15) days after the Employer first became aware of such event or action.”

Section 23(2) states that “[a] legible copy of any written disciplinary notice shall be given immediately to the employee.”

The Tribe Employer violated Section 23(1). In this regard, the Tribe Employer never charged Woodcock with “egregious behavior” as specified under Group II in the Classification of Rules and Regulations. Unless an employee is charged with “egregious behavior” the Tribe Employer is to consider progressive discipline. The evidentiary record shows that Tribe Employer exerted no effort to consider progressive discipline short of suspension.

Another violation of Section 23(1) occurred when the Tribe Employer did not issue to Woodcock a notice of his suspension “which must specify the events or action for which the notice is issued” within 15 days “of the event or action” leading to his suspension or within 15 days after the “Employer first became aware of such event or action.” The Tribe Employer did not meet these contractual time limits; it suspended Woodcock on December 27, 2011 and issued the notice on March 02, 2012. The notice is substantively deficient as it does not inform Woodcock of the events or action leading to his suspension.

A violation of Section 23(2) occurred when the Tribe Employer did not “immediately” provide Woodcock with a copy of his written suspension notice on December 27, 2011.

Section 29, Grievance Procedure, at 2.a. states that “[t]he Employer and the Union, upon request, shall make available to each other relevant information necessary to resolve the subject grievance.” The Union filed a grievance and requested information about Woodcock’s suspension but the Tribe Employer never responded. Thus, the Tribe Employer violated Section 29.2.a.

The Tribe Employer’s decision not to call any percipient witnesses as in security personnel that were directed by the Tribe Employer or Tribal Council to be present at events of December 26, 2011 or were present on December 27, 2011, is not construed favorably for the Tribe.

These violations of the CBA show that the Tribe Employer denied Woodcock a meaningful opportunity to respond to notice of suspension. This action by the Tribe Employer is prejudicial to Woodcock as it was a denial of due process guaranteed under a just-cause standard. The Tribe Employer initiated no effort to conduct a fair and impartial investigation which is foundational tenet for determining an employee’s culpability.

Given these findings, there is no just cause for Woodcock’s suspension. The suspension is rescinded and Woodcock’s employment history and record with the Tribe Employer is expunged of any and all references to this matter.

b. Woodcock’s Discharge

Section 23 states that a discharged “shall only [be] ... for reasons of just cause.” The Tribe Employer states that an employee must maintain a license for employment at the Casino and when TGC revoked Woodcock’s license on July 11, 2012, the Tribe Employer could no longer retain him as an employee so the Tribe discharged Woodcock.

On April 17, 2012, Tribal Chairman Lewis notified Woodcock that the Tribal Council determined he had violated the Anti-Violence Ordinance. It cited the tribal meeting of December 26, 2012, as the foundation for the violation. The Tribal Council imposed penalties on Woodcock, that is, 5 years ban from attending any tribal meeting and 10 ban on tribal benefits and services as well as payment or restitution for any property damages. Thus, Woodcock was punished by the Tribal Council.

Under a just cause standard in a collective bargaining agreement, a penalty imposed by an employer a second time based on the same events for which an employee has been previously penalized constitutes double jeopardy and violates the just-cause standard. When the Tribe Employer discharged grievant on July 13, 2012, relying on events of December 26, 2011 for which the Tribe penalized Woodcock under the Anti-Violence Ordinance, this constituted double jeopardy and violates Section 23. Reports filed by the Tribe Employer's security officers present on December 26, 2011, do not refer to any violent behavior by Woodcock although the reports noted his profane language. Woodcock apologized for his language to Lt. Bowen on December 27 but Lt. Bowen did not include the apology in his "updated" security report dated January 24, 2012.

In addition to subjecting Woodcock to double jeopardy, the Tribe Employer denied Woodcock the representative of his choice before the TGC. Any information, documents or data relied upon by the Tribe Employer as a basis for its decision to discharge Woodcock which were obtained during this hearing are accorded no evidentiary value as he was not allowed Union representation.

The Tribe Employer's decision not to call any percipient witnesses such as those security personnel that were directed by the Tribe Employer or Tribal Council to be present at events of February 27 - 28, 2012 reflect a failure to conduct a fair and impartial investigation of the February events.

Given these findings about the substantive and procedural due process violations engaged in by the Tribe Employer that are prejudicial to Woodcock by denying him a meaningful opportunity to present his case, the Tribe Employer violated the just-cause standard. The discharge is rescinded and any and all references to it in Woodcock's employment history and records maintained by the Tribe Employer are expunged.

2. Pitman's Suspension and Discharge

a. Pitman's Suspension

Section 23 states that "[t]he Employer shall only discipline, suspend or discharge employees for reasons of just cause."

Section 23(1) states that "[e]xcept in the event of egregious behavior (identified as those offenses listed in Group II of the Classification of Rules and Regulations in the Chukchansi Team Member Handbook), discipline should be progressive in nature."

Section 23(1) states, further, that "[w]ritten disciplinary notices (written warnings, suspension and terminations) issued to employees must specify the events or actions for which the notice is issued" and "[w]ritten disciplinary notices shall be issued to employees within fifteen (15) days of the event or action for which the written disciplinary notice is being issued or within fifteen (15) days after the Employer first became aware of such event or action."

