No. 25-234

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITE HERE LOCAL 30,

Plaintiff - Appellee,

v.

WILTON RANCHERIA,

Defendant - Appellant.

On Appeal from the United States District Court
for the Eastern District of California
Hon. Kimberly J. Mueller
Case No. 2:23-CV-02767-KJM-SCR

DEFENDANT-APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

Wilton Rancheria ("Wilton" or "the Tribe") is a sovereign nation, a federally recognized Indian tribe with its own constitution, laws, and government. As a sovereign entity, Wilton determines whether, when, and how it will engage with other sovereign entities, such as the State of California and the United States. Wilton's sovereignty, like that of other Indian tribes, predates the founding of the United States and is recognized by state and federal law as validated by the Supreme Court of the United States. As such, its sovereignty and its governing laws may not be subsumed by a private agreement or ignored by an arbitrator. Enforcing a private agreement instead is not only a manifest disregard of the law, but a deliberate attack on Wilton's self-governance and sovereignty. Wilton thus brings this appeal of the District Court's denial of its Motion to Vacate or Correct the Arbitrator's Award to assert and protect its sovereignty in the face of the Arbitrator's disregard of that sovereignty.

As set forth herein, the District Court erred by failing to vacate the underlying Arbitration Award, in which the Arbitrator manifestly disregarded the law and exceeded his powers. First, the Arbitrator disregarded the Indian Gaming Regulatory Act ("IGRA") by finding the Tribe "ceded" its authority to regulate labor relations when it executed a Tribal-State Compact with the State of California (as required by IGRA). Second, the Arbitrator similarly disregarded well-settled law by ignoring the

force of Wilton's Tribal Labor Relations Ordinance ("TLRO"), despite the fact that such an ordinance carries the full force of law. by enforcing an earlier and conflicting private agreement over Tribal law. Third, and even if the private agreement applies, which it does not, the Arbitrator's Award irrationally failed to draw from the essence of the agreement between Wilton and Plaintiff-Appellee Unite Here by disregarding the agreement's plain language and purpose, and the Parties' course of performance. Accordingly, this Court should reverse the District Court's Order denying Wilton's Motion to Vacate or Correct the Arbitrator's Award.

II. STATEMENT OF JURISDICTION

The District Court had jurisdiction over this case under 28 U.S.C. § 1367. On December 9, 2024, the District Court entered an Order denying Wilton's Motion to Vacate or Correct Arbitration Award. (1-ER-4-14.) On January 8, 2025, Wilton timely filed a Notice of Appeal with the District Court to appeal that Order. (3-ER-490-492.)

Appellant's appeal is from a final Order and Judgment that disposed of all claims asserted in the District Court action. (1-ER-2-3.) This Court has jurisdiction over appeals from final decisions of the United States District Courts pursuant to 28 U.S.C. § 1291. This Court also holds jurisdiction over appeals from an order confirming an award under 9 U.S.C. § 16(a)(1)(D).

III. STATEMENT OF THE ISSUES

A. Whether the District Court correctly denied Appellant's Motion to Vacate or Correct the Arbitration Award. Courts vacate arbitration awards when those awards manifestly disregard the law. Tribal sovereignty is a fundamental principle of American law, that courts have applied for centuries. Here, however, the Arbitrator acknowledged the principle of tribal sovereignty but manifestly disregarded it by: (1) refusing to acknowledge that Wilton's decision to enter into a Compact with the State of California and adopt an ordinance thereunder were sovereign acts; (2) refusing to give effect to a valid statutory enactment of the Tribal government; and (3) purporting to give effect to a private contract instead.

B. Whether the District Court correctly determined that the Arbitrator did not exceed his powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted was not made. Courts vacate arbitrators' awards that fail to draw upon the underlying contract's essence, which occurs when the award is completely irrational. The contract at issue explicitly incorporated the TLRO by stating the TLRO would "govern labor relations at the Casino." Yet, the Arbitrator disregarded both that provision and the Parties' course of performance that was consistent with the TLRO and chose instead to give effect to a provision of the contract that conflicts with the ordinance. By doing so, the

Arbitrator elevated a conflicting contractual provision over validly enacted Tribal law.

IV. STATEMENT OF THE CASE

A. Factual Background

1. Wilton and the State of California Negotiated and Executed a Tribal-State Compact, as Required by the Indian Gaming Regulatory Act, in June 2017.

IGRA requires Indian tribes desiring to engage in "gaming activities" to execute a Tribal-State Compact. In July 2017, in anticipation of opening the Sky River Casino, the Tribe and the State of California did just that. (2-ER-66.) The resulting document is referred to in this Brief as the "Compact." The Tribe and the State negotiated the language of the Compact and fully executed the document in July 2017. The Secretary of the Interior approved the Compact on January 22, 2018. *See* Indian Gaming: Tribal-State Class III Gaming Compacts Taking Effect in the State of California, 83 Fed. Reg. 3015 (Jan. 22, 2018).

Section 12.10 of the Compact addresses Labor Relations and provides:

> The Gaming Activities authorized by this Compact **may only commence after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance attached hereto** as Appendix C, and the Gaming Activities may only continue **as long as the Tribe maintains the ordinance**. The Tribe shall provide written notice to the State that it has adopted the ordinance, along with a copy of the ordinance, before commencing the Gaming Activities authorized by this Compact.

(*Id.*) (emphases added).[1] The Compact's model Tribal Labor Relations Ordinance (Appendix C to the Compact) requires a two-step certification process before an arbitrator from the Tribal Labor Panel can certify a union as representing covered employees: (1) first, the union must present dated and signed authorization cards from at least 30% of the Eligible Employees; and (2) if there is at least a 30% showing of interest, a secret ballot election will be conducted requiring more than 50% of Eligible Employees voting for union representation. (2-ER-103, note 2, citing TLRO § 3-210.)

2. After the Tribal-State Compact Was Signed, Wilton and the Union Executed a Private Agreement in August 2017 to Assist with the Tribe's Gaming License Efforts.

Simply executing the Compact did not guarantee issuance of the Tribe's class-III gaming license. *See* 25 U.S.C. § 2710(d)(1). To support the Tribe's licensing efforts and obtain ratification of the Compact, Boyd Gaming (as Wilton's gaming

[1] The United States Department of the Interior publishes all tribal-state compacts on its website at https://www.bia.gov/as-ia/oig/gaming-compacts. The full text of the Tribal-State Compact between the State of California and Wilton Rancheria, along with the Secretary's letter of decision, can be viewed at https://www.bia.gov/sites/default/files/dup/assets/as-ia/oig/pdf/508_compliant_2018.01.22_wilton_rancheria_tribal_state_gaming_compact.pdf. The Court should take judicial notice of the Compact's language as published by the Secretary and as noticed in the Federal Register, per Rule 201 of the Federal Rules of Evidence.

management company[2]) and Plaintiff–Appellee Unite Here ("Union") entered into a Memorandum of Agreement in August 2017 (the "2017 MOA"). (2-ER-67; 2-ER-81-84.) Therein, the Union agreed to "actively support . . . the Tribe's efforts to obtain ratification of the Compact." (2-ER-83, ¶ 14.)

