No. 26-

IN THE

Supreme Court of the United States

WILTON RANCHERIA,

Petitioner,

v.

UNITE HERE INTERNATIONAL UNION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Notwithstanding the deference afforded to arbitration awards, arbitrators lack the power to facially invalidate federal and state statutes. Similarly, courts defer to Tribal interpretation of Tribal law, as a critical element of longstanding policies upholding and safeguarding Tribal sovereignty. Does an arbitrator exceed his authority when he facially invalidates a duly-enacted Tribal law, especially when a court would not do so and when he would not be permitted to invalidate a duly-enacted federal or state statute?

PARTIES TO THE PROCEEDING, CORPORATE DISCLOSURE STATEMENT, & RELATED PROCEEDINGS

A. Parties to the Proceeding

- Wilton Rancheria
- Unite Here International Union

B. Corporate Disclosure Statement

- Wilton Rancheria has no parent company, and no company owns 10% or more of its stock.

C. Related Proceedings

- United States Court of Appeals (9th Cir.): *Unite Here Int'l Union v. Wilton Rancheria*, No. 25-234, 2026 WL 948529 (9th Cir. Apr. 8, 2026)
- United States District Court (E.D. Cal.):
  - *Unite Here v. Wilton Rancheria*, No. 2:23-cv-02767-KJM-SCR, 2024 WL 5047033 (E.D. Cal. Dec. 9, 2024)
  - *Wilton Rancheria v. Unite Here*, Minute Order, Dkt. No. 23, 25-cv-02413 (E.D. Cal. Apr. 30, 2026)
- *Wilton Rancheria and Unite Here Int'l*, NB 4229, AAA-01-23-00003-6907 (Mar. 17, 2024)

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INTRODUCTION

For decades, Wilton Rancheria fought to be recognized as a sovereign nation by the United States. The Tribe finally achieved this recognition only to have an arbitrator strip it of its sovereign authority to pass its own laws with the proverbial flick of a pen. The Arbitrator determined that a Tribal law, duly enacted in accordance with the Wilton Rancheria Constitution, was not a law with the force of sovereign authority.

But an arbitrator has no authority to facially invalidate a statute of a State or the United States. It follows that an arbitrator has no authority to facially invalidate the statute of a foreign sovereign. Courts defer to Tribes' interpretations of their own laws—in recognition of their foreign sovereign authority—and the Arbitrator must do the same.

Allowing an arbitrator to facially invalidate a Tribal law, as was done here, will cause Tribes to avoid arbitration, as no Tribe would risk such impairment of its sovereignty. To allow otherwise would permit rogue arbitrators to invalidate the laws of other sovereigns, greatly affecting American companies' ability to contract with foreign nations.

Petitioner respectfully requests the Court's review to correct the Arbitrator's award that far exceeded his authority vis-à-vis Tribal sovereign laws.

OPINIONS BELOW

The court of appeals' opinion (App'x at 1a) is unpublished at 2026 WL 948529.

The district court's opinion (App'x at 5a) is unpublished at 2024 WL 5047033.

JURISDICTION

The court of appeals entered its judgment on April 8, 2026. This petition is timely filed on July 7, 2026. The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

9 U.S.C. § 10

25 U.S.C. §§ 2701, *et seq.*

25 U.S.C. § 1302

STATEMENT

A. Legal Background

1. Tribal Sovereignty & The Indian Gaming Regulatory Act

As part of the bargain struck in the United States Constitution, "Indian Tribes remain independent sovereigns with the exclusive power to manage their internal matters." *Haaland v. Brackeen*, 599 U.S. 255, 308 (2023) (Gorsuch, J., concurring); *see also Worcester v.*

Georgia, 31 U.S. 515, 518 (1832) (Tribes are independent political communities). "[T]he Constitution vests in the federal government a set of potent (but limited and enumerated) powers." *Haaland*, 599 U.S. at 308 (Gorsuch, J., concurring). Specifically, "States could no more prescribe rules for Tribes than they could legislate for one another or a foreign sovereign." *Id.* at 317. Congress retained a limited ability to legislate in specific statutory contexts. For example, the Indian Civil Rights Act of 1968 ("ICRA") applies most, but not all, of the protections of the United States Constitution's Bill of Rights directly to individual members of federally recognized Tribes. App'x at 145a–152a.

The Indian Gaming Regulatory Act ("IGRA"), enacted in 1988, established a statutory framework for regulating gaming activities on Tribal land. Tribes seeking to engage in Class III gaming activities must execute a Tribal-State Compact, which—along with the legislation enacted pursuant to it—forms the legal framework governing labor relations at Tribal-owned casinos. *Id*. at 107a, 117a. The IGRA also establishes a negotiation process between Tribes and States, and an approval process whereby the federal government must review, approve, and publish all compacts executed between any State and Tribe. *Id.* at 117a, 123a.

2. The Federal Arbitration Act

In 1925, Congress enacted the Federal Arbitration Act ("FAA") which provides for private dispute resolution through arbitration and governs judicial review of arbitration awards. App'x at 81a–91a. The purpose of the FAA was to encourage arbitration: "to place arbitration

agreements 'upon the same footing as other contracts." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 511 (1974) (quoting H.R. Rep. No. 96, 68th Cong., 1st Sess., 1, 2 (1924)). This Court has consistently reinforced a "'liberal federal policy favoring arbitration agreements.'" *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002).

B. Factual and Procedural Background

1. Factual Background

a. The Tribe and Its History

Petitioner Wilton Rancheria ("the Tribe") is a federally recognized Tribe and sovereign nation located near Elk Grove, California. Citizens of Wilton Rancheria descend from the Miwok and Nisenan people. Non-Indian settlements, forced relocations, and decades of federal and state policies devastated these Tribal populations and cultures, resulting in an amalgamated indigenous background with collective ancestry now known as the Wilton Rancheria.

The history of the federal-Indian relationship in California differs markedly from that of Native peoples elsewhere in the United States. The unprecedented magnitude of non-native migration following the discovery of gold in 1848 set in motion a series of dispossessions. In the early 1850s, the United States negotiated eighteen treaties with California Tribes, but the United States Senate refused to ratify these treaties. Between the unratified treaties and the Land Claims Act of 1851, most California Indians became landless. The California Act for the Government and Protection of Indians of 1850

further facilitated removing California Indians from their traditional lands and separating at least a generation of children and adults from their families, languages, and cultures.

In 1905, citizens sympathetic to the plight of California Indians encouraged Congress to acquire isolated parcels of land on their behalf. Between 1906 and 1910, a series of appropriations provided funds to purchase small tracts of land in central and northern California for landless Indians, giving rise to the Rancheria system. The BIA ultimately acquired a tract near the town of Wilton in Sacramento County for Wilton's indigenous people. The Tribal community living on the Rancheria adopted the first constitution in 1935.

But federal action interrupted that sovereign existence. In 1958, Congress enacted the California Rancheria Act ("Rancheria Act" or "the Act"), Pub. L. No. 85-671, 72 Stat. 619, *amended by* Pub. L. No. 88-419, 78 Stat. 390. The Rancheria Act provided for termination of federal recognition of forty-one California Tribes, including Wilton Rancheria. *Wilton Miwok Rancheria v. Salazar*, No. C 07-02681, 2010 WL 693420, at *1 (N.D. Cal. Feb. 23, 2010). On September 22, 1964, the official notice of the termination of federal supervision of the Wilton Rancheria was published. 29 Fed. Reg. 13,146 (Sept. 22, 1964).

Wilton Rancheria Tribal citizens began working toward the restoration of federal recognition in the 1980s. After decades of litigation and negotiation, the parties reached a resolution and signed a final judgment on July 16, 2009. *Wilton Miwok Rancheria*, 2010 WL 693420, at

*2. In the Stipulated Judgment, the Department of the Interior agreed to restore federal recognition of Wilton Rancheria and its members, to accept in trust certain lands formerly belonging to the Tribe, and to process applications for trusts for other parcels of land. *Id.*; *see also* Restoration of Wilton Rancheria, 74 Fed. Reg. 33,468 (July 13, 2009) (effective June 8, 2009).

With its sovereignty restored, the Tribe moved swiftly to reconstitute its government. The Tribe adopted its current Tribal Constitution in 2011 and established four branches of government: the Office of the Chair and Vice Chair, the Tribal Council, a Tribal Court, and the General Council.

b. Labor Relations at the Casino

In 2017, the federal government took land into trust for the Tribe's economic development, including the development of the Tribe's gaming facility, the Sky River Casino ("the Casino"). In June 2017, pursuant to the IGRA, the Tribe and California executed a compact (the "Compact"), later approved on January 22, 2018, that included a model labor relations ordinance, which required a two-step certification process for any union seeking to become the collective bargaining representative of Casino employees: (1) a potential union must first present signed authorization cards from at least 30% of eligible employees, and (2) a secret ballot election must then be conducted requiring more than 50% of eligible employees to vote for union representation. This model ordinance would become the basis for the later-enacted Tribal Labor Relations Ordinance.

In August 2017, the Tribe and Respondent Unite Here International Union ("Unite Here")—a labor organization seeking to represent employees at the Casino—entered into a Memorandum of Agreement (the "MOA"). App'x at 153a–161a. Pursuant to Paragraph 2, the parties agreed "that the Tribal Labor Relations Ordinance governs labor relations at the Casino, and to hereby establish the following procedure for the purpose of ensuring an orderly environment for Employees to exercise their rights under the Tribal Relations Ordinance to organize collectively[.]" *Id.* at 154a. The MOA contained provisions diverging from the Compact's model ordinance. For example, Paragraph 7 provided for a "card check" recognition process, under which Unite Here would be recognized as the exclusive bargaining representative if it presented signed authorization cards from a majority of eligible employees. *Id.* at 155a.