Section 23(2) states that “[a] legible copy of any written disciplinary notice shall be given immediately to the employee.”

The Tribe Employer violated Section 23(1). In this regard, the Tribe Employer never charged Pitman with “egregious behavior” as specified under Group II in the Classification of Rules and Regulations. Unless an employee is charged with “egregious behavior” the Tribe Employer is to consider progressive discipline. The Tribe Employer never considered progressive discipline short of suspending Pitman, an employee with no prior disciplinary history.

In violation of Section 23(1), the Tribe Employer did not issue to Pitman a written notice of her suspension “which must specify the events or action for which the notice is issued” within 15 days “of the event or action” leading to his suspension or within 15 days after the “Employer first became aware of such event or action.” Pitman received a letter from the Casino’s General Manager Olin dated April 17, 2012, stating “[his] staff received notice” on March 01, 2012, of the events on February 27 - 28, 2012, as “warrant[ing] your suspension from work pending an investigation.”

Beginning March 01 the Tribe Employer had until March 17 (at the latest) to issue the notice of suspension to Pitman. By not issuing the suspension notice until April 17, 2012, the Tribe Employer violated Section 23(1).

The Tribe Employer’s General Manager states that Pitman’s suspension is “pending an investigation.” The investigation did not produce any evidence of wrongdoing by Pitman. Subsequent statements by the Tribe Employer’s General Manager at the Casino confirm that the events of February 27 - 28 had no effect on business as revenues increased and the General Manager confirmed no public safety concerns by Casino patrons. [Un. Exh. 22] The Tribe has not proven that Pitman is a threat to public safety.

Section 29, Grievance Procedure, at 2.a. states that “[t]he Employer and the Union, upon request, shall make available to each other relevant information necessary to resolve the subject grievance.” The Union filed a grievance and requested information about Pitman’s suspension but the Tribe Employer never responded. This is a violation of Section 29.2.a.

The Tribe Employer’s decision not to call any percipient witnesses as in any Casino personnel and/or security personnel that were voluntarily present or were directed by the Tribe Employer and/or Tribal Council to be present at events on February 27 - 28, 2012, is not construed favorably for them. The Tribe Employer’s investigation, conducted by its security, concludes that Pitman was present on February 27 – 28 but does not establish her culpability for damage or violence. Rather, the Madera County Sheriff’s Office report clearly establishes that the culpability for damage was not attributable to Pitman.

These violations of the CBA show that the Tribe Employer denied Pitman a meaningful opportunity to respond to the allegations leading to her suspension. This action by the Tribe Employer is prejudicial to Pitman as it was a denial of due process guaranteed under a just-cause standard. The Tribe Employer initiated no effort to conduct a fair and impartial investigation which is foundational tenet for determining an employee’s culpability.

Given these findings, there is no just cause for Pitman’s suspension. The suspension is rescinded and Pitman’s employment history and record with the Tribe Employer is expunged of any and all references to this matter.

b. Pitman's Discharge

Section 23 states that a discharged "shall only [be] ... for reasons of just cause." The Tribe Employer states that an employee must maintain a license for employment at the Casino and when the TGC revoked Pitman's license on July 11, 2012, the Tribe Employer could no longer retain her as an employee and discharged Pitman.

Pitman was not allowed the representative of her choice (Union representative) at her discharge hearing before the TGC. Denying her the representative of her choice is prejudicial to Pitman's right to due process under the CBA. Any evidence or findings relied upon by the Tribe Employer for her discharge that were obtained during the hearing where she was denied representation are accorded no evidentiary value because Pitman was denied due process.

The Tribe's discharge of Pitman is without just cause due to the prejudicial denial of representation and the lack of clear and convincing evidence on the allegations lodged against her. The record is replete with examples of double standards applied by the Tribal Council to others present on February 27 - 28; the others present retained employment at the Casino. This double standard shows the arbitrary and capricious decision to discharge Pitman is based solely on her support for the Reid Faction. The Tribe's arbitrary and capricious decision to discharge Pitman constitutes an abuse of its discretion as the Employer at the Casino.

In sum, grievants Woodcock and Pitman were suspended and discharged without just cause. The remedy to cure the numerous violations of the CBA is reinstatement with a make whole remedy that includes backpay with interest,² tips for Woodcock,³ restoration of seniority, contributions to retirement, reimbursement for health insurance premiums and expenses, and any other employment benefits unjustly denied due to their wrongful suspensions and discharges. Front pay is also awarded should the Tribe Employer not reinstate the grievants. In other words, the Union's requested remedy is granted.

Award

The grievance is sustained and the Union's requested remedy is granted.

Patrick Halter /s/
Patrick Halter
Arbitrator

Signed on this 24th day
of February 2014

²Backpay with interest will be calculated in accordance with Memorandum GC 11-08 (March 11, 2011) issued by the General Counsel, Office of the General Counsel, National Labor Relations Board.

³The CBA, Appendix A, designates Woodcock's bargaining-unit position of Valet Attendant as "tipped employees" but Pitman's bargaining-unit position of Arcade Attendant is not designated. Thus, the remedy provides Woodcock with backpay and front pay including tips.