Importantly, the 2017 MOA codified the Parties' intent that the Compact would govern the Union's organizing efforts, as IGRA mandates. In fact, the 2017 MOA explicitly refers to the Compact's model Tribal Labor Relations Ordinance in paragraph 2 stating, "[t]he parties agree that the Tribal Labor Relations Ordinance governs labor relations at the Casino . . . for Employees to exercise their rights under the Tribal Relations Ordinance to organize collectively[.]" (2-ER-81, ¶ 2.) Despite that clear statement of intent, the 2017 MOA included provisions that conflict with the model Tribal Labor Relations Ordinance. Those conflicts are addressed below.

3. Wilton Enacted the 2019 Tribal Labor Relations Ordinance, 7 WRC § 3-101, et. seq., as Negotiated in the Compact.

Approximately 20 months later, on April 18, 2019, the Tribe enacted the Compact's model Tribal Labor Relations Ordinance, with some variation, as Wilton Rancheria Code Title 7, Chapter 3 – Tribal Labor Relations Ordinance of 2019, 7 WRC § 3-101, et. seq. (the "TLRO") via Tribal Council Resolution No. 2019-23.

[2] Boyd Gaming became the "development partner" and manager of the Sky River Casino for the first seven years of its operation after supporting the Tribe's effort to be federally recognized as an Indian Tribe. (2-ER-109.)

(2-ER-99-100.) Wilton enacted the TLRO in accordance with both the Tribe's Constitution and the Tribal Council Organization Act. As part of the Tribe's legislative process, the TLRO was submitted to the Chairperson, the Executive Branch of Government. The Chairperson then had ten (10) calendar days to veto a decision by Tribal Council, accept the decision, or take no action, thus affirming the action. The Tribal Council possesses powers to: (1) override the Chairperson's veto; (2) re-pass the proposed decision by a majority vote after addressing any reasons for veto noted by the Chairperson; or (3) take no further action on the decision. After passing all these legislative requirements, the TLRO secured formal legal status and became a Wilton Rancheria law.

Although the text of the TLRO is identical to the Compact's model Tribal Labor Relations Ordinance, the TLRO contains certain prefatory sections codifying the Tribe's intent to be bound by the TLRO (and not the 2017 MOA). For example, 7 WRC § 3-103 states, "this Ordinance is identical to the ordinance attached to the Tribe's January 22, 2018, compact." (2-ER-86.) Additionally, 7 WRC § 3-104 reads: "This Ordinance shall be narrowly construed to apply to Eligible Employees [defined by the TLRO] to the extent the Ordinance provisions are lawfully required by an effective tribal-state gaming compact between the Tribe and the State of California." (*Id*.)

Notably, the TLRO differs in several respects from the 2017 MOA. For example, under the 2017 MOA, if the Union provides a notice of intent to organize ("NOIO"), the Tribe must provide the Union a list of employees within fifteen days. (2-ER-81-82, ¶ 6.) Conversely, the TLRO requires the Tribe to provide the employee list within two days of receiving the Union's NOIO. (2-ER-90, § 3-207(c).) The 2017 MOA and the TLRO also differ as to the method of originating union recognition. The 2017 MOA recognizes the Union as the exclusive collective bargaining representative once the Union presents signed authorization cards from a majority of eligible employees (a process known colloquially as a "card check"). (2-ER-82, ¶ 7.) The TLRO, on the other hand, requires a secret ballot election of eligible employees if the Union provides signed and dated authorization cards from 30% or more employees. (2-ER-103, note 2 (citing TLRO § 3-210).) If more than 50% of eligible employees vote for the Union, only then does the Union become the certified representative of the employees. (*Id*.) Because paragraph 2 of the 2017 MOA provides that the Compact's "Tribal Labor Relations Ordinance governs labor relations at the Casino," and because Wilton's Tribal Council adopted the TLRO as a "formal law" in accordance with Wilton's Constitution and the Tribal Council Organization Act, the 2017 MOA also requires a secret ballot election.

B. Procedural Background

1. The Union Filed Suit to Enforce the Parties' Private Agreement Despite the Agreement Having Been Superseded by Tribal Law.

On February 2, 2023, the Union presented the Tribe with a written NOIO, and the Tribe thereafter provided the Union with the employee list within two days as required by the TLRO. (2-ER-68.) On June 20, 2023, the Union informed the Tribe that it had collected signed authorization cards from a majority of the eligible employees. Instead of agreeing to hold a secret ballot election under the TLRO, however, the Union claimed that Wilton had to recognize the Union as the exclusive bargaining representative of the eligible employees without allowing the employees to vote in a secret ballot election. (*Id*.) The Tribe objected to the notion that the 2017 MOA could supersede Tribal law (the TLRO) and agreed to an election under the procedures outlined in the TLRO. (*Id*.)

On November 29, 2023, the Union sued to compel arbitration under the 2017 MOA. (3-ER-380-470.) Soon afterwards, on December 18, the Tribe moved to dismiss the Union's Complaint. (3-ER-234-379.) Wilton argued that before any disputes about the 2017 MOA could be heard, it was necessary to complete a parallel arbitration initiated under the TLRO to determine whether the Union needed to follow the procedures set forth in the TLRO for seeking to become the employees'

representative. (3-ER-253-255.) The District Court agreed with the Tribe and stayed the Union's lawsuit until the arbitration could be completed. (2-ER-231-232.)

2. The Arbitrator Exceeded His Powers by Enforcing the Parties' Private Agreement That Directly Conflicts with Tribal Law.

Arbitrator Norman Brand issued his Award and Decision ("Award") on March 17, 2024, ruling that the Union need not follow the procedures established by the TLRO for union recognition and, instead, the Tribe must comply with the union-recognition ("card check") procedures in the 2017 MOA. (2-ER-102-121.) The Arbitrator based his decision on three findings:

First, the Arbitrator found "[n]othing suggests the Tribe was unaware that it was agreeing to permit the Union to organize its employees and gain recognition through the card check process described in [the 2017 MOA] ¶ 7." (2-ER-118.) In so holding, the Arbitrator noted that the 2017 MOA's "essential promises are Tribal neutrality in an organizing campaign and card check recognition" in exchange for the Union's support of the Tribe's effort to ratify the Compact with California. (2-ER-117-118.)

