

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

**CHICKASAW NATION operating  
WINSTAR WORLD CASINO**

**and**

**Cases 17-CA-25031  
17-CA-25121**

**INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS LOCAL 886,  
affiliated with THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**CHICKASAW NATION’S STATEMENT OF POSITION**

The Chickasaw Nation, an Indian Tribal Government, regulates and operates a governmental gaming facility on lands held in trust for the Nation by the United States, in order to provide essential governmental services to the Nation’s citizens. It is therefore not subject to the National Labor Relations Act because (1) the Act recognizes the essential distinction between public and private employers by generally exempting all governments from its coverage in 29 U.S.C. § 152(2); (2) the Nation operates its gaming facility in the exercise of its treaty-protected right of self-government and inherent sovereign authority, and (3) the Act does not contain an express statement that it applies to tribal governments, *United States v. Dion*, 476 U.S. 734, 738 (1986); *Dobbs v. Anthem Blue Cross & Blue Shield*, 600 F.3d 1275, 1283 (10th Cir. 2010). A federal law is not interpreted to abrogate a treaty-protected or inherent right of self-governance absent a “clear and plain” expression of congressional intent to do so. *Dion*, 476 U.S. at 738-40; *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2031 (2014) (tribal sovereignty is intact unless Congress clearly and unequivocally abrogates it). Neither the text nor legislative history of the Act mentions Indian Tribes, and silence cannot “establish

congressional intent to strip Indian tribes of their retained inherent authority to govern their own territory.”<sup>1</sup>

The Chickasaw Nation is a federally-recognized Indian Tribe. 79 Fed. Reg. 4748 (Jan. 29, 2014). It is organized under the Chickasaw Constitution and is a party to treaties with the United States.<sup>2</sup> In its governmental capacity, the Nation engages in gaming activities within its Territory, on lands held in trust by the United States for the benefit of the Nation, at the WinStar World Casino. The Chickasaw Nation governs, manages, regulates and directly operates WinStar exclusively to raise revenues used to provide essential governmental functions to its citizens and others in its Territory. It does so in the exercise of its treaty right of self-government and inherent sovereign authority to engage in economic activity and in accordance with the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721, its gaming compact with Oklahoma, and its laws.<sup>3</sup> All persons working at WinStar are governmental employees and are subject to the Nation’s personnel rules and regulations. Since the Nation conducts gaming at WinStar in the exercise of its sovereign authority, the NLRA is inapplicable to it just as the Act is inapplicable to other governments. Moreover, the application of the NLRA to the Nation is barred by the Nation’s treaty rights, inherent sovereign authority and other federal law; all preclude application to the Nation of laws which do not expressly apply to tribal governments.

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<sup>1</sup> *NLRB v. Pueblo of San Juan*, 276 F.3d 1186, 1196 (10th Cir. 2002). *Accord*, *San Manuel Indian Bingo & Casino*, 341 N.L.R.B. 1055, 1064 (2004) (Schaumber, dissenting); *Bay Mills*, 134 S. Ct. at 2031-32. *See also Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2444 (2014) (“We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance.”) (quotation marks omitted).

<sup>2</sup> Treaty of Dancing Rabbit Creek, Sept. 27, 1830, 7 Stat. 333; Treaty of Doaksville, Jan. 17, 1837, 11 Stat. 573; 1855 Treaty of Washington, June 22, 1855, 11 Stat. 611; 1866 Treaty of Washington, Apr. 28, 1866, 14 Stat. 769.

<sup>3</sup> WinStar is licensed by the Nation’s Office of the Gaming Commissioner, as required by IGRA, *id.* at § 2710(b)(1)(B) and (d)(1)(A), the Chickasaw Nation Public Gaming Act of 1994, and Chickasaw Nation Code § 3-3306(9)(a).

The Deputy General Counsel insists the Nation’s government is actually engaged in commercial activity. This is wrong for two reasons. First, like many state and local governments, the Nation’s activities are strictly undertaken to raise revenues to provide essential governmental services to its citizens and communities within its Territory. Contrary to the Deputy General Counsel’s position and the split ruling in *San Manuel*, “tribal gaming operations cannot be understood as mere profit-making ventures that are wholly separate from the Tribes’ core governmental functions.” *Bay Mills*, 134 S. Ct. at 2043 (Sotomayor, J., concurring).<sup>4</sup> Second, despite *San Manuel*’s purported distinction, 341 N.L.R.B. at 1062-63,<sup>5</sup> labeling tribal gaming activity “commercial” has no legal significance, for only Congress possesses the power to decide how and whether to limit tribal sovereign authority, *Bay Mills*, 134 S. Ct. at 2037. “[I]t is fundamentally Congress’s job, not ours, to determine whether or how to limit tribal immunity. The special brand of sovereignty the tribes retain – both its nature and extent – rests in the hands of Congress.” *Id.* (citing *United States v. Lara*, 541 U.S. 193, 200 (2004)).