On April 18, 2019, the Tribe formally exercised its sovereign authority, pursuant to the Article VI, Section 2(c) of its Constitution, by enacting the Tribal Labor Relations Ordinance of 2019 ("TLRO"), codified at Wilton Rancheria Code Title 7, Chapter 3, via Tribal Council Resolution No. 2019-23. App'x at 183a–185a. The Resolution confirmed the TLRO's status as Tribal law, reciting that the "Tribal Council Organization Act of 2012 provides that acts shall be the formal laws passed by the Tribal Council in development of the Tribe's permanent body of law, 4 WRC §1-303." *Id.* As part of the Tribe's legislative process, the TLRO underwent three stages of review: (1) internal review, (2) public review, and (3) a final review phase. *Id.* The draft law was submitted to the Chairperson, *i.e.*, the Executive Branch of Government who then had ten calendar days to veto, accept, or take no action on the

Tribal Council's decision. 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 completing these legislative requirements, the TLRO secured formal legal status and became Wilton Rancheria law. *Id.* Like the Compact's model ordinance, the TLRO requires a secret ballot election as the sole method of union certification—differing from the card-check process in the MOA.

Four years later, on February 1, 2023, Unite Here presented the Tribe with a Notice of Intent to Organize, and the Tribe provided the employee list within two days, as required by the TLRO. *Id.* On June 20, 2023, Unite Here informed the Tribe it had collected signed authorization cards from a majority of eligible employees and demanded recognition without a secret ballot election, in accordance with the 2017 MOA. *Id.* at 186a–187a. The Tribe immediately objected to the notion that a 2017 MOA could supersede Tribal law, and maintained that the TLRO governed the recognition process. *Id.* at 193a, 198a ("Contracts are always subject to applicable law, which includes Tribal law, either through incorporation or by rendering the agreement invalid as a violation of applicable law. I assume that Unite Here would prefer not to invalidate the MOA . . . we will not simply ignore the TLRO or the secret ballot requirement under the TLRO.").

2. Procedural Background

a. The Arbitration Award

On November 29, 2023, Unite Here filed suit in the United States District Court for the Eastern District of California to compel arbitration under the MOA. App'x at 6a. The Tribe moved to dismiss, arguing that a parallel arbitration under the TLRO should first determine whether Unite Here was required to follow the TLRO's procedures. *Id.* at 6a–7a. The district court agreed and stayed Unite Here's lawsuit. *Id.* at 7a–8a.

On March 17, 2024, Arbitrator Norman Brand (the "Arbitrator") issued his Award. The issue presented was whether Unite Here must comply with the TLRO or the Tribe must comply with the MOA. *Id.* at 30a. The Arbitrator narrowed the issue to how Unite Here obtains certification. *Id.* Notably, neither party presented as an issue whether the TLRO was a valid law, enacted pursuant to the Tribe's sovereign authority, and the Tribe never would have consented to an arbitrator determining that issue. The Arbitrator ruled that Unite Here need not follow the TLRO's election procedures and that the Tribe must instead comply with the card-check procedures in the MOA, based on three interrelated findings. *Id.* at 48a–54a.

First, the Arbitrator found the Tribe agreed to the MOA, and that card-check recognition was an essential component of the bargain. *Id.* at 48a–49a. *Second*, he determined that the purpose of the MOA was to obtain a card-check agreement, and that reading Paragraph 2 of the MOA to exclusively require the TLRO's election procedure would render Paragraph 7 surplusage. *Id.* at

49a–52a. *Third*, the Arbitrator concluded that the Tribe failed to show the TLRO is a law made as a sovereign act that takes precedence over the MOA. *Id.* at 52a–54a. Instead, he determined that the TLRO "was not a sovereign act but a compact obligation to the State" and therefore "did not affect the Tribe's obligations under the MOA." *Id.* at 54a. He further reasoned that "[b]y limiting the TLRO to what can be 'lawfully required by an effective tribal-state gaming compact,' the Tribe recognized it had ceded its sovereign power to legislate labor relations." *Id.* at 35a.

b. The District Court Opinion

The Tribe filed a Motion to Vacate or Correct the Arbitration Award in the Eastern District of California. *Id.* at 10a. The Tribe argued that the Arbitrator exceeded his authority, disregarded the Tribe's sovereign status, and irrationally allowed a private agreement to supersede binding Tribal law. *Id.*

On December 9, 2024, the district court denied the motion, finding the Arbitrator's conclusion—that the TLRO "was not a sovereign act but a compact obligation to the State" that "did not affect the Tribe's obligations under the MOA"—was not "completely irrational." *Id.* at 22a. The district court held it could not vacate the award under Section 10 of the Federal Arbitration Act, noting that the Act permits vacatur only in limited circumstances. *Id.*

c. The Ninth Circuit Opinion

On April 8, 2026, the Ninth Circuit affirmed the district court's denial of the Tribe's motion to vacate,

concluding that the Arbitrator's reasoning did not constitute a manifest disregard of law. *Id.* at 4a. The court explained that the Arbitrator did not ignore the TLRO's election procedure because, in its view, that procedure was not the exclusive method available to the parties. *Id.* at 3a.

Importantly, the Ninth Circuit expressly declined to reach the Arbitrator's third ground. The court reasoned that the Arbitrator's analysis of the language of the TLRO and MOA sufficed to support his conclusion that "the Tribe fails to show that the TLRO is a law it made as a sovereign that takes precedence over the MOA." *Id.* at 4a. The court further stated that "[t]he subsequent formal enactment of the same TLRO incorporated by reference into the MOA, whether an exercise of sovereign power or not, does not impact the arbitrator's finding that the TLRO election procedure was not exclusive." *Id.* By declining to address this determination, the Ninth Circuit did not disturb the Arbitrator's conclusion that the Tribe's enactment of the TLRO was not a sovereign legislative act.

I. The Petition Should Be Granted Because an Arbitrator Exceeds His Authority by Invalidating Tribal Law and Allowing the Award to Stand Will Upend a Century of Well-Settled Law.

A. An arbitral decision that invalidates Tribal law conflicts with both the law of other circuits and state law and justifies vacatur.

An arbitration award must be vacated when an arbitrator exceeds his authority. An arbitrator exceeds his authority by invalidating Tribal law. Petitioner has identified no authority supporting that an arbitrator may

do so. In fact, case law overwhelmingly supports that an arbitrator cannot facially invalidate any statute—whether state or federal. These decisions rest on important considerations, including separation of powers. It follows that an arbitrator cannot facially invalidate a foreign statute, like a Tribal statute, without exceeding his authority. The concerns unique to Tribal authority further confirm that an arbitrator may not facially invalidate Tribal law. A Tribe, like Wilton Rancheria, that fought hard and won the ability to self-govern should not lose the sacred sovereign right to pass laws through the decision of an arbitrator when that right cannot be taken through an act of Congress or an Article III judge. No circuit split exists here because no court has ever upheld an award permitting an arbitrator to invalidate a duly-enacted Tribal statute. Thus, the Arbitrator's decision here so dramatically exceeds his authority that it requires review.

1. Courts eschew facial invalidation of statutes.

A court facially invalidates a law only when it determines that it can have no constitutional application. *United States v. Stevens*, 559 U.S. 460, 473 (2010). In essence, a court must determine that no application of the statute can be constitutional or proper, so it must strike down the law. *Id.* That is the effect of the Arbitrator's decision on Wilton Rancheria's Tribal law: He determined it was not a law at all and stripped the TLRO of the force of law.

Facial invalidation is not limited to the instant action, but applies in *all* actions. For that reason, courts apply a high threshold to such challenges. *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). The effect of a facial

challenge is "'to short circuit the democratic process' by preventing duly enacted laws from being implemented." *Id.* Without applying any required analysis—much less the rigorous analysis to meet the high threshold required—the Arbitrator simply invalidated the TLRO, despite its having gone through the full Wilton Rancheria democratic process. App'x at 53a–54a; 183a–185a.

By its nature, a facial challenge presents a question of separation of powers because the Article III judiciary is invalidating the act of Article I Congress. *United States v. Raines*, 362 U.S. 17, 20–21 (1960) (characterizing facially invalidating Acts of Congress as unconstitutional "'the gravest and most delicate duty that this Court is called on to perform'" (quoting *Marbury v. Madison*, 1 Cranch 137, 177–80 (1803)). Facial invalidation of State statutes implicates similar concerns. *See*, *e.g.*, *McKinney v. Goins*, 387 N.C. 35, 42–43 (2025) (since the people imbue the legislature with the power to enact laws, the judiciary should presume laws are constitutional, but strike down laws beyond the limits of the constitution); *Moran Towing Corp. v. Urbach*, 99 N.Y.2d 443, 448 (N.Y. 2003) (legislative enactment presumed constitutional).

Unlike Article III courts, arbitration—as a creature of contract—reflects a different set of considerations. *Czarina, L.L.C. v. W.F. Poe Syndicate*, 358 F.3d 1286, 1293 (11th Cir. 2004). "[T]he powers of an arbitrator extend only as far as the parties have agreed they will extend." *Id.* (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995)). Arbitrators are not imbued with the constitutional role of the judiciary either by the United States Constitution or any State constitution. Recognizing these differences, courts have uniformly held arbitrators

lack the power to facially invalidate statutes or otherwise have refused to uphold an award purporting to do so.