Second, the Arbitrator rejected the Tribe's claim that, through the 2017 MOA, the Tribe agreed to "maintain neutrality while allowing the union to organize in exchange for the union's support of ratification of the compact." (2-ER-118.) The Arbitrator based this finding on a comparison of the 2017 MOA and the TLRO,

noting that the TLRO, 7 WRC § 3-207, contemplated bilateral agreements between unions and tribes. The Arbitrator asserted that the Union could have "most of what it negotiated in the 2017 MOA" without supporting ratification, stating, "it would be illogical for a Union to spend months negotiating a comprehensive MOA providing political support for the Tribe in order to receive so little in return." (2-ER-118-119.)

The Arbitrator then found that paragraph 2 of the 2017 MOA ("the Tribal Labor Relations Ordinance governs labor relations at the Casino") did not control, and did not require the Parties to follow the TLRO for two reasons. (2-ER-119.) First, the Arbitrator determined paragraph 2 did not control because such a reading "is implausible and inconsistent with the interpretation of other card check MOAs" executed by other tribes. (2-ER-119.) Second, the Arbitrator found that if paragraph 2 provided the exclusive means of an election, then MOA paragraph 7 would be superfluous. (2-ER-119-120.) The Arbitrator (again) overlooked the fact that a subsequent legislative enactment displaced the contractual provision altogether.

Third, the Arbitrator incongruously ruled that the Tribe failed to show that the TLRO "is a law it made as a sovereign that takes precedence over the [2017 MOA]." (2-ER-120.) The Arbitrator found that by agreeing to the Compact (mandated by IGRA), the Tribe "voluntarily gave up its right to legislate about labor relations" because the Compact required the Tribe to adopt the Compact's model Tribal Labor Relations Ordinance, which it later did. (*Id.*) In sum, he stated:

> In its compact with the State, the Tribe agreed to enact a specific [tribal labor relations ordinance] as a condition of opening a casino with Class III gaming. In making that agreement, the Tribe ceded its sovereign right to control labor relations in the casino. Consequently, enacting the [TLRO] in 2019 was not a sovereign act but a compact obligation to the State. Therefore, enacting the [TLRO] did not affect the Tribe's obligations under the MOA it negotiated with the Union.

(2-ER-120.) The Arbitrator then concluded that the Tribe must comply with the 2017 MOA rather than the TLRO.

3. The District Court Incorrectly Denied Wilton's Motion to Vacate the Arbitrator's Award.

On June 14, 2024, Wilton sought to vacate the Arbitrator's award by filing a Motion to Vacate or Correct Arbitration Award with the District Court. (2-ER-144-210.) The District Court struck this first filing, without prejudice, and directed the Parties to meet and confer on the issue. (2-ER-141-143.) The District Court also granted the Union's motion to compel arbitration under the 2017 MOA.[3] (2-ER-128-140.) After conferring with the Union, Wilton renewed its Motion to Vacate or Correct on August 13, 2024. (2-ER-59-127.) Briefing was complete on September 3, 2024. (2-ER-19-30.)

On December 9, 2024, the District Court denied Wilton's Motion to Vacate or Correct. (1-ER-4.) In so doing, the District Court first determined that federal law

[3] The Parties are currently arbitrating the issue the Union raised in its November 29, 2023, Complaint.

applied (as opposed to California law), and that the Federal Arbitration Act, and not the Labor Management Relations Act, governed the dispute. (1-ER-7-13.)[4]

The court then noted that the Federal Arbitration Act permitted it to vacate an arbitration award in limited circumstances, including "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." (1-ER-14 (citing 9 U.S.C. § 10(a)(4)).) The court stated that this ground for vacatur required the party challenging the award to show that it was "'completely irrational' or exhibits a 'manifest disregard of law.'" (1-ER-14 (citing *Kyocera Corp. v. 6 Prudential-Bache Trade Servs., Inc*., 341 F.3d 987, 997 (9th Cir. 2003) (en banc)).)

The court concluded Wilton did not show that the Arbitrator exceeded his powers or executed them "imperfectly." Specifically, the court ruled that the Arbitrator properly found: (1) Wilton had ceded sovereign power to govern labor relations; (2) the TLRO did not constitute a law; (3) the MOA covered the parties' relationship; (4) the MOA did not incorporate the TLRO; and (5) the parties must comply with the process in the MOA. (1-ER-15-17)

The District Court further concluded that the Arbitrator considered the 2017 MOA and TLRO and the negotiations and histories behind each before reaching his

[4] Wilton is not appealing the court's decision on the applicable jurisdiction and legal standard.

conclusion. Accordingly, the District Court held it could not vacate the award under section 10 of the Federal Arbitration Act. (1-ER-17.)

V. STANDARD OF REVIEW

The Court of Appeals reviews a district court decision confirming or vacating an arbitration award under the FAA under the same standard it applies when reviewing any other district court decision that finds an agreement between the parties. In such a case, the court should accept findings of fact that are not "clearly erroneous" and decide questions of law *de novo. See First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 947–948 (1995); *Coutee v. Barington Cap. Grp., L.P.*, 336 F.3d 1128, 1132 (9th Cir. 2003); *see also Aramark Facility Servs. v. Serv. Emp.'s Int'l Union, Local 1877, AFL-CIO*, 530 F.3d 817, 822 (9th Cir. 2008) (applying de novo review for legal rulings and clear error for findings of fact). When the appellate court reviews for clear error, it must accept a district court's factual findings unless it has a "definite and firm conviction that a mistake has been committed." *Concrete Pipe & Prods. of Cal., Inc.*, 508 U.S. 602, 622 (1993); *see also Husain v. Olympic Airways*, 316 F.3d 829, 835 (9th Cir. 2002), *aff'd* 540 U.S. 644 (2004). A district court may vacate an arbitration award if the arbitrator's conduct violated the FAA or if the award itself is "completely irrational" or "constitutes manifest disregard of the law." *G.C. & K.B. Invs., Inc.*, 326 F.3d 1096, 1105 (9th Cir. 2003).

VI. SUMMARY OF ARGUMENT

Courts vacate arbitration awards when "the arbitrators exceeded their powers," 9 U.S.C. § 10(a)(4), which occurs when arbitrators render "completely irrational" awards or exhibit a "manifest disregard of law." *Kyocera Corp.*, 341 F.3d at 997 (internal quotations omitted). The Arbitrator here exceeded his powers in at least three respects:

A. The Arbitrator Manifestly Disregarded the Law Regarding Tribal Sovereignty.

Tribes, like Wilton, exist as independent sovereigns with all the inherent powers that come with that status. They can have their own lawmaking process, judicial system, and executive branch. They retain sovereign immunity. This has been the case since before the United States' founding.

