

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

THE SAGINAW CHIPPEWA INDIAN
TRIBE OF MICHIGAN, a federally
recognized Indian tribe,

Plaintiff,

Court File No.
1:15-cv-12077

v.

Hon. Marianne O. Battani

MARK G. PEARCE, CHAIRMAN, KENT
Y. HIROZAWA, PHILIP A. MISCIMARRA,
HARRY I. JOHNSON, III, and LAUREN
MCFERRAN in their official capacities as
members of the National Labor Relations
Board, and TERRY A. MORGAN in her
official capacity as Regional Director of
Region 7.

Defendants.

**Saginaw Chippewa Indian Tribe of Michigan's
Emergency Motion for Temporary Restraining Order**

The Saginaw Chippewa Indian Tribe of Michigan moves the Court to issue an order under Rule 65 of the Federal Rules of Civil Procedure temporarily restraining the National Labor Relations Board, its Members, and its Regional Director from proceeding in NLRB Case No. 07-RC-152046 (the “2015 Election Case”), and staying this case until 60 days after the United States Court of Appeals for the Sixth Circuit issues an opinion in the pending cross appeals, Cases No. 14-

2405 and 14-2558 (the “Sixth Circuit Case”). More specifically, the Board has set a June 15, 2015 hearing in the 2015 Election Case, and the Tribe moves this court to order the Board to adjourn that hearing and stay this case until 60 days after the Sixth Circuit issues its ruling in the Sixth Circuit Case. The Tribe also requested this relief in the form of a motion for preliminary injunction,¹ but files this companion motion to allow interim relief and prevent irreparable injury that will occur before this Court has the opportunity to consider the motion for preliminary injunction.

The Tribe previously contacted counsel for the Board to seek concurrence with this motion and to resolve this dispute without court action. The Board does not concur in the motion, and court action is necessary to resolve the dispute. The Tribe files a supporting memorandum with this motion, but respectfully requests that the Court decide this motion on an emergency basis without a hearing.

WHEREFORE, the Saginaw Chippewa Indian Tribe of Michigan respectfully requests that this Court grant its motion for a temporary restraining order.

¹ Doc 3, Pg ID 286-88.

Dated: June 9, 2015

s/ Jessica Intermill

William A. Szotkowski (MN # 161937)

Jessica Intermill (MN # 0346287)

Jessie Stomski Seim (MN # 0388973)

admission pending

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Defendants.

**Saginaw Chippewa Indian Tribe of Michigan's
Memorandum in Support of
Emergency Motion for Temporary Restraining Order**

Concise Statement of Issue Presented

A pending Sixth Circuit Appeal will decide whether the National Labor Relations Board may exercise jurisdiction over the Tribe. Less than a week after that court heard oral argument and took the case under advisement, the Board commenced a new action against the Tribe that raises the same jurisdictional question. It will hold a hearing in the new action on Monday, June 15. Restraining the Board from proceeding in the new action until the Sixth Circuit decides the jurisdictional question would preserve the status quo and prevent

irreparable injury to the Tribe. Should this Court preliminarily enjoin the Board?

Controlling or Most Appropriate Authority

Kentucky v. U.S. ex rel. Hagel, 769 F.3d 588 (6th Cir. 2014) (exceptions to administrative exhaustion).

Moltan Co. v. Eagle-Picher Indus., Inc., 55 F.3d 1171 (6th Cir. 1995) (injunctive relief factors).

Related Cases

Saginaw Chippewa Indian Tribe of Michigan v. National Labor Relations Board, Case No. 14-2405, 14-2558 (6th Cir. pending).

Saginaw Chippewa Indian Tribe of Michigan v. National Labor Relations Board, 838 F. Supp. 2d 598 (E.D. Mich. 2011).

Saginaw Chippewa Indian Tribe of Michigan v. Granholm, No. 05-10296-BC, 2010 WL 5185114 (E.D. Mich. 2010).

Argument

On Monday, June 15, the Board will irreparably injure the Tribe, requiring the Tribe to expend unrecoverable governmental resources to litigate a complex jurisdictional issue for the *sixth* time before a tribunal that lacks expertise in the area, even while the Sixth Circuit has taken the case that will decide the issue under consideration.

The Court must consider four factors to decide whether to issue a preliminary injunction: 1) the likelihood of the Tribe's success on the merits; 2) whether the preliminary injunction would save the Tribe from irreparable injury; 3) whether issuance of the preliminary injunction would harm others; and 4) whether the preliminary injunction would serve the public interest.¹ The likelihood of success that a plaintiff must show "will vary inversely with the degree of injury the plaintiff will suffer absent an injunction."² That is, the test requires "a realistic appraisal of all the traditional factors weighed by a court of equity. A balancing is required, and not the mechanical application of a certain form of words."³

As the companion Emergency Motion for Preliminary Injunction and its Memorandum in Support describe, each of these factors favors the Tribe in this

¹ *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1175 (6th Cir. 1995).

² *Roth v. Bank of the Commonwealth*, 583 F.2d 527, 538 (6th Cir. 1978).

³ *Id.*

case. For sake of brevity, the Tribe incorporates that Memorandum here by reference.

A preliminary injunction will likely be necessary to afford the Tribe adequate relief because the Tribe is uncertain when the Sixth Circuit decision will issue, and so may need protection beyond the 14-day window that a temporary restraining order affords.⁴ But the Tribe also needs a temporary restraining order to protect it from immediate irreparable injury. The briefing and schedule that applies to motions for preliminary injunctions cannot occur before Monday, June 15, the date the Board will irreparably harm the Tribe. The Tribe intended its original motion seek both a temporary restraining order and preliminary injunction, but a clerical error before filing made that decision less than clear.⁵ As soon as the Tribe identified the error, it filed this motion in an abundance of caution to clarify that the Tribe seeks both a preliminary injunction and a temporary restraining order.

Conclusion

The Board will irreparably injure the Tribe on Monday, June 15. The Tribe simply requests a time-out that will freeze the parties as they are while the Sixth Circuit decides the complex question of law that governs Count I of the Tribe's

⁴ See Fed. R. Civ. P. 64(b)(2) (providing for automatic expiration of temporary restraining orders).

⁵ See Doc 3, Pg ID 286 (titled Emergency Motion for Preliminary Injunction, but moving "the Court to issue an order . . . temporarily restraining the National Labor Relations Board, its Members, and its Regional Director").

Complaint. For the reasons discussed in the Tribe's Memorandum in Support of its Motion for Preliminary Injunction, both a temporary restraining order and preliminary injunction are necessary to protect the Tribe and this Court's resources, preserving the status quo until the Sixth Circuit can decide the underlying jurisdictional issue.

Dated: June 9, 2015

s/ Jessica Intermill

William A. Szotkowski (MN # 161937)

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