2. Courts vacate awards when an arbitrator facially invalidates a law.

Petitioner has identified only one case in a federal circuit, other than in the instant action, through which litigants asked for review of an award in which an arbitrator purported to invalidate the law of a sovereign nation. In *Citizen Potawatomi Nation v. Oklahoma*, the arbitrator held that "federal law preempts Oklahoma's ability to levy a tax on sales made within Tribal jurisdiction by the nation to individuals that are not members of the Nation." 881 F.3d 1226, 1233 (10th Cir. 2018). Although not stated directly, in finding Oklahoma law was preempted by federal law, the arbitrator effectively invalidated Oklahoma law. Oklahoma filed a motion to vacate arguing that the arbitrator exceeded his powers by failing to limit the award to enforcement of the provisions of the compact between Oklahoma and the Nation. *Id.* at 1234. Further, per Oklahoma, "the arbitrator opted to make public policy by invalidating Oklahoma's sales tax laws as they relate to Compact gaming facilities and conferring upon the Nation a right to sell and serve alcohol that does not exist in the law and is not created by the Compact." *Id.* at 1234 n.11. The court found the arbitration clause under the Compact suffered fatal defects. *Id.* at 1235. As a result, it vacated the award without ruling on Oklahoma's argument regarding the arbitrator's invalidation of Oklahoma law. *Id.* at 1235. Petitioner has not identified any federal court decision that upholds an award in which an arbitrator invalidated a federal statute.

State appellate courts also have concluded that an award warrants vacatur when the arbitrator finds a statute

unconstitutional. The Connecticut Supreme Court in *Garrity v. McCaskey*, vacated an arbitration award when the arbitrator explicitly ruled on the constitutionality of a statute. 223 Conn. 1, 6 (1992); *see also City of New Haven v. AFSCME, Council 15, Local 530, AFL-CIO*, 544 A.2d 186 (Conn. 1988) ("[A]lthough arbitrators may decide legal issues that have constitutional implications, they exceed their authority when they address the constitutional validity of a statute.").

The Oklahoma Supreme Court determined the same: "This Court is the Protector of our Constitution. No statute can remove this duty and place the ultimate determination of a constitutional issue in an arbitrator." *Wyatt-Doyle & Butler Eng'rs, Inc. v. City of Eufaula*, 13 P.3d 474, 477 (Ok. 2000). That court recognized that the City defendant could not have waived its constitutional right to have the dispute decided in court because the constitutional right to have a dispute heard by a court of competent jurisdiction belongs to the people and taxpayers, not the City itself. *Id.* It affirmed the trial court's award that refused to confirm the arbitration decision. *Id.* at 479.

The Washington Court of Appeals held in *Malted Mousse, Inc. v. Steinmetz*, that the arbitrator's award finding a statute unconstitutional was beyond the scope of his authority. 113 Wash. App. 157, 159 (Wash. App. 2002), *reversed on other grounds* 150 Wash.2d 518 (Wash. 2003) (*en banc*).[1] In that action, the arbitrator denied the prevailing party attorneys' fees because, as he

1. The Washington Supreme Court reversed and ordered a trial *de novo*, so it did not reach whether an arbitrator lacked "the authority to unilaterally rule on a statute's unconstitutionality." 150 Wash. 2d at 534 n.12.

announced *sua sponte*, the statute permitting such fees was unconstitutional. *Id.* at 160. The court reasoned that "[t]he act of declaring a statutory scheme unconstitutional is beyond the scope of an arbitrator's authority and a manifest procedural error." *Id.* at 163. The role of the arbitrator is not coextensive with that of courts who are empowered to "analyze the Legislature's enactments against the overarching principles of the constitution." *Id.*

Similarly, in *County of Hennepin v. Law Enforcement Labor Services, Inc., Local No. 19*, the Supreme Court of Minnesota held that an arbitrator exceeded the scope of his authority by ruling that deputy sheriffs did not violate the Fourth Amendment. 527 N.W.2d 821, 824 (Minn. 1995). The court agreed with appellant who argued that "an arbitrator lacks the authority to decide constitutional issues." *Id.* The court went further, and found that "in the public sector an arbitrator has no authority to make constitutional determinations, irrespective of the language of the arbitration agreement." *Id.*

Through these cases, an overarching principle emerges: To permit an arbitrator to rule that a statute is facially unconstitutional would violate separation of powers principles—whether statutes are constitutional or not is the province of the judiciary.

3. Courts also note that arbitrators lack the power to hear facial challenges in the context of exhaustion.

Unsurprisingly, cases in which an arbitrator facially invalidates a statute are few and far between. Most arbitrators, apparently respecting the bounds of their

authority, do not invalidate statutes affirmatively in response to direct facial challenges. Instead, in most instances, litigants raise the issue of whether an arbitrator can decide facial challenges in the context of exhaustion. Typically, a party whose claims are subject to arbitration agreement must bring those claims in arbitration before litigation. *See Meyers v. Bethlehem Ship Bldg. Co.*, 303 U.S. 41, 50–51 (1938). But federal courts do not require parties to raise a facial challenge in arbitration—rather, they deem facial challenges an exception to normal exhaustion requirements. *See generally*, *Davis v. Del. Health & Soc. Service/Div. of Child Support Enf't*, Civ. Action No. 5187-VCP, 2010 WL 1502659, at *2 (Del. Ch. Apr. 6, 2010) (recognizing that normally a party must exhaust administrative remedies before seeking judicial review, but not in the case of a facial challenge to legislation).

In a pair of cases, the Third and Fourth Circuits concluded that arbitration is not a prerequisite to judicial review of a facial constitutional challenge. *Republic Indus., Inc. v. Cent. Pa. Teamsters Pension Fund*, 693 F.2d 290 (3d Cir. 1982); *Republic Indus., Inc. v. Teamsters Joint Council No. 83 of Va. Pension Fund*, 718 F.2d 628 (4th Cir. 1983), *cert. denied*, 467 U.S. 1259 (1984).

In *Central Pennsylvania Teamsters Pension Fund*, the employer challenged the constitutionality of provisions of the Multiemployer Pension Plan Amendments Act ("MPPAA"). *Cent. Pa. Teamsters Pension Fund*, 693 F.2d at 291–92. The district court dismissed for failure to exhaust the mandated arbitration procedure. *Id.* at 291. The Third Circuit held that no policy considerations justified requiring exhaustion and postponing judicial review. *Id.* Exhaustion is not required when the nonjudicial

remedy would inadequately prevent irreparable injury, pursuing administrative remedies would be futile; or the agency action clearly and unambiguously violates a statutory or constitutional right. *Id.* The court reasoned that that "to compel arbitration in the context of a facial challenge would promote neither deference to Congress nor administrative autonomy" and that the legislature could not have intended to defeat separation of powers principles by allowing an administrative tribunal to review the constitutional validity of a statute—a function reserved for the judiciary. *Id.* at 296.

The Fourth Circuit, facing substantially similar facts and relying upon the Third Circuit's reasoning, added that "arbitration could neither moot the constitutional issues which are raised nor develop a factual context for their easy judicial resolution." *Teamsters Joint Council No. 83 of Va. Pension Fund*, 718 F.2d at 635. District courts in other Circuits have followed the rule that facial challenges need not be raised in arbitration. *See*, *e.g.*, *Ctr. States, Southeast & Southwest Areas Pension Fund v. Skyland Leasing Co.*, 691 F. Supp. 2d 6, 8, 14 (W.D. Mich. 1987) (finding exhaustion not required and distinguishing between questions of statutory interpretation—the unique province of courts—and factual issues—ripe for arbitrator determination); *Refined Sugars, Inc. v. Local 807 Labor-Mgmt. Pension Fund*, 580 F. Supp. 1457, 1459 (S.D.N.Y. 1984) (exhaustion is not required "where the questions presented include facial challenges to the constitutionality of the legislation involved"); *Stoeven Bros. Inc. v. Cal. Butchers' Pension Trust Fund*, No. C–82–0558 RFP, 1983 WL 2152, at *1 (N.D. Cal. Sept. 15, 1983) (same); *see also State of Del. v. Bennett*, 697 F. Supp. 1366, 1375 (D. Del. 1988) (endorsing that to require the arbitration panel to

rule on the constitutionality of the Act would violate the principles of separation of powers).

Each of these decisions rests on one or more interrelated ground. *First*, separation of powers commands that only the judiciary is vested with the authority to invalidate duly-enacted statutes passed by a legislature. *Second* and relatedly, the judiciary is primed to reach these kinds of facial decisions and interpret statutes, not an arbitrator. Courts do not even allow administrative agencies—experts on a particular topic—to review facial challenges. *State of Del.*, 697 F. Supp at 1375. *Third*, facial challenges do not require a well-developed factual record, which the arbitrator might aid in developing, but rather present pure questions of law.

State courts also bar arbitrators from deciding facial challenges and require litigants to raise those issues to a court. In *Parker v. St. Tammany Parish Hospital Service District*, the First Circuit Court of Appeal of Louisiana evaluated a motion by defendant to prevent a patient from raising an issue of the constitutionality of a statutory cap on damages before the arbitration panel. 670 So.2d 531, 534–35 (La. Ct. App. 1996). Defendant argued that "the arbitration panel has no authority to pass on the constitutionality of statutes," *id.* at 534, and the court agreed. *Id.* at 534–35.

In *Williams v. State*, the Appellate Division of the Superior Court of New Jersey evaluated an action against New Jersey seeking a declaration that a statute establishing a unit of armed probation officers within the Administrative Office of the Courts violated the separation of powers clause of State constitution. 375 N.J. Super. 485,

489–90 (Sup. Ct. App. Div. 2005). The State argued that "the trial court erred in declining to submit the issue of comity and constitutionality of the Act to arbitration." *Id.* at 490. The court concluded that "the facial validity of legislation is not subject to arbitration," and should be left to courts. *Id.* at 490–91.

In sum, courts overwhelmingly find that arbitrators—since they lack Article III authority and are bound by the contract between the parties—lack the authority to facially invalidate laws. These cases stand in direct contrast to what the Arbitrator did here by stating that a duly-enacted Tribal Law lacked the force of a law. And, Petitioner found no cases that support an arbitrator invalidating a duly-enacted statute, or finding that a private agreement superseded a duly-enacted statute.

4. The fact that arbitration rests on the parties' consent confirms that arbitrators lack the power to facially invalidate statutes.