The Arbitrator alluded to the existence of tribal sovereignty but disregarded it altogether in arriving at his Award. The Award states that sovereignty plays no role in the analysis because Wilton entered a compact with California. Centuries of well-settled law says otherwise. In fact, compact-making amounts to an inherent *feature* of sovereignty—not a repudiation of it, and an Arbitrator cannot treat Tribes as second-class sovereigns. By doing so, the Arbitrator manifestly disregarded Wilton's sovereign status and thus exceeded his powers.

B. The Arbitrator Manifestly Disregarded the TLRO as Law.

Just like state and federal statutes, Tribal ordinances are law. As such, ordinances such as the TLRO carry the force of law, govern legal disputes, and cannot be ignored. The Arbitrator again recognized the existence of the TLRO and its status as an ordinance, but then disregarded it because, in his view, a private contract overrode the ordinance. That approach poisons the award because arbitrators have no authority to ignore valid, binding law. Indeed, arbitrators made aware of statutes and other laws *must* at least attempt to apply them. But here the Arbitrator merely hand-waved away the TLRO and gave it no legal effect.

Case law could hardly be clearer: When an arbitrator simply ignores the relevant law, he manifestly disregards the law and exceeds his powers. Here, faced with the language of the TLRO, a Tribal law, the Arbitrator ignored it and opted instead to apply provisions of the MOA. Arbitrators have no such power, and they may not treat a valid Tribal law as a mere suggestion. The TLRO was a duly enacted law, passed through the Tribe's legislative process, yet the Arbitrator willfully ignored it. The Arbitrator's conduct is the textbook definition of manifestly disregarding the law.

C. The Arbitrator Rendered a Completely Irrational Award by Failing to Draw on the "Essence" of the MOA.

The Arbitrator ignored the MOA's plain text and the Parties' course of performance. The MOA explicitly recognizes the TLRO as controlling in labor

relations matters, thereby incorporating the Compact. The Arbitrator disregarded the MOA's stated purpose—to aid the Tribe in its gaming license ratification efforts. But if the Tribe did not enact or was to repeal the TLRO, the Tribe would fall out of compliance with the Compact and, without the Compact, the Tribe could not operate class III gaming. How the Union would gain the "benefit of its bargain" with no casino to organize is not clear. Moreover, the Parties' course of performance demonstrated that they expected the TLRO to govern labor relations. Thus, the language and context of the 2017 MOA, along with other indicia of the Parties' intentions, make clear the MOA was just one piece of the federal-state regulatory process, not the only piece. Accordingly, the District Court's Order denying Wilton's Motion to Vacate or Correct the Arbitrator's Award should be reversed.

VII. ARGUMENT

A. The District Court Erred in Denying Wilton's Motion to Vacate the Arbitrator's Award.

Section 10 of the Federal Arbitration Act empowers a federal court to vacate an arbitration award when "the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4). Arbitrators "exceed their powers" when the award is "completely irrational" or "exhibits a 'manifest disregard of law.'" *Kyocera Corp.*, 341 F.3d at 997 (quoting *French v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 784 F.2d 902, 906 (9th Cir. 1986), in the first instance, and

Todd Shipyards Corp. v. Cunard Line, Ltd., 943 F.2d 1056, 1059–60 (9th Cir. 1991) in the second).

An award is "completely irrational" if the arbitrator's decision "fails to draw its essence from the agreement." *Comedy Club, Inc. v. Improv W. Assocs*., 553 F.3d 1277, 1288 (9th Cir. 2009) (quoting *Hoffman v. Cargill Inc*., 236 F.3d 458, 461–62 (8th Cir. 2001)). Whether an award "draws its essence from the agreement" is viewed in light of the agreement's language and context, as well as other indications of the parties' intentions. *See Bosack v. Soward*, 586 F.3d 1096, 1106 (9th Cir. 2009) (quoting *Lincoln Nat'l Life Ins. Co. v. Payne*, 374 F.3d 672, 675 (8th Cir. 2004)); *see also Coast Trading Co., v. Pac. Molasses Co*., 681 F.2d 1195, 1197 (9th Cir. 1982) (holding that an "arbitrator is confined to the interpretation and application of the parties' agreement" and that an "award is legitimate only so long as it draws its essence from the . . . agreement" (internal quotations omitted)).

The Arbitrator exceeded his powers by exhibiting a manifest disregard of both federal and Tribal law and by basing the Award on an irrational reading of the MOA. As a result, the District Court's Order denying Wilton's Motion to Vacate the Arbitrator's Award should be reversed.

1. The Arbitrator manifestly disregarded Tribal sovereignty.

Like all federally recognized Indian tribes, the Wilton Rancheria Tribe is a sovereign nation. *See Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 689 (2022)

("Tribes possess 'inherent sovereign authority over their members and territories,'" (quoting *Okla. Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991)). This is significant because sovereignty, after all, comes with special status. And as sovereign entities, tribes have full authority to regulate and oversee tribal activities. *See United States v. Wheeler*, 435 U.S. 313, 322 (1978). Tribes exist, then, as "'distinct, independent political communities retaining their original rights' in matters of local self-government." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) (quoting *Worcester v. Georgia*, 6 Pet. 515, 559 (1832)).

The roots of tribal sovereignty run deep in our law. For centuries, courts have recognized that tribes are "domestic dependent nations." *See Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831). Sovereignty comes not from the blessing of the United States government, but tribal power "predates" the country's political order. *See McClanahan v. State Tax Comm'n of Ariz.*, 411 U.S. 164, 172 (1973). After all, the "inherent powers" of tribes "formed long before Europeans first settled in North America." *Natl. Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 851 (1985). Thus, "[i]t must always be remembered," the Supreme Court has explained, "that the various Indian tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that of our own Government." *McClanahan*, 411 U.S. at 172.

The federal government, then, has limited say over tribal affairs. Not even the Constitution "dicate[s] the metes and bounds of tribal autonomy." *United States v. Lara*, 541 U.S. 193, 205 (2004). To the contrary, "the Constitution safeguards the sovereign authority of Tribes" and limits any state control over tribal affairs. *See Haaland v. Brackeen*, 599 U.S. 255, 313 (2023) (Gorsuch, J., concurring). And only legislation from Congress—not states—can regulate tribes. But until Congress does so, "tribes retain their historic sovereign authority." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014).

Sovereign status is no mere formality. It plays a critical role in tribal relations and authority. Indeed, "the sovereign source of a law is an inherent and distinct feature of the law itself." *Denezpi v. United States*, 596 U.S. 591, 597 (2022). Said another way, tribal sovereignty *is* the law, and that law governs all tribal activities.