As the Board correctly held before its split decision in *San Manuel*, application of the NLRA to the Nation’s gaming activities is barred by the terms of the Act and by the Nation’s treaty rights, inherent sovereign authority, and other federal law.

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<sup>4</sup> Justice Sotomayor went on to say that tribal gaming enterprises are “critical to the goals of tribal self-sufficiency because such enterprises in some cases may be the only means by which a tribe can raise revenues.” *Id.* (citation and internal quotation marks omitted). The Justice Department agreed in its *Bay Mills amicus* brief that “[t]ribal gaming under IGRA is not just ordinary commercial activity.” Brief for the United States as Amicus Curiae Supporting Respondent at 29 n.7, *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024 (2014) (No. 12-515).

<sup>5</sup> The *San Manuel* dissent correctly applied longstanding Board precedent to reject the majority’s revisionist approach and concluded that the Act cannot divest tribal sovereign authority through silence. *Id.* at 1066-67, 1069 (quoting *Fort Apache Timber Co.*, 226 N.L.R.B. 503 (1976)).

Respectfully submitted this 9th day of September, 2014.

Counsel for Chickasaw Nation:

SONOSKY, CHAMBERS, SACHSE,  
MILLER & MUNSON, LLP

*/s/ Lloyd B. Miller*

By:

Lloyd B. Miller, AK Bar No. 7906040  
900 West Fifth Avenue, Suite 700  
Anchorage, AK 99501  
Tel: (907) 258-6377  
Fax: (907) 272-8332  
Email: [lloyd@sonosky.net](mailto:lloyd@sonosky.net)

Leonard Court, OBA #1948  
CROWE & DUNLEVY  
20 N. Broadway, Suite 1800  
Oklahoma City, OK 73102  
Tel: (405) 235-7706  
Fax: (405) 272-5232  
Email: [court@crowedunlevy.com](mailto:court@crowedunlevy.com)

On the Brief:

Stephen H. Greetham  
CHICKASAW NATION OF OKLAHOMA  
2020 Lonnie Abbott Blvd.  
Ada, OK 74820  
Tel: (580) 272-5236  
Fax: (580) 272-2077  
Email: [Stephen.greetham@chickasaw.net](mailto:Stephen.greetham@chickasaw.net)

Douglas B.L. Endreson  
SONOSKY, CHAMBERS, SACHSE,  
ENDRESON & PERRY, LLP  
1425 K Street, N.W., Suite 600  
Washington, D.C. 20005  
Tel: (202) 682-0240  
Fax: (202) 682-0249  
Email: [dendreson@sonosky.com](mailto:dendreson@sonosky.com)

Michael Burrage  
WHITTEN BURRAGE  
1215 Classen Drive  
Oklahoma City, OK 73103  
Tel: (405) 516-7800  
Fax: (405) 516-7859  
Email: [mburrage@whittenburrage.com](mailto:mburrage@whittenburrage.com)

Bob Rabon  
RABON, WOLF, & RABON  
402 East Jackson (Highway 70)  
Hugo, OK 74743  
Tel: (580) 326-6427  
Fax: (580) 326-6032  
Email: [bob.rabon@sbcglobal.net](mailto:bob.rabon@sbcglobal.net)

### STATEMENT OF SERVICE

I hereby certify that on the 9th day of September, 2014 I served, or caused to be served, by electronic mail a copy of the foregoing **CHICKASAW NATION'S STATEMENT OF POSITION** on the following parties listed below:

Susan Wade-Wilhoit  
[Susan.Wade-Wilhoit@nlrb.gov](mailto:Susan.Wade-Wilhoit@nlrb.gov)

John Dossett  
[jdossett@ncai.org](mailto:jdossett@ncai.org)

George McCaffrey  
[george@mccaffreylegal.com](mailto:george@mccaffreylegal.com)

Alan Schoenfeld  
[alan.schoenfeld@wilmerhale.com](mailto:alan.schoenfeld@wilmerhale.com)

Ron Cobb  
[rcobb@teamsterslocal886.com](mailto:rcobb@teamsterslocal886.com)

Edward Dumont  
[edward.dumont@wilmerhale.com](mailto:edward.dumont@wilmerhale.com)

Kurt Rupert  
[krupert@hartzoglaw.com](mailto:krupert@hartzoglaw.com)

*s/ Lloyd B. Miller*

Counsel for Chickasaw Nation