The overarching principle of the foregoing cases is that arbitrators cannot facially invalidate statutes; that is the province of the judiciary. To hold otherwise would create anomalous results. Facial challenges have an *erga omnes* effect. A facial invalidation of a statute applies to all; a judge does not void a statute only as to the litigating parties. *Moody*, 603 U.S. at 723. Even if parties can waive individual rights as applicable to particular instances, separation of powers is a structural constitutional principle that parties cannot waive. *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 668 (2015) (recognizing that even Congress cannot withdraw from Article III courts any matter which is the subject of a suit at common law or

in equity). And parties cannot waive the rights of other, largely unidentified, individuals. *Wyatt-Doyle & Butler Eng'rs, Inc.*, 13 P.3d at 477. Facial invalidation in arbitration runs counter to the contractual agreement between a finite set of parties undergirding arbitration. Even if parties purported to grant the arbitrator the power to declare a statute facially unconstitutional, the resulting award could bind only those parties. An arbitrator lacks power to void the statute as to the rest of the country or state, which is what the Arbitrator purports to do here—render the TLRO invalid as if it were not a duly-enacted Tribal law for all purposes and not limited to the dispute between Petitioner and Respondent. App'x at 30a, 54a.

The finding that facial invalidation of statutes exceeds arbitrators' authority comports with related doctrines regarding the scope of other non-Article III judges. This Court has concluded that non-Article III judges may hear particular claims with the consent of the parties, in part because of the meaningful supervision provided by Article III district courts of the underlying decisions. "Article III . . . serves a structural purpose, 'barring congressional attempts 'to transfer jurisdiction [to non-Article III tribunals] for the purpose of emasculating' constitutional courts and thereby prevent [ing] 'the encroachment or aggrandizement of one branch at the expense of the other.'" *Wellness*, 575 U.S. at 678. In *Wellness*, the Court concluded that a magistrate judge may supervise jury selection, with consent of the parties, because "the entire process takes place under the district court's total control and jurisdiction." *Id.* at 677. Similarly, consent in bankruptcy allows Article I bankruptcy judges to hear related claims. However, even with consent of the parties, a magistrate judge and bankruptcy judge still

cannot reach an ultimate finding in a binding opinion that facially invalidates a statute. Instead, they must submit findings and recommendations to a district judge for final review because only that will satisfy the constitutional protections of Article III. *See*, *e.g.*, *Stern v. Marshall*, 564 U.S. 462, 483–84 (2011) (holding a bankruptcy court lacks constitutional authority to enter final judgment on non-core proceedings); *United States v. Blazer*, 2019 WL 3934802, at *2 (D. Kan. Aug. 20, 2019) (holding a magistrate judge may not find a statute unconstitutional because an Article I judge "may not infringe on an Article III judge's constitutionally granted powers").

Although arbitrators and Article I judges are both creatures of consent of the parties, the opinions of both magistrate and bankruptcy judges differ dramatically from arbitrators' awards: This Court and the FAA require a highly deferential standard when a court reviews arbitration awards. *Hall Street Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 578 (2008) (barring the parties' ability to agree to *de novo* or another standard of review, and limiting review to the categories enumerated in the FAA). Since Article I judges cannot issue binding opinions on facial challenges because of separation of powers concerns, it follows that arbitrators cannot either—particularly because district courts lack the authority to authorize the final opinion with their Article III imprimatur.

5. No exception exists that empowers arbitrators to facially invalidate Tribal law.

In recognition of Tribal sovereignty, courts defer to Tribal law. Arbitrators have no greater authority and must also defer to Tribal law, not invalidate it.

Tribes have sovereign authority to craft their own substantive law governing internal matters and to enforce law in their own fora. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55–56 (1978). "[T]ribal courts are best qualified to interpret and apply tribal law." *Prescott v. Little Six, Inc.*, 387 F.3d 753, 756 (8th Cir. 2004).

In *Basil Cook Enterprises, Inc. v. St. Regis Mohawk Tribe*, plaintiff argued that the St. Regis Mohawk Tribal Court is a nullity under the Tribal constitution. 117 F.3d 61, 67 (2d Cir. 1997). The Second Circuit rejected that argument because to so hold would require it "to construe tribal law." *Id.* And the Second Circuit stated, "This we may not do." *Id.* (citing Supreme Court, Ninth Circuit, and Eight Circuit precedent for the proposition that it is "the exclusive responsibility of Native American tribes to construe their own law").

Similarly, the Eighth Circuit and lower courts within it, avoid interpreting Tribal law. In *Runs After v. United States*, the Eighth Circuit affirmed the district court's decision to abstain from interpreting whether Tribal Council resolutions conflicted with Tribal constitution, bylaws, and election ordinance. 766 F.2d 347, 352 (8th Cir. 1985). The court held that "resolution of such disputes involving questions of interpretation of the tribal constitution and tribal law is not within the jurisdiction of the district court." *Id.* In *Smith v. Babbit*, the court held that it lacked jurisdiction to determine membership of a Tribe because it would involve interpretation of the Tribal Constitution. 875 F. Supp. 1353, 1361 (D. Minn. 1995). Courts lack the authority to interpret Tribal law, which necessarily includes invalidating Tribal law. *See Attorney's Process & Investigation Servs., Inc. v. Sac &*

Fox Tribe, 609 F.3d 927, 943 (8th Cir. 2010) (federal courts defer to tribal court rulings under Tribal law). It follows that if courts lack this authority, so too do arbitrators.

The Interior Board of Indian Appeals ("IBIA") and Bureau of Indian Affairs ("BIA")—both agencies charged with Native American Tribal relations for the United States Department of the Interior—also must defer to Tribal law. The IBIA, faced with the interpretation of an ordinance enacted by a Tribe has held that the Secretary of the Interior was required to defer to the Tribe's "reasonable interpretation of its own Constitution and laws." *See Shakopee Mdewakanton Sioux Cmty. v. Acting Minneapolis Area Director*, 27 IBIA 163, 171–172 (1995). Since the court concluded the interpretation reflected by the Tribe's ordinance was reasonable, it deferred to the Tribe's interpretation. *Id.* In *Cayuga Nation v. Bernhardt*, the district court explained that "while it is generally true that the IBIA reviews questions of law *de novo*, that is not the case with Indian law." 374 F. Supp. 3d 1 (D.D.C. 2019). The deference afforded to Tribal interpretation of Tribal law—even by the agencies who possesses expertise—suggests that an arbitrator may not decide matters of Tribal law. *See Williams*, 375 N.J. Super. at 523–24 ("If an administrative agency, which is vested with 'specialized expertise,' lacks jurisdiction to declare a statute facially unconstitutional, then such proposition applies with greater force to an arbitrator."). Together, these cases stand for the proposition that Wilton Rancheria, as a foreign sovereign, is best positioned to interpret its own Tribal Constitution and laws, and that interpretation requires deference.

The broad grant of authority in the FAA does not elevate arbitrators above the powers of Article III courts or remove the requirement of deference. The policy in favor of arbitration in the FAA "should not override the federal policy of deferring to tribal courts." *Gaming World Int'l Ltd. v. White Earth Band of Chippewa Indians*, 317 F.3d 840, 850 (8th Cir. 2003). That action involved a dispute over "activities undertaken by tribal government within reservation lands." *Id.* The Eighth Circuit held that the district court "erred by not deferring for exhaustion of tribal court remedies" and that such error was amplified because it concerned tribal government actions within the bounds of their sovereignty. To hold otherwise—*i.e.*, that arbitrators may interpret Tribal law when courts must defer to Tribal interpretation—would be to favor arbitration over ordinary litigation. To do so is impermissible. *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218–221 (1985) ("[A] court may not devise novel rules to favor arbitration over litigation."). Thus, the Arbitrator's award must be struck because it exceeded arbitral authority and failed to defer to duly-enacted laws based on Wilton Rancheria's sovereignty.

Nothing suggests that the FAA intended to permit arbitrators to nullify tribal sovereignty because it if intended to, it needed to announce so explicitly. *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 388 (2023). And "[i]f 'there is a plausible interpretation of the statute' that preserves sovereign immunity, Congress has not unambiguously expressed the requisite intent." *Id.* The FAA did not express that intent. Nothing in the FAA states that it intended to abrogate the deference owed to Tribal interpretation of Tribal law.

Thus, arbitrators lack authority to facially invalidate Tribal law. The Arbitrator's Award that invalidated duly-enacted Tribal law must be struck as it exceeds the scope of arbitral authority and any judicial decision on this subject.

B. To allow this ruling to stand will rupture settled precedent on arbitration and Tribal sovereignty.

The Arbitrator's Award marks a fundamental departure from at least a century of law encouraging arbitration, recognizing Tribal sovereignty, and favoring arbitration in international contexts. The consequences are far reaching.

Facing the prospect of Tribal law being facially invalidated by arbitrators—when courts lack that same authority—Tribes will cease agreeing to arbitrate. Tribes receive deference in agency and court proceedings, *see supra* at 22–26; it would be irrational for them to risk invalidation of their duly-enacted laws in a forum that does not require such deference. No Tribe would take that chance, particularly when many, like Petitioner, have faced discrimination and disenfranchisement and have had to fight for the right to self-governance in the first place.

Such a result would frustrate the purpose of the FAA, which was to encourage arbitration. *Scherk*, 417 U.S. at 511 (quoting H.R.Rep.No.96, 68th Cong., 1st Sess., 1, 2 (1924)). The policy favoring arbitration is particularly strong in the international context. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985) ("[T]hat federal policy applies with special force in

the field of international commerce."). Far from favoring arbitration with Tribes—foreign sovereigns—it makes arbitration prohibitively dangerous. The FAA cannot countenance such a result.