The Arbitrator here manifestly disregarded Wilton's tribal sovereignty in issuing his award—and not for lack of awareness. Indeed, the Arbitrator referenced and acknowledged sovereignty multiple times, but he declined to apply it. Instead, he decided sovereignty did not apply because Wilton "ceded" its power through its Compact with California. (2-ER-120.) In doing so, the Arbitrator "recognized the applicable law and then ignored it." *Mich. Mut. Ins. Co. v. Unigard Sec. Ins. Co.*, 44 F.3d 826, 832 (9th Cir. 1995). The Arbitrator was "aware" of tribal sovereignty

but "interpreted it in a way to render it inapplicable to this case." *Comedy Club, Inc. v. Improv West Assocs.*, 553 F.3d 1277, 1293 (9th Cir. 2009).

When, as here, an Arbitrator's ruling ignores well-established law, the arbitrator exceeded his powers. *Id.* The Arbitrator dismissed a foundational tribal principle that Indian tribes possess inherent sovereignty. For example, the Arbitrator found that Wilton "voluntarily gave up its right to legislate about labor relations" by entering into the Compact with California. (2-ER-120.) He further decided that "the Tribe ceded its power to regulate labor relations in the State," so "passing the TLRO was not a sovereign act." *Id.* By entering the Compact with California, the Arbitrator determined, Wilton "agreed to give up its sovereign power [to] legislate labor relations in return for a compact that permitted it to engage in Class III gaming in its casino" and "[i]n making that agreement, the Tribe ceded its sovereign right to control labor relations in the casino." (2-ER-121.)

In so ruling, the Arbitrator disregarded well-established principles of tribal sovereignty. Most notably, the Arbitrator flipped compact-making on its head. Entering such an agreement does not override sovereignty—it is an *attribute* of sovereignty. *See Dyer v. Sims*, 341 U.S. 22, 35 (1951) (Jackson, J., concurring) (a government's power to enter compacts "is a power inherent in sovereignty."). Agreeing to compacts gives "sovereign States the age-old treaty-making power of independent sovereign nations." *Id.* at 31 (quotations omitted). Courts recognize

that in entering compacts, "[s]tates do not easily cede their sovereign powers." *Tarrant Reg'l Water Dist. v. Hermann*, 569 U.S. 614, 631 (2013). Such power mirrors the United States' power to enter treaties that, while not ceding sovereignty, impose obligations. *See Bond v. United States*, 572 U.S. 844, 848 (2014).

IGRA—the law under which the Compact was made—further confirms this principle. IGRA requires tribal-state compacts for all class III gaming on tribal land (*see* 25 U.S.C. § 2710(d)(1), (d)(3)(A)) and also establishes both a negotiation process between tribes and states (*see* 25 U.S.C. § 2710(d)(3)(A)) and an approval process whereby the federal government must review, approve, and publish all compacts executed between any state and tribe (*see* 25 U.S.C. § 2710(d)(3)(B), (d)(8)). All Parties agree the Tribe and California negotiated and executed the Compact pursuant to IGRA, and the federal government approved the Compact. (Award at 4; 7, note 11 (noting the Compact's date of publication by the Federal Register).). Such agreements—among three distinct sovereigns—advance IGRA's stated purpose: "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). Compacts do not undercut tribal authority; they *promote* strong tribal powers.

Just recently, the Ninth Circuit reinforced IGRA's sovereignty-supporting language. *See Maverick Gaming LLC v. United States*, 123 F.4th 960 (9th Cir. 2024).

The case centered on whether a tribe was a "required party" in a dispute between a state and a gaming company. In analyzing IGRA, the Ninth Circuit explained the statute "facilitates [its] goals" for strong tribal governments "by, for example, requiring that net revenue from tribal gaming be used for specific *sovereign* functions. *Id.* at 983 (emphasis added) (quoting 25 U.S.C. § 2710(b)(2)(B), (d)(1)(A)(ii)). "IGRA's very purpose is to confer legal entitlements to the Tribe, and all other federally recognized Indian tribes, in the form of tribal-state gaming compacts." *Id.* Thus, *Maverick* held that the tribe was a necessary party to the litigation to protect its sovereign interests. *Id.* at 972 (noting that the case "implicates the Tribe's legally protected economic and sovereign interests.").

In short, the Arbitrator flatly ignored tribal sovereignty and disregarded its import and role in the dispute. But tribes cannot be treated like second-class sovereigns. They retain inherent power and adjudicators must "tread lightly in the absence of clear indications of legislative intent" to invade tribal sovereignty. *Martinez*, 436 U.S. at 60. States—like California here—generally cannot regulate tribal affairs. *See Rice v. Olson*, 324 U.S. 786, 789 (1945) ("The policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history."); *see also Haaland*, 599 U.S. at 318 (Gorsuch, J. concurring) ("States have virtually no role to play in managing interactions with Tribes."). Tribes remain "immun[e] from state and local control." *Arizona v. San Carlos Apache Tribe of*

Ariz., 463 U.S. 545, 571 (1983). They are distinct political entities and they possess the same powers as any other independent government.

Put simply: tribes are sovereign, meaning Wilton could enter into a compact with California and retain sovereign power to pass legislation and regulate its own affairs. Indeed, compacts are a consequence of the exercise of sovereign power, not a method of giving up such power. The Arbitrator's disregard of this fundamental legal principle contaminated his entire award and led him astray in erroneously ruling that Wilton had no sovereign power to regulate labor relations. By pushing sovereignty aside, the Arbitrator failed to apply well-established law and thus exceeded his powers. Because the Arbitrator manifestly disregarded Wilton's Tribal sovereignty, the Award must be vacated.

2. The Arbitrator manifestly disregarded the TLRO.

Sovereignty comes with a corollary right to pass binding laws. A "law is defined by the sovereign that makes it, expressing the interest that the sovereign wishes to vindicate." *Denezpi*, 596 U.S. at 597. That is just what Wilton did here. Through its legislative process, the Tribe passed the TLRO that is designed to govern tribal labor issues. When a tribe passes laws, "it does so as part of its retained sovereignty and not as an arm of the Federal Government." *Id.* (quotations omitted).

There can be no dispute that the TLRO is *law*. Tribal legislative acts do not amount to mere suggestions or helpful hints at what the tribe might want. Tribes

possess the full power to enact laws, including in the form of ordinances. As the Supreme Court recognized in *Denezpi*, a tribe has inherent authority to "exercise its 'unique' sovereign authority in adopting the tribal ordinance." 596 U.S. at 599; *see also Fisher v. Dist. Ct. of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382, 387 (1976) (tribes may establish constitutions, laws, and a judicial system to exercise "the powers of self-government."). Tribes "remain 'a separate people, with the power of regulating their internal and social relations.'" *United States v. Wheeler*, 435 U.S. 313, 322 (1978) (quoting *United States v. Kagama*, 118 U.S. 375, 381–82 (1886)). As "self-governing sovereign political communities," tribes retain "the inherent power to prescribe laws for their members." *Wheeler*, 435 U.S. at 322–33.

