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## United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240

IN REPLY REFER TO:

In reply, please address to:  
Main Interior, Room 6513

Ronald Meisburg, General Counsel  
John E. Higgins, Jr., Deputy General Counsel  
National Labor Relations Board  
1099 14th St. N.W.  
Washington, D.C. 20570-0001

JAN 15 2009

Dear Messrs. Meisburg and Higgins:

At the request of the Little River Band of Ottawa Indians (Band) and in response to the expressed interest of the Regional Counsel in hearing the views of the Department of the Interior (DOI), I write to express DOI's disagreement with the position taken by the National Labor Relations Board's (NLRB or Board) Regional Director in Grand Rapids, Michigan in the matter of the Little River Band of Ottawa Indians (GR-7-CA-5116). In this matter the Board has issued subpoenas to the Band as part of an enforcement action which attacks the Band's constitution and labor ordinances as unfair labor practices. DOI takes the position that, as a matter of Federal Indian law, the NLRB cannot charge the Band with an unfair labor practice for its exercise of its sovereign authority in adopting a constitution and enacting tribal labor laws. The proper avenue for challenging the Band's constitution and labor ordinances is a direct preemption case brought by the Board in Federal district court, not an unfair labor practice charge.

The Little River Band of Ottawa Indians is a federally recognized Indian tribe, restored to federal recognition by Congress pursuant to 25 U.S.C. §§ 1300k-1300k-7. The Little River Band of Ottawa Indians Tribal Government (the "Tribal Government") is established pursuant to the Band's Constitution, which was promulgated under 25 U.S.C. § 1300k-6 and approved by the United States Department of the Interior, as provided by the Indian Reorganization Act, 25 U.S.C. § 476 ("IRA"). As a sovereign entity, the Band has authority to govern labor relations within its jurisdiction. Like any other sovereign, it cannot be charged with an unfair labor practice simply for the act of establishing labor laws. But that is exactly what has happened in this matter. The NLRB seeks to enforce the National Labor Relations Act (NLRA) against the Band solely on the basis of its constitution and labor ordinances. This fact is made clear by the words of the Charge against the Band.

Since on or about January 1, 2008, and prior thereto, the respondent the Little River Band of Ottawa Indians Tribal Government has promulgated the Constitution of the Little River Band of Ottawa Indians which on its face preempts the National Labor Relations Act jurisdiction. Said Constitution of the Little River Band of Ottawa Indians among its articles reserves authority to govern labor relations including but not limited to regulating terms and conditions under which collective bargaining agreements may or may not occur. The Constitution of the Little River Band of Ottawa Indians among other illegal articles denies employees the right to strike. By this and other conduct the respondent has intimidated [sic] employees and utilized the Constitution of the Little River Band of Ottawa Indians as a means to deny employees the right to organize as protected by Section 7 of the Act.

The NLRB has a direct means to seek to establish that the Band's laws are preempted by the NLRA in an original action in the Federal court. See, e.g., *NLRB v. Pueblo of San Juan*, 276 F.3d 1186 (10<sup>th</sup> Cir. 2002); *NLRB v. State of Illinois Dept. of Emp. Security*, 988 F.2d 735 (7<sup>th</sup> Cir. 1993); *NLRB v. State of North Dakota*, 504 F. Supp.2d 750 (D.N.D. 2007); *NLRB v. State of New York*, 436 F.Supp. 335 (E.D.N.Y.1977), *aff'd*, 591 F.2d 1331 (2<sup>nd</sup> Cir.1978). The NLRB cannot challenge the sovereign acts of the Band in adopting its constitution and promulgating its labor ordinances as if those acts were merely those of a private employer. Just as the NLRB cannot charge a state government with an unfair labor practice for promulgating state labor laws, it cannot charge a tribal government for promulgating tribal labor laws.

I urge you to contact the Grand Rapids Field Office to put an end to this enforcement action as soon as possible. Please feel free to contact Jane Smith (202-208-5808), the person on my staff handling this matter, should you have any questions or need additional information.

Sincerely,



Edith R. Blackwell  
Associate Solicitor

cc: Hon. Don Koon, Tribal Council Speaker  
Stephen M. Glasser, Regional Director, NLRB  
Steven Carlson, Attorney NLRB