Such a result also puts Tribes on a different footing vis-à-vis arbitration than corporations, states, and foreign corporations—making Tribes second-class sovereign entities. But sovereignty intends no half-measures; there is no sovereignty if arbitrators can upend critical doctrines on Tribal sovereignty.[2] As part of the bargain struck through the Constitution, Tribes remain independent sovereigns, which includes their ability to take the full panoply of self-governance actions. *Haaland*, 599 U.S. at 308 (Gorsuch, J., concurring). Even in the context of commercial agreements, sovereignty should not be subordinated. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 145–46 (1982). But this Award supports—and indeed, encourages—such subordination.

Tribes retain the right to govern themselves: to establish a legislature or council, to enact laws, and to create courts. *McGirt v. Oklahoma*, 591 U.S. 894, 928–29 (2020). Wilton Rancheria fought for decades to regain those rights that the United States had wrested away from it. Accordingly, it cannot be that an arbitrator who disagrees with Tribal sovereignty can eliminate it with a keystroke. In fact, Congress believed so strongly in Tribal sovereignty, that it refused to apply all of the provisions of the Constitution to Tribes; instead, it recognized and

2. In other contexts, this Court has compared tribal immunity to foreign sovereign immunity. *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 757 (1998).

confirmed such sovereignty in several areas. 25 U.S.C. §§ 1301–04. For example, the Contracts Clause does not apply to Tribes. *Id.*; *State ex. Rel. Maney v. Maney*, No. CV 99-558, 2005 WL 6438072, at *4, 4 Cher. Rep. 23 (Eastern Cherokee Sup. Ct. May 10, 2005).

It cannot stand that an arbitrator can invalidate the laws of foreign sovereigns because such a result might abrogate Puerto Rican, American Samoan, or even French and Spanish law. Territories and other sovereigns have sovereign immunity similar to that retained by Tribes. *See Fin. Oversight & Mgmt. Bd. For Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339 (2023) (similarly, ordinarily requiring that Congress unambiguously and unmistakably abrogate sovereign immunity for Puerto Rico and noting that the same standard applied to Tribes); *Marx v. Gov't of Guam*, 866 F.2d 294, 297–98 (9th Cir. 1989) (noting that Guam is recognized to have "a form of inherent or common law sovereign immunity"). In this case, the Arbitrator utterly ignored (or simply failed to understand) the broad-reaching effect of violating sovereign immunity. This Award could create a lane for other arbitrators to abrogate the sovereign immunity of additional territories or even foreign states. If the Court permits arbitrators to invalidate the laws of one foreign sovereign—Wilton Rancheria—nothing stops them from invalidating inconvenient laws of other foreign sovereigns, like of England or Saudi Arabia.

Further, in the international context, arbitration is entitled to even greater deference. *Deloitte Noraudit A/S v. Deloitte Haskins & Sells, U.S.*, 9 F.3d 1060, 1063 (2d Cir. 1993). In other words, courts will afford greater

deference to arbitration decisions, even if such awards invalidate foreign laws. If arbitrators are able to invalidate the law of territories and even other countries—as follows logically from this decision—it will have far reaching consequences because courts will defer to those decisions. This result was never intended and cannot be sanctioned by this Court as the far-reaching potential consequences upend a century of existing law and policy in dealing with United States entities.

C. The Arbitrator's massive overreach of settled law infects the entire Award, and resolution of the questions presented will resolve the main issue in this case.

Resolution of this question will resolve the important issue in this case. The Tribe never waived its sovereign immunity. The Arbitrator exceeded his authority in invalidating a duly-enacted Tribal law that superseded a private memorandum. And such disregard of Tribal law exceeded the Arbitrator's jurisdiction and infected the entire Award. The Award must be vacated.

Under the FAA, "where the arbitrators exceeded their powers," the award must be vacated. 9 USCA 10(a)(4). Common examples of an arbitrator exceeding his authority included (1) substituting his own judgment,[3] (2) ignoring

3. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 673–77 (2010) (holding that the arbitrators imposed their own view of sound public policy by permitting class-wide arbitration and exceeded their authority); *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597 (1960) (an award "must 'draw its essence' from the [agreement], not merely reflect '[the panel's] own brand of industrial justice'").

permitted law,[4] and (3) exceeding scope of relief permitted under the contract.[5] All occurred in the instant matter.

The Arbitrator here facially invalidated a Tribal law. He found that the TLRO—a duly-enacted law—was not actually a law. App'x at 54a. That renders it effectively meaningless. He exceeded his authority, substituted his own judgment to do so rather than following traditional analysis of how statutes and contracts interplay, and declined to defer to the Tribe's understanding of its own law that requires a secret ballot election in order for a union to become the exclusive bargaining representative of employees. *Id.* at 52a–54a. He cited no authority that permitted such a course of action. *Id.*

To the extent the Arbitrator cites, *W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber*, that case is inapposite. In that case, the Court found that a contract provision that had been enjoined is unenforceable. 461 U.S. 757, 766–67 (1983). The company faced the dilemma of complying with the injunction and risking liability under the collective bargaining agreement, or following the collective bargaining agreement and risking a contempt

4. *St. John's Mercy Med. Ctr. v. Delfino*, 414 F.3d 882, 884 (8th Cir. 2005) (an arbitration award evidences manifest disregard for the law when "an arbitration panel cites relevant law, then proceeds to ignore it").

5. *Magid v. Waldman*, 2022 WL 571424, at *2 (2d Cir. Feb. 25, 2022) (affirming the district court's finding that the arbitration panel exceeded the scope of its authority by awarding a party attorney's fees for enforcement proceedings because "[t]here is no evidence that [the party] requested fees for subsequent enforcement proceedings").

citation. *Id.* The injunction was later found erroneous. *Id.* The Court determined that the company had created two conflicting obligations for itself, and that it bore the risk of damages if the injunction was erroneous. *Id.* Nothing in that action states that Tribal law need not be complied with even if a conflicting contractual obligation exists. Nothing in that action empowered an arbitrator to determine a Tribal law was not a sovereign act.

1. The Tribe did not waive sovereign immunity.

In the context of commercial agreements, unless explicitly relinquished, sovereignty persists. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 145–46 (1982). In that case, the Court explained that "petitioners and the dissent confuse the Tribe's role as commercial partner with its role as sovereign." *Id.* The Court noted that, "It is one thing to find that the Tribe has agreed to sell the right to use the land and take from it valuable minerals; it is quite another to find that the Tribe has abandoned its sovereign powers simply because it has not expressly reserved them through a contract. Confusing these two results denigrates Indian sovereignty." *Id.* Tribal sovereignty remains "even when unexercised" in "all contracts subject to the sovereign's jurisdiction" "unless surrendered in unmistakable terms." *Id.* at 148.

The TLRO did not permit the Arbitrator to determine that it is not a sovereign act. Waiver of immunity must be clear and unequivocal. *Martinez*, 436 U.S. at 58. Waiver of immunity is limited to corporate activities of a Tribe and "do not extend to actions of the tribe in its capacity

as a political governing body." *World Fuel Servs., Inc. v. Nambe Pueblo Dev. Corp.*, 362 F. Supp. 3d 1021, 1095 (D.N.M. 2019) (quoting *Ute Dist. Corp. v. Ute Indian Tribe*, 149 F.3d 1260, 1268 (10th Cir. 1998)). Nothing on the face of the TLRO purports to waive that sovereign immunity. The Arbitration provision only states that it agrees "to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming or vacating an arbitration award issued pursuant to this Ordinance . . . The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel." App'x at 74a–75a. In fact, the TLRO consistently expressed a preference for the TLRO, Tribal law, and for Tribal ordinances to govern when faced with conflicting preferences. *See*, *e.g.*, *id.* And the Tribe at no point took the position that the TLRO was not a duly-enacted ordinance. *See* App'x at 53a (only Unite Here's witness asserted this position). Instead, the Tribal Council Resolution No. 2019-33 enacting the TLRO indicated that it was passed with the full force of a formal law under the Tribal Constitution. *Id.* at 183a. No litigation position or testimony on behalf of the Tribe contradicts that position. Thus, without more, the Tribe did not waive its sovereign immunity such that the Arbitrator may find that the TLRO was not imbued with the force of law.

2. The Award's result was entirely tainted by the improper invalidation.

The Award rests on three interconnected reasons, and all three were required for the Arbitrator to reach the ultimate decision. *First*, an essential consideration in the MOA was card check recognition as evidenced by the

bargaining history. *Id.* at 48a–49a. *Second*, an essential consideration in the MOA was card check recognition as evidenced by the MOA itself, and on the face of the MOA, if the process in the TLRO is mandatory, then the MOA card check agreement is surplusage. *Id.* at 49a–52a. *Third*, no deference to Tribal law (the TLRO) was required because it was not a sovereign act. *Id.* at 52a–54a. Without the third reason, the TLRO must take precedence, regardless of the MOA's plain language or bargaining history. *Racine Cty. v. Int'l Ass'n of Machinists & Aerospace Workers Dist. 10*, 310 Wis.2d 508 (Wisc. 2008).

A contract cannot trump statutory authority. *Id.* at 517. In *Racine County*, the arbitrator found for a union in a grievance arbitration alleging that the county violated the collective bargaining agreement (the contract). Defendant county sought to vacate the arbitration award, and the trial court determined that the arbitrator's award ignored relevant law and sought to supersede statutory and judicial authority. *Id.* The appeals court reversed. *Id.* The Wisconsin Supreme Court found that the arbitrator's award "improperly invaded the judicial branch's statutory authority," and that "[a] collective bargaining agreement cannot trump such statutory, judicial branch authority because doing so would violate separation of powers principles." *Id.* at 521.

Here, the Ninth Circuit erred when it dismissed without reasoning the Tribe's argument that the Arbitrator exceeded his authority by improperly invalidating the TLRO. App'x at 4a. An award cannot be upheld when the *ultra vires* action "taint[s] the entire process." *PoolRe Ins. Corp. v. Org. Strategies, Inc.*, 783 F.3d 256, 265–66 (5th

Cir. 2015). The Arbitrator had to reconcile the MOA and TLRO, which is what he apparently sought to accomplish through his third reason. He had to explain why the contract did not yield to the statute. He chose to do so by purporting to invalidate the TLRO—far exceeding his authority. The third reason cannot be severed, so the whole Award is tainted.