In passing the TLRO, Wilton exercised its sovereign authority to enact Tribal law. Indeed, Wilton went through its complete legislative process to enact the TLRO. Tribal Council Resolution No. 2019-23 (attached to the adopted TLRO) sets forth the Tribe's authority to adopt the TLRO. That Council Resolution first notes that Wilton's Constitution grants its Tribal Council the power to make "all laws, including resolutions, codes and statutes," and pass laws regulating the Tribe's "elections, enrollment, and employment, and all other matters so long as those laws are consistent with [Wilton's] Constitution." (2-ER-99.) That Resolution also summarizes the process through which proposed acts become "the formal laws based by the Tribal Council in development of the Tribe's permanent body of law,"

according to the Tribal Council Organization Act of 2012. (2-ER-99 (citing WRC § 1-303(A).) First, all acts and amendments must pass through a legislative process including an internal review phase, a public review phase, and a final review phase. Second, during the 30-day public review phase, the Tribal Council must solicit comments from members of the public regarding the proposed act and must hold at least one public hearing. (*Id.*) Third, the proposed act must be submitted to each member of the Tribal Council for a final review period of no less than seven days. (*Id.*)

Tribal Council Resolution No. 2019-23 confirmed the TLRO proceeded through all three steps. The Tribal Council submitted the proposed Tribal Labor Relations Ordinance of 2019 for public review from February 20, 2019, to March 21, 2019; the Tribal Council conducted a public hearing regarding the proposed Tribal Labor Relations Ordinance of 2019 on March 7, 2019; and the proposed Tribal Labor Relations Ordinance of 2019 was submitted to each member of the Tribal Council for final review on March 28, 2019. (2-ER-99-100.) Having met these requirements, the Tribal Council enacted the TLRO by an affirmative vote of 5 for, 0 against, and 0 abstaining. (2-ER-100.) Notably, the version of the TLRO enacted by Wilton's Tribal Council was not identical to the model Tribal Labor Relations Ordinance and instead the Tribe revised it to reflect its interests and its laws, further emphasizing the Tribe's legislative authority, self governance, and sovereign status.

There is no doubt, then, that the TLRO is a valid law, and a law cannot be ignored—not by a judge and not by an arbitrator. Yet, the arbitrator manifestly disregarded the TLRO, writing that the Tribe "fail[ed] to show that the [ordinance] is a law." (2-ER-120.) Because the Arbitrator viewed the TLRO as non-law, he disregarded it and applied the MOA.

Arbitrators cannot simply look past the law, and courts reviewing arbitration awards must "ensure that arbitrators comply with the requirements of the statute." *See Shearson/American Express Inc. v. McMahon*, 482 U.S. 220, 232 (1987). Arbitrators manifestly disregard the law when they are "conscious of the law and deliberately ignore it." *Montes v. Shearson Lehman Bros., Inc.*, 128 F.3d 1456, 1461 (11th Cir. 1997); *see also Bosack v. Soward*, 586 F.3d 1096, 1105 (9th Cir. 2009). In issuing awards, arbitrators must give effect to legal standards applicable to the case. *See Aspic Eng'g & Constr. Co. v. ECC Centcom Constructors, LLC*, 913 F.3d 1162, 1169 (9th Cir. 2019). If they fail to do so, they have manifestly disregarded the law. *Id.* at 1169-70. For that reason, courts allow disputes involving federal statutes to go to arbitration and arbitrators are bound to apply those statutes. An "arbitrator['s] decision" regarding a "violation of" a statute "remains subject to judicial review under the FAA" to ensure arbitrators are applying the statute. *See 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 269 n.10 (2009).

The Arbitrator here did just the opposite. He ignored the TLRO, a valid and duly enacted law, despite understanding its status as a Tribal ordinance. He well knew that Wilton went through the legislative process to enact the TLRO. (2-ER-103, note 2) ("Wilton Rancheria enacted [the TLRO], codified as Chapter 3 of the Wilton Rancheria Labor Code, on April 18, 2019."). Indeed, at the hearing, the Arbitrator heard testimony from Raymond Hitchcock, the former Chairman of the Tribe, who testified that the TLRO was Tribal law:

> Q. BY MS. CARROLL: Did a version of that Tribal Labor Relations Ordinance, which we've been calling the TLRO, did that later become tribal law?
> A. Yes, it did.
> Q. How did that happen?
> A. Through the tribal law process. It's an ordinance process that creates resolutions that actually enacts tribal law similar to any governmental entity.

(2-ER-124-125.)

The record shows the Arbitrator was well aware of the TLRO and its status. He knew it was enacted as a Tribal ordinance through the legislative process and noted that it was "codified as Chapter 3 of the Wilton Rancheria Labor Code." He further understood that Wilton enacted the TLRO in 2019, after the MOA. Yet, he ignored the TLRO altogether and failed to give it the force of law. Instead, the Arbitrator disregarded the TLRO's text because he believed Wilton "voluntarily gave up its rights to legislate about labor relations." (2-ER-120.)

The Arbitrator's treatment of the TLRO as subordinate to the MOA is a critical error. Laws govern contracts, not the other way around. Indeed, only *Congress* can displace tribal laws. *See Roff v. Burney*, 168 U.S. 218, 222 (1897); *Wheeler*, 435 U.S. at 323 ("But until Congress acts, the tribes retain their existing sovereign powers."). States have no say in the matter. *San Carlos*, 463 U.S. at 571. Tribal law is law.

Contracts do not generally override this fundamental principle. As courts have long held, a "contract with a sovereign government will not be read to include an unstated term exempting the other contracting party from the application of a subsequent sovereign act . . . nor will an ambiguous term of a grant or contract be construed as a conveyance or surrender of sovereign power." *United States v. Winstar Corp.*, 518 U.S. 839, 878 (1996). Contracts with a sovereign government contain no "implied term[s]" promising to keep the same law. *See RIU One Corp. v. City of Berkeley*, 371 F.3d 1137, 1149 (9th Cir. 2004). The Constitution "does not require a State to adhere to a contract that surrenders an essential attribute of its sovereignty." *Id.*; *see also Peterson v. United States Dep't of Interior*, 899 F.2d 799, 807 (9th Cir. 1990) ("[G]overnmental contracts 'should be construed, if possible, to avoid foreclosing exercise of sovereign authority.'").[5]

[5] Sovereignty even serves as a defense to a claim of *breach* of contract after a change in the law. For example, when a government alters its law in a way that affects its

"[A] contract entered into by a private party with the government will not be interpreted to exempt the private party from the operation of a subsequent sovereign act by the government." *Centex Corp. v. United States*, 395 F.3d 1283, 1306-07 (Fed. Cir. 2005). Government contracts must be construed "to avoid foreclosing exercise of sovereign authority." *Peterson*, 899 F.2d at 807. In short, "[s]overeign power governs all contracts subject to the sovereign jurisdiction." *Winstar*, 518 U.S. at 872.

The Arbitrator turned this well-established principle upside down. After recognizing the TLRO as law, he ignored it anyway, applying instead the 2017 MOA. To arrive at that ruling, the Arbitrator necessarily ignored the legal force of the TLRO, something arbitrators cannot do. *See Aspic*, 913 F.3d at 1169. An arbitrator "aware of" the relevant law who "interpret[s] it in way to render it inapplicable" disregards and "ignores" the law in violation of the FAA. *See Comedy Club*, 553 F.3d at 1291–93. That is precisely what the Arbitrator did here – he knew about the TLRO and its codification in the Tribe's laws, but disregarded it anyway. Arbitrators cannot do so, and the Award must be vacated.

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existing contracts, the government may invoke the "sovereign acts doctrine," which holds that contracts with a government are subject to the sovereign's lawmaking power. *See Horowitz v. United States*, 267 U.S. 458, 461 (1925); *Winstar Corp.*, 518 U.S. at 899. Thus, when a sovereign passes laws subsequent to entering into a contract, the later-enacted laws do not generally constitute a breach, subject to narrow exceptions. This protects the sovereign's dual roles as a contracting party and a lawmaker. And, in no event do courts hold that a federal statute is not *law* simply because the statute affects a previous contract entered into by the United States.

3. The Arbitrator acted irrationally by failing to draw on the MOA's "essence" and consider the Parties' course of performance.

In relying on the MOA, the Arbitrator ultimately failed to draw on its "essence" by disregarding critical language and refusing to apply either the Compact or the superseding TLRO. Both the Arbitrator's reasoning and the resulting outcome are completely irrational.

In cases where an arbitrator disregards "specific provisions" of a contract, the arbitration award is completely irrational and subject to vacatur. *See Aspic,* 913 F.3d at 1168 ("the Arbitrator exceeded his authority and . . . [t]he Award disregarded specific provisions of the plain text in an effort to prevent what the Arbitrator deemed an unfair result. Such an award is 'irrational.'").

Here, although the Arbitrator credited the MOA's bargaining history, he did not at all address the 2017 MOA's explicit incorporation of the Compact's model Tribal Labor Relations Ordinance, which later became the 2019 TLRO. (2-ER-117-118.) The Arbitrator also discounted paragraph 2 of the 2017 MOA, that "[t]he parties agree that the Tribal Labor Relations Ordinance governs labor relations at the Casino," claiming that giving credit to that language: (1) was "inconsistent with other card check MOAs" (although no others were at issue or at all relevant); and (2) would render paragraph 7 superfluous. (2-ER-119-120.) Thus, the Arbitrator rendered a completely irrational Award by not only entirely disregarding explicit

language within the MOA and the Parties' course of performance, but also negating the MOA's stated purpose - to aid the Tribe in its gaming license ratification efforts.

a. The plain language in the MOA demonstrates the Parties' intent to be bound by the TLRO.

As an initial matter, the Arbitrator failed to credit the Compact "signed [ ] between the State of California and Wilton Rancheria on June 29, 2017." (2-ER-107-108.) As the Arbitrator noted, the Compact stipulated that "Gaming Activities . . . may only commence" after the Tribe adopts the Tribal Labor Relations Ordinance, maintains that Ordinance, and provides notice of adopting the Ordinance to the State of California. (2-ER-107.) The Compact's mandate is neither incidental nor ambiguous—the Tribe's very ability to operate the Casino hinges on the Tribe's adherence to the model Tribal Labor Relations Ordinance.

The language of the MOA is clear and demonstrates the Parties' explicit intent to be bound by the Compact's model Tribal Labor Ordinance and, subsequently, the TLRO: "[t]he parties agree that the Tribal Labor Relations Ordinance governs labor relations at the Casino . . . for Employees to exercise their rights under the Tribal Relations Ordinance to organize collectively[.]"; *see also Daversa-Evdyriadis v. Norwegian Air Shuttle ASA*, No. EDCV 20-767-JGB(SPX), 2020 U.S. Dist. LEXIS 173854, at *9 (C.D. Cal. Sep. 17, 2020) ("[L]anguage explicit enough to reflect an intent to be affirmatively bound by a specific [ ] law or regulation is sufficient to result in incorporation.").

Even subsequent laws such as the TLRO may be considered part of an agreement when, as here, the agreement's language "clearly indicates this to have been the intention of the parties." *See Middleton v. Halliburton Energy Servs., Inc.*, No. 1:19-cv-01747-ADA-CDB, 2023 U.S. Dist. LEXIS 10655, at *9 (E.D. Cal. Jan. 20, 2023); *see also Torrance v. Workers' Comp. Appeals Bd.*, 32 Cal. 3d 371, 379 (1982) ("[When] an instrument provides that it shall be enforced according either to the law generally or to the terms of a particular . . . statute, the provision must be interpreted as meaning the law or the statute in the form in which it exists at the time of such enforcement.") (citation omitted).

How the Arbitrator then concluded that paragraph 2 of the 2017 MOA did *not* indicate the Parties' intent is baffling. (2-ER-118; *but see* 2-ER-117-118 (finding the 2017 MOA's "essential promises are Tribal neutrality in an organizing campaign and card check recognition," in exchange for the Union's support of the Tribe's effort to ratify the Compact with California).) In fact, the Arbitrator's conclusion is completely irrational. *See Aspic,* 913 F.3d at 1169 (finding the Arbitrator's Award to be irrational and that "[w]hen an arbitrator disregards the plain text of a contract without legal justification simply to reach a result that he believes is just, we must intervene.").