This Petition does not ask this Court to decide whether the card-check recognition process applies. Instead, Petitioner asks the Court to invalidate the Award to rein in an Arbitrator who far exceeded his mandate and upended centuries of Tribal law. There was another way for the Arbitrator to reach the same result.

Unite Here could have raised due process claims or claims under the takings clause in Tribal court. The ICRA reflects a takings clause and a due process clause. App'x at 146a–147a. Thus, Unite Here could have argued in Tribal Court that they had a property interest in the MOA that could not be impaired. *See Radwan v. Manuel*, 55 F.4th 101 (2d Cir. 2022) (a contract created a property interest that was protected by due process). Following a favorable ruling in Tribal Court that the TLRO could not serve to impair the existing card-check recognition process, the Arbitrator could then have reached the same result.

What the Arbitrator could not do—apparently troubled by a later enacted law that impaired a contract—is read a Contracts Clause into Tribal law. Congress actively chose not to do that in the ICRA. App'x at 146a–147a. "By not including certain clauses of the Bill of Rights and by

modifying the clauses that were finally incorporated into 25 U.S.C. § 1302, Congress recognized as legitimate the Tribal interest in maintaining traditional practices that conflict with constitutional concepts of personal freedom developed in a different social context." *Janis v. Wilson*, 385 F. Supp. 1143, 1150 (D.S.D. 1974). The Contracts Clause is one such right. *Maney*, 2005 WL 6438072, at *4. It is hard to think of a greater invasion of Tribal authority than a private individual imposing a restriction Congress chose not to.

The Tribe has raised the argument at all stages that the arbitrator exceeded his authority in invalidating the TLRO. Br. at 11–15, *Unite Here Local 30 v. Wilton Rancheria*, No. 2:23-cv-02767-KJM-SCR (E.D. Cal. Aug. 13, 2024), ECF No. 33-1; Defendant-Appellant's Suppl. Br., *Unite Here Local 30 v. Wilton Rancheria*, No. 25-234 (9th Cir. Dec. 19, 2025), ECF No. 43.1. Thus, this argument was preserved at all stages, and is ripe for this Court's resolution.

CONCLUSION

The Award at issue requires review by this Court because it massively exceeds the scope of an arbitrator's authority by allowing an arbitrator to facially invalidate a Tribal law and thereby unlawfully abrogating Tribal sovereignty. Allowing it to stand would disrupt a century-long policy of respect for Tribal sovereignty, deference to Tribal interpretation of Tribal law and in favor of arbitration.

Respectfully submitted,

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APPENDIX

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APPENDIX A — *UNITE HERE INTERNATIONAL UNION V WILTON RANCHERIA*, NO. 25-234, 2026 WL 948529 (9TH CIR. APR. 8, 2026)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 25-234

UNITE HERE INTERNATIONAL UNION,

Plaintiff-Appellee,

v.

WILTON RANCHERIA,

Defendant-Appellant.

Argued and Submitted December 4, 2025
San Francisco, California
Filed April 8, 2026

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding
D.C. No. 2:23-cv-02767-KJM-SCR

Before: R. NELSON, COLLINS, and VANDYKE, Circuit Judges.

Appendix A

MEMORANDUM*

Defendant-Appellant Wilton Rancheria ("the Tribe") appeals the district court's denial of the Tribe's motion to vacate an arbitration award directing the Tribe to cooperate with UNITE HERE's ("the Union") attempts to use the procedure for electing a collective bargaining representative established by the parties' 2017 Memorandum of Agreement ("MOA"). We have jurisdiction under 28 U.S.C. § 1291; the district court had jurisdiction over the Union's initial complaint under 28 U.S.C. § 1331 and over the Tribe's motion to vacate under 28 U.S.C. § 1367. When a district court denies a motion to vacate an arbitration award, we review the district court's denial de novo. *ASARCO LLC v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC*, 910 F.3d 485, 489 (9th Cir. 2018). Under the Federal Arbitration Act, federal courts review an arbitration award very deferentially, upholding it "unless it is completely irrational or it constitutes a manifest disregard of the law." *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1105 (9th Cir. 2003) (quoting *French v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 784 F.2d 902, 906 (9th Cir. 1986)). Failures to "understand or apply the law"—even "misinterpretations of law"—do not satisfy this standard. *French*, 784 F.2d at 906 (quoting *Am. Postal Workers Union AFL-CIO v. U.S. Postal Serv.*, 682 F.2d 1280, 1285 (9th Cir. 1982)).

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appendix A

The district court properly denied the Tribe's motion to vacate. There is no question that the parties authorized the arbitrator to decide whether the Union had to use the election procedure described in the Tribal Labor Relations Ordinance ("TLRO"), or whether the Tribe had to comply with the Union's efforts to use the MOA election procedure. The arbitrator focused his analysis on that "essential dispute," noting that "compliance with the MOA does not affect compliance" with other TLRO provisions. Then, exercising the authority granted to him by the parties, the arbitrator rejected as "unconvincing" and "implausible" the Tribe's argument that the MOA language incorporating the same TLRO the Tribe would formally enact in 2019 "mean[s] the Union agreed that it must follow the election procedure in the TLRO because that procedure is exclusive." The arbitrator noted that similar TLROs had never been interpreted to "vitiate[]" the election procedure prescribed by similar MOAs, and that reading the TLRO procedure as the exclusive election method would turn the MOA provisions describing the alternative procedure into surplusage.

The Tribe fails to persuasively argue that this ground of the arbitrator's decision qualifies as a manifest disregard of law or as completely irrational. The arbitrator's reasoning does not involve "recogniz[ing] the applicable law and then ignor[ing] it." *Mich. Mut. Ins. Co. v. Unigard Sec. Ins. Co.*, 44 F.3d 826, 832 (9th Cir. 1995). Contrary to the Tribe's argument, the arbitrator did not ignore the election procedure described by the TLRO: he merely found that it was not the "exclusive" election procedure available to the parties. Nor is the

arbitrator's analysis "completely irrational" for "fail[ing] 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)). In rejecting the argument that the TLRO procedure was the exclusive election procedure available to the parties, the arbitrator was drawing from the essence of the agreement by giving effect to each of the agreement's provisions. Under the extraordinarily deferential standard prescribed by the Federal Arbitration Act, the district court therefore properly upheld, as not manifestly disregarding the law or completely irrational, the arbitrator's conclusion that the Tribe had to comply with the Union's attempts to use the MOA election procedure.[1]

AFFIRMED.

1. The arbitrator's analysis of the language of the TLRO and the MOA in the second ground of his decision suffices to support his conclusion, so we do not reach the third ground the arbitrator provided—that "the Tribe fails to show that the TLRO is a law it made as a sovereign that takes precedence over the MOA." The subsequent formal enactment of the same TLRO incorporated by reference into the MOA, whether an exercise of sovereign power or not, does not impact the arbitrator's finding that the TLRO election procedure was not exclusive.

APPENDIX B — *UNITE HERE V. WILTON RANCHERIA*, NO. 2:23-CV-02767-KJM-SCR, 2024 WL 5047033 (E.D. CAL. DEC. 9, 2024)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

No. 2:23-cv-02767-KJM-SCR

UNITE HERE,

Plaintiff,

v.

WILTON RANCHERIA,

Defendant.

Signed December 6, 2024
Filed December 9, 2024

ORDER

Kimberly J. Mueller, SENIOR UNITED STATES DISTRICT JUDGE.

UNITE HERE is an organization that represents employees in casinos, hotels and the food service industry, and it is the plaintiff in this lawsuit. Wilton Rancheria is a federally recognized Indian Tribe, and it is the defendant. The parties completed arbitration related to the Union's efforts to organize employees at the Tribe's casino earlier this year, and the Tribe now seeks to vacate the

arbitrator's award. As explained in this order, because the arbitrator's decision was rational and within his authority, the court **denies** the Tribe's motion to vacate the award.

I. BACKGROUND

The Union filed this lawsuit to compel the Tribe to follow a process laid out in a 2017 "Memorandum of Agreement" or "MOA" between the two of them. *See* MOA, Compl. Ex. B, ECF No. 1; Prev. Order (Aug. 7, 2024) at 2, ECF No. 32. Under that agreement, if the Union gives written notice of its intent to organize employees at the Tribe's casino in Elk Grove, California, then the Tribe and the casino's operator are obligated to give the Union access to the casino and its employees. *See* Prev. Order (Aug. 7, 2024) at 2. If the Union requests recognition as an exclusive collective bargaining agent, then an arbitrator checks employee authorization cards or membership records to confirm whether the Union represents a majority. *See id.* at 2-3. The Union alleges in its complaint that it received access and requested recognition, which would mean it was time to select an arbitrator, but the Tribe refused to do so. *See* Compl. ¶¶ 22, 29, 32. The Union also alleges the Tribe and its casino operator later excluded the Union's representatives from parts of the casino. *See id.* ¶ 31.

Soon after this case was filed, the Tribe moved to dismiss the Union's complaint. *See generally* Mot. Dismiss, ECF No. 5. It relied primarily on the argument that the case was unripe. *See generally* Mem. Dismiss, ECF No. 5-1. In the Tribe's view, before any disputes about the

2017 agreement and card check could be litigated or arbitrated, it was first necessary to resolve a different dispute and complete a parallel arbitration that had begun on approximately the same timeline. *See* Mem. Dismiss at 9-16. The parallel arbitration had its roots in a gaming compact between the Tribe and the State of California, which became effective in early 2018. *See id.* at 2-3. As required by that compact, the Tribe adopted a "Tribal Labor Relations Ordinance" or "TLRO." *See id.* at 2-3; *see also* TLRO, Compl. Ex. A, ECF No. 1. That ordinance makes a card check only the first step in a two-step process for recognizing a bargaining representative; the second step is a secret ballot election. *See* TLRO § 3-210.[1] The ordinance, like the 2017 agreement, includes an arbitration clause, and by the time the Union filed this case, the Tribe had already demanded arbitration under the ordinance. *See* Prev. Order at 4. Arbitration had in fact already begun. *See id.* The arbitrator, Norman Brand, had framed the issue as "[w]hether the Union must comply with the TLRO . . . or the Tribe must comply with the MOA." Case Mgmt. Order, Carroll Decl. ¶ 3 & Ex. A, ECF No. 10-2. And so, the Tribe argued, the Union's motion to compel arbitration under the 2017 agreement would be premature until the arbitrator decided whether the ordinance or agreement would control. *See* Mem. Dismiss at 9-16.

After a hearing, this court stayed the Union's lawsuit until the pending arbitration was complete. *See* Min.

1. For clarity, the court refers in this order to the section numbers used in the version of the TLRO adopted by Wilton Rancheria, not those in the version attached to the complaint. *See* Biddle Decl. Ex. 2, ECF No. 33-2.

Order (Feb. 23, 2024), ECF No. 16. The arbitrator issued his decision a few months later. *See* Joint Status Rep. & Attachment, ECF No. 18.[2] He ordered the Tribe to comply with the 2017 agreement. *See* Award at 20. The arbitrator's opinion offers "three reasons for this finding:"

- First, the arbitrator cited the "essential promises" of the 2017 agreement. *Id.* at 16. The Union received the Tribe's promises both to be neutral during a Union organizing campaign and to recognize a card check, and in return, the Tribe secured the Union's political support in its "efforts to have the legislature approve its compact with the State." *Id.* The "bargaining history" was, in the arbitrator's assessment, "unequivocal." *Id.* The arbitrator did not credit the testimony the Tribe had offered in support of its contrary position. The person who offered that testimony—a former Tribe chairperson—had not attend the negotiations, so he had no first-hand knowledge of what was discussed. *See id.* Nor was the arbitrator persuaded by the Tribe's claim that it had been misled about what it was agreeing to. The Tribe had been represented by an experienced negotiator who had gone up against the Union in similar negotiations about multiple similar agreements before. *See id.* at 16-17.

- Second, the arbitrator concluded that the Tribe's version of events lacked "support in the evidence,

2. The award is also attached as an exhibit to Steven Biddle's declaration. *See* Award, Biddle Decl. Ex. 3, ECF No. 33-2.

logic, or the MOA" itself. *Id.* at 17. The person who had negotiated the MOA on behalf of the Union "credibly testified" in the arbitration "that the whole purpose of the negotiation was to get a card check agreement." *Id.* The arbitrator found that position was "logical because the Union could have most of what it negotiated in the MOA—without supporting ratification of the Compact—if it sought certification through an election under the TLRO." *Id.* The arbitrator found confirmation of this conclusion in the fact that the Tribe's interpretation of its ordinance was unprecedented and novel. *Id.* at 18. The Tribe's preferred interpretation also turned some provisions in the 2017 agreement into useless "surplusage," contrary to the rules of contract interpretation. *Id.* at 18-19.

- Third, the Tribe did not show in the arbitration that "the TLRO is a law it made as a sovereign that takes precedence over the MOA." *Id.* at 19. Rather than the act of a sovereign, the arbitrator saw the TLRO as evidence the Tribe had actually surrendered "its right to legislate about labor relations." *Id.* "Therefore," the arbitrator concluded, "enacting the TLRO did not affect the Tribe's obligations under the MOA it negotiated with the Union." *Id.* at 20.

After the arbitrator made this award, the Tribe sought to vacate it by filing a motion in this action. *See* Joint Status Rep., ECF No. 18; Prev. Order (Apr. 19, 2024), ECF No. 20; Mot. Vacate, ECF No. 22. It was clear the Tribe had not met and conferred effectively with the Union about

that motion, however, as required by this court's standing orders, so the court struck it without prejudice to renewal. *See* Prev. Order (Apr. 19, 2024) at 2. The court also lifted the stay that had been in effect while the arbitration was pending, denied the Tribe's motion to dismiss, and granted the Union's motion to compel arbitration under the 2017 agreement, i.e., the card-check process. *See* Prev. Order (Aug. 7, 2024) at 13. After the court issued these orders, the Tribe renewed its motion to vacate the arbitrator's decision, this time after meeting and conferring. *See generally* Renewed Mot. Vacate, ECF No. 33. The Union opposes the motion, *see generally* Opp'n at 36, and the Tribe has filed its reply, *see generally* Reply, ECF No. 37. The court took the matter under submission without holding a hearing. Min. Order (Sept. 25, 2024), ECF No. 40.

II. JURISDICTION AND LEGAL STANDARD

It is first necessary to clarify the basis of this court's jurisdiction and the applicable law. The Tribe and the Union agree this court has jurisdiction, but they disagree about the reasons. The Union alleges in its complaint that this court has jurisdiction over its claims against the Union under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. Compl. ¶ 5, ECF No. 1. True: federal district courts have jurisdiction over suits for violations of contracts between employers and labor organizations "representing employees in an industry affecting commerce." 29 U.S.C. § 185(a). The Tribe is an employer, the Union is a labor organization representing employees in the hospitality and casino industries, and

neither side doubts the 2017 agreement is a contract. *See, e.g.*, *Unite Here Loc. 30 v. Sycuan Band of the Kumeyaay Nation*, 35 F.4th 695, 702 (9th Cir. 2022) (holding district court has jurisdiction over claim for an order compelling arbitration under contract between union and tribal employer).

But section 301 of the Labor Management Relations Act does not give this court original jurisdiction over the Tribe's motion and its arguments against the Union. The Tribe is asking this court to vacate an arbitration award, not to compel arbitration. More fundamentally, a motion to vacate an arbitration award cannot fairly be called a "suit" for a "violation" of a "contract" between an employer and a labor organization. *See id.* (rejecting similar jurisdictional claim). In this case, there is only one contract between an employer and a labor organization—the 2017 agreement—and the Tribe does not contend there has been any violation of that agreement. It argues, in fact, that this court should not enforce the 2017 agreement. *See, e.g.*, Mem. at 14-15. Nor can the Tribe's labor ordinance, which it does seek to enforce, be fairly described as a "contract," let alone a contract between an employer and a labor organization.

For its part, the Tribe argues this court has jurisdiction under the disputed labor ordinance itself. *See* Mem. at 8-9. That ordinance does permit lawsuits about arbitration awards to be filed in federal court, and the Tribe has waived its sovereign immunity against such a lawsuit. *See* TLRO § 3-213(E). This court's jurisdiction, however, is not conferred in the first instance by agreements

between litigants, but rather by the Constitution and by Congress. *See, e.g.*, *Badgerow v. Walters*, 596 U.S. 1, 7-8, 142 S. Ct. 1310, 212 L. Ed. 2d 355 (2022). To be sure, suits against tribes are "barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation." *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509, 111 S. Ct. 905, 112 L. Ed. 2d 1112 (1991). But a sovereign's decision to waive its sovereign immunity does not automatically grant federal district courts jurisdiction over any dispute in which the same sovereign might become involved, not even when that sovereign is the United States itself. *See, e.g.*, *Fort Sill Apache Tribe v. Nat'l Indian Gaming Comm'n*, 317 F. Supp. 3d 504, 513 (D.D.C. 2018) (distinguishing "affirmative grant of subject matter jurisdiction" from "an unequivocal waiver of sovereign immunity").

Some of the Tribe's arguments also suggest it relies on the Federal Arbitration Act (FAA) as an independent source of federal subject matter jurisdiction. *See, e.g.*, Reply at 2-3 (contending its motion was proper under cases interpreting FAA). But the FAA "does not itself create jurisdiction." *Badgerow*, 596 U.S. at 4. A district court must have an independent basis for federal subject matter jurisdiction before it can adjudicate a motion to vacate an arbitral award under the FAA. *See id.* at 7-19.

Although the Tribe does not mention this court's supplemental jurisdiction, the Union has suggested in other filings that this court would have supplemental jurisdiction over a counterclaim by the Tribe if it asserted one. *See* Joint Status Rep. at 4, ECF No. 68. Federal

district courts have supplemental jurisdiction "over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). The parties' disagreement about the arbitration award also is part of the same "case or controversy" as the Union's original claim, i.e., whether the Tribe must move forward with the card check as the Union demands or whether the Union must follow the procedure laid out in the Tribe's labor ordinance. Exercising supplemental jurisdiction in this case also would put this court in good company. Other federal courts have exercised supplemental jurisdiction over similar claims in similar disputes. *See, e.g.*, *Sycuan*, 35 F.4th at 701; *Transcon. Gas Pipe Line Co., LLC v. Permanent Easement for 2.59 Acres*, No. 17-00289, 2019 U.S. Dist. LEXIS 209252, 2019 WL 6481528, at *1 & n.4 (M.D. Pa. Oct. 8, 2019), *aff'd*, 834 F. App'x 752 (3d Cir. 2020) (per curiam).

Although the Union does not doubt this court would have jurisdiction over a counterclaim if the Tribe had asserted one, it points out the Tribe has not actually filed any counterclaims, nor even an answer. Opp'n at 2. It has filed only motions. Based on the absence of any answer or counterclaims from the docket, the Union urges the court to reject the Tribe's motion outright. *See id.* at 2-4. The Tribe contends it was not required to file a counterclaim, citing cases in which other courts have held a motion is the correct procedural tool for those who seek to vacate an arbitration award. *See* Reply at 2-3.