Indeed, the Arbitrator's Award, when considered in its entirety, fairly bleeds irrationality. The Arbitrator appropriately found that: (1) the Tribe sought its class-

III gaming license pursuant to IGRA (2-ER-105; 2-ER-108, note 11, noting the Compact's date of publication by the Federal Register); (2) to comply with IGRA, the Tribe then executed and remains bound by the Compact (2-ER-107); (3) the Compact's model Tribal Labor Relations Ordinance requires a secret ballot election (2-ER-103, note 2, "The [model Tribal Labor Relations Ordinance] provides for a two-step certification process . . ." requiring a 30% showing of interest based on signed cards from employees followed by a secret ballot election); (4) the MOA references the Compact's model Tribal Labor Relations Ordinance (2-ER-113); and (5) the Parties—*knowing this history*—negotiated and added a provision to the MOA stating "[t]he parties agree that the Tribal Labor Relations Ordinance governs labor relations at the Casino" (2-ER-110, note 16.) The MOA's language is not debatable. Yet, somehow, the Arbitrator concluded that the plain language of this contract does not mean what it says and delivered an Award that is "completely irrational." *See Bosack*, 586 F.3d at 1106.

b. The 2017 MOA codified the Parties' intent that the Union's organizing efforts would be governed by the TLRO.

In an effort to give significance to "every word, phrase, sentence, and part of an act in pursuance of the legislative purpose," the Arbitrator found that crediting paragraph 2 of the 2017 MOA would render paragraph 7 of that contract as "surplusage." (2-ER-120.) Importantly, however, although paragraph 7 purports to

require a different union organizing process than the Compact's model Tribal Labor Relations Ordinance, the 2017 MOA codified and clarified the Parties' intention that all labor relations matters, including the Union's organizing efforts, were to be governed by the Compact, as mandated by IGRA. (2-ER-81, ¶ 2) ("[t]he parties agree that the Tribal Labor Relations Ordinance governs labor relations at the Casino . . . for Employees to exercise their rights under the Tribal Relations Ordinance to organize collectively[.]".) Former Tribal Chairman Hitchcock testified as such at the Arbitration hearing, stating that the Tribe had insisted, and the Union ultimately agreed, on adding that provision to ensure employees could take part in a secret ballot election to determine whether they wished to be represented by the Union. (2-ER-124-126.) Thus, paragraph 2 reflected the Parties' agreement and intention that the TLRO would govern labor relations at the Casino.

To be clear, during the bulk of the MOA's negotiation, the Tribe and California had *already signed* the Compact as of June 2017. (*Compare* 2-ER-107 ("Raymond C. Hitchcock, as Chairperson of Wilton Rancheria, signed the Compact between the State of California and Wilton Rancheria on June 29, 2017") with 2-ER-110 ("[The Union] presented the first proposal for an MOA to [the Tribe] in ***July*** 2017.") (emphasis added).[6] *See Gallo v. Wood Ranch USA, Inc.*, 81 Cal. App. 5th

[6] In fact, the Union, Boyd Gaming, and the Tribe had begun discussing terms and sharing drafts of a potential MOA months before the Compact was fully executed

621, 642 (2022) ("[W]here, as here, the parties to a contract incorporate a law that is to be used at some time in the future . . ., the parties are deemed to have contemplated—and hence, consented to—the incorporation of postcontract changes to that law."). However, in crediting only paragraph 7, the Arbitrator ironically purports to apply this private contract while giving no credit to the two "acts of legislative purpose," the Compact and TLRO. Yet, contrary to the Arbitrator's finding, the language and context of the 2017 MOA, along with other notable indicia of the Parties' intentions, make clear the MOA was just one piece of the federal-state-regulatory process and not the only piece.

Accordingly, the Arbitrator should not have imposed his own interpretation of paragraphs 2 and 7 of the MOA, particularly when that interpretation refuses to credit explicit language within the contract. As established by this Court, such blatant disregard of explicit contract provisions is a sufficient basis for reversing an arbitrator's award. *See Aspic*, 913 F.3d at 1168 ("What an arbitrator may not do, however, is disregard contract provisions to achieve a desired result."); *see also United Food & Com. Workers Union, Loc. 1119, AFL-CIO v. United Markets, Inc.*, 784 F.2d 1413, 1416 (9th Cir. 1986) (affirming vacatur because the arbitrator's resolution "'add[ed] to' the terms of the agreement—an effect forbidden by ... the

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by the Tribe and the State on July 19, 2017, and the MOA negotiations continued thereafter until the MOA was fully executed on August 7, 2017.

main agreement. *This direct conflict with the language of the agreement renders the arbitrator's interpretation implausible*.") (emphasis added).

c. The course of performance illustrates the Parties expected the TLRO to govern labor relations.

The Arbitrator further disregarded the "essence" of the MOA, which was to facilitate the Tribe's ratification of the Compact so it could operate the Casino. Without the Casino, there would be no workforce for the Union to seek to organize. Moreover, without the TLRO, there is no Compact and without the Compact the Tribe would fall out of compliance with IGRA, directly resulting in the revocation of its gaming license. How the Union would gain the "benefit of its bargain" with no casino to organize is not clear and further demonstrates that such an outcome would be completely irrational. Accordingly, and as agreed by both parties, the MOA explicitly identified the TLRO as controlling in labor relations matters, thereby incorporating the Compact.

Moreover, the Arbitrator's reliance on other MOAs executed by other tribes is not relevant. The only relevant MOA is the one executed and negotiated by Wilton and the Union, just as the only relevant Compact is the one executed between Wilton and California and the only relevant TLRO is the one enacted by the Tribe.[7] Every

[7] This, too, undermines the Tribe's sovereignty. Comparing agreements between other tribes is akin to comparing two contracts of a similar subject matter executed by California and New Hampshire—neither have any bearing on the other.

negotiation, executed contract, and implemented law at issue supports the Tribe's gaming license under federal law. To disregard all of these critical factors and the entire essence of the MOA because of the Arbitrator's interpretation of a single provision within a private agreement, while ignoring Tribal law, is completely irrational.

VIII. CONCLUSION

For the reasons set forth herein, this Court should reverse the District Court's Order denying Wilton's Motion to Vacate or Correct the Arbitrator's Award.

Respectfully submitted this 25th day of April 2025.

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STATEMENT OF RELATED CASES

Appellant is not aware of any related cases before this Court.

Dated: April 25, 2025

LITTLER MENDELSON, P.C.

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CERTIFICATE OF COMPLIANCE

I, STEVEN G. BIDDLE, do hereby certify that this Brief complies with Rule 32(a)(5), (6), and (7)(B)(i) of the Federal Rules of Appellate Procedure as supplemented by Circuit Rule 32-2. The Brief has been prepared in a 14-point proportionally spaced typeface using "Times New Roman." The Brief contains 8,970 words according to the Microsoft Office Word, the word processing system used to prepare the Brief.

Dated: April 25, 2025

LITTLER MENDELSON, P.C.

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CERTIFICATE OF SERVICE

(All Case Participants are CM/ECF Participants)

I hereby certify that on April 25, 2025, I electronically filed the foregoing Appellant's Opening Brief and Excerpts of Record with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Brooke Williamson