Both of the parties' arguments are correct in part. The Federal Rules did require the Tribe to answer the Union's complaint within fourteen days of this court's previous order. *See* Fed. R. Civ. P. 12(a)(4). The Tribe's failure "to plead or otherwise defend" could result in the entry of default. *See* Fed. R. Civ. P. 55(a). But that pleading was not a prerequisite to the Tribe's current motion. Under section 10 of the FAA, a party challenging an arbitration award must file an "application," not a complaint. 9 U.S.C. § 10(a). Section 6 of the Federal Arbitration Act also confirms applications are to be "made and heard in the manner provided by law for the making and hearing of motions," not pleadings. 9 U.S.C. § 6. The Federal Rules of Civil Procedure also make an express exception for procedures required by the FAA. *See* Fed. R. Civ. P. 81 (a)(6). For these reasons, as the Tribe correctly points out, *see* Reply at 2-3, federal courts have held repeatedly that motions are the correct procedural tool for challenging an arbitration award under the FAA, *see, e.g.*, *Webster v. A.T. Kearney, Inc.*, 507 F.3d 568, 570-71 (7th Cir. 2007); *Productos Mercantiles E Industriales, S.A. v. Faberge USA, Inc.*, 23 F.3d 41, 46 (2d Cir. 1994); *O.R. Sec., Inc. v. Prof'l Planning Assocs., Inc.*, 857 F.2d 742, 748 (11th Cir. 1988). And so it is true both that the Federal Rules required the Tribe to file an answer in response to the Union's complaint and that the Tribe could move to vacate the arbitration award without filing a counterclaim.

It would be this simple if it were obvious that the FAA in fact governs this dispute. Unfortunately it is not so obvious. Despite the Tribe's references to the FAA, it relies on the California Arbitration Act to explain why,

in its view, the arbitrator's award must be vacated. *See* Mem. at 9-10 (citing Cal. Civ. Proc. Code § 1286.2). The Union's position is more consistent, but not completely so. It cites both the Labor Management Relations Act and the FAA in the jurisdictional allegations of its complaint. Compl. ¶ 5 (citing 9 U.S.C. § 1 et seq. and 29 U.S.C. § 185). In opposition to the Tribe's motion, by contrast, the Union says nothing about the FAA. It instead urges the court to refer solely to the "federal common law" that has developed under section 301 of the Labor Management Relations Act. *See* Opp'n at 5-7 (citing 29 U.S.C. § 185(a)).

Resolving the question of whether state law applies here is not difficult. Neither party has cited anything to suggest they clearly intended the California Arbitration Act to govern this dispute rather than federal law, and the court has found nothing to fill this gap. *Cf. Johnson v. Gruma Corp.*, 614 F.3d 1062, 1066 (9th Cir. 2010) (requiring evidence of "clear intent" for state arbitration law to apply, such as express citation of that law). The court will not test the arbitration award under the terms of the California Arbitration Act.

Resolving which of the two federal options applies, if one does, is more difficult. The Union relies on two premises to argue in favor of the Labor Management Relations Act. First, it cites section 301 of the Labor Management Relations Act, which gives federal courts jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization." Opp'n at 5 (quoting 29 U.S.C. § 185(a)). Second, the Union points out it agreed to the arbitration that culminated in the disputed opinion

and award. *See id.* (citing Martin Decl. ¶¶ 3-4 & Exs. 2-3). By the Union's reasoning, the Tribe is an "employer," the Union is a "labor organization," and their agreement to arbitrate is a "contract," so the Labor Management Relations Act must apply. *See id.* at 5-6.

The flaw in this reasoning lies in its application of section 301. As noted, that section gives district courts jurisdiction over "[s]uits for violation of contracts" between employers and labor organizations. 29 U.S.C. § 183(a). And again, as discussed above, a motion to vacate an arbitration award cannot fairly be described as a suit for violation of a contract. It is true that, as in *Sycuan*, this court has jurisdiction over the Union's claim for an order compelling arbitration under the parties' 2017 agreement. *See* 35 F.4th at 702. That claim was based on the Union's allegation that the Tribe violated its agreement to identify the arbitrator who would conduct a card check. *See id.* The Tribe, by contrast, does not allege in its motion that the Union violated an agreement, least of all its agreement to participate in arbitration under the Tribe's labor ordinance. There is no dispute: the Union kept its promise to arbitrate. It participated in the arbitration before Arbitrator Brand. The Tribe's claim is not that the Union has violated a contract promise, but rather that the Union must comply with an ordinance, the TLRO, and that the arbitrator was wrong to say otherwise.

The Union cites several cases to support its position, but in none did a court rely on the Labor Management Relations Act to resolve a dispute like this one. *See* Opp'n at 5. First, in *Sycuan*, discussed above, the Ninth Circuit

held that section 301 did not permit the district court to resolve a different tribe's claims about its own labor ordinance. *See* 35 F.4th at 702. A tribal ordinance is not a contract between an employer and a labor organization. *Id.* Second, in *Service Employees International Union v. St. Vincent Medical Center*, applying section 301 was a straightforward exercise: a union alleged a hospital had refused to arbitrate as it had previously agreed to do, and it sued to compel arbitration as agreed. *See* 344 F.3d 977, 981-82 (9th Cir. 2003). The situation was similar in *Hotel Employees, Restaurant Employees Union, Local 2 v. Marriott*, the third case the Union cites. *See generally* 961 F.2d 1464 (9th Cir. 1992). In that case, a union sought to enforce a hotel's promises to use a card check procedure and to remain neutral during an organizing campaign. *See id.* at 1465-66, 1468. Fourth, the Supreme Court's decision in *Retail Clerks v. Lion Dry Goods* is further afield. *See* 369 U.S. 17, 82 S. Ct. 541, 7 L. Ed. 2d 503 (1962). The Court held simply that the word "contracts" in section 301(a) includes more than just "collective bargaining contracts." *See id.* 25-26. The fifth and final case the Union cites in its opposition does more to undermine its position than strengthen it: in that case, another judge of this court confirmed a disputed arbitration award under the Federal Arbitration Act—not the Labor Management Relations Act. *See Unite Here Loc. 19 v. Picayune Rancheria of Chukchansi Indians*, 101 F. Supp. 3d 929, 933-34 (E.D. Cal. 2015) (applying 9 U.S.C. § 10(c)).

The Union also cites cases in which courts have held that section 301 "grants a district court jurisdiction to enforce [or vacate] an arbitration award entered into

pursuant to a collective bargaining agreement." *Sheet Metal Workers Int'l Ass'n, Loc. Union No. 150 v. Air Sys. Eng'g, Inc.*, 948 F.2d 1089, 1091 (9th Cir. 1990); *see also, e.g.*, *Sheet Metal Workers' Int'l Ass'n Loc. Union No. 359 v. Madison Indus., Inc. of Arizona*, 84 F.3d 1186, 1190 (9th Cir. 1996). The arbitration award in this case was not "entered into pursuant to a collective bargaining agreement." The arbitration was conducted under the Tribe's disputed labor ordinance.

The FAA offers a better fit than the Labor Management Relations Act. The FAA applies broadly to all arbitration agreements "evidencing a transaction involving commerce" under section 2. 9 U.S.C. § 2. Nothing in the record suggests any reason to doubt the Tribe's agreement to arbitrate with the Union under the TRLO evidences a "transaction involving commerce." Section 10 also includes specific and directly applicable standards for motions to vacate arbitration awards. *See* 9 U.S.C. § 10(a).[3]

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3. The arbitration was conducted in Sacramento, California, which is within this District. *See* Award at 3. The arbitrator appears to have signed the award in San Francisco, California, *see id.* at 20, which is within the Northern District of California. Despite that reference to San Francisco, the court finds the award was made within this District for purposes of section 10(a) of the Federal Arbitration Act. *See* 9 U.S.C. § 10(a) ("In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration . . . ."). The court also finds this District is the appropriate statutory venue for the Tribe's motion. *See* 28 U.S.C. § 1391(b)(1) and (2) ("A civil action may be brought in—(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial

Section 1 of the FAA does include a carveout clarifying it does not govern arbitrations about "contracts of employment." 9 U.S.C. § 1. That language may suggest "Congress did not mean the [FAA] to be used to review arbitration awards involving collective bargaining agreements." *San Diego Cnty. Dist. Council of Carpenters of United Bhd. of Carpenters & Joiners of Am. v. Cory*, 685 F.2d 1137, 1141 (9th Cir. 1982). But it does not suggest Congress intended to exclude disputes like this one, in which no party has entered a "collective bargaining agreement" and no one has cited any particular "contracts of employment."

For these reasons, the court finds section 10 of the FAA provides the best choice of legal standards for adjudicating the Tribe's motion. Having reached this conclusion, the court also finds that a motion, not a counterclaim, is the correct vehicle for challenging the arbitrator's award, as explained above.

III. DISCUSSION

At the outset, contrary to the Union's argument in opposition, the Tribe sought to vacate the arbitration award before the relevant deadline. *See* Opp'n at 4. Under the FAA, "[n]otice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered." 9 U.S.C. § 12. The Tribe first moved to vacate

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district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated . . . .").

the award on June 14, 2024, within three months of the day the award was made on March 17, 2024, and it renewed its motion without any prejudicial delays. *Cf. Move, Inc. v. Citigroup Glob. Markets, Inc.*, 840 F.3d 1152, 1158 (9th Cir. 2016) (holding three-month deadline is subject to equitable tolling if claimant acted with due diligence in pursuing its claim and tolling would not prejudice opposing party).

Under section 10 of the FAA, the court may vacate an arbitration award in only a few limited circumstances:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) 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.

9 U.S.C. § 10(a). The Supreme Court and Ninth Circuit have confirmed these are the only reasons a court can

vacate an award. *U.S. Life Ins. Co. v. Superior Nat'l Ins. Co.*, 591 F.3d 1167, 1173 (9th Cir. 2010) (citing *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 584, 128 S. Ct. 1396, 170 L. Ed. 2d 254 (2008)). The party seeking to vacate an arbitration award must show it is entitled to that relief. *Id.*

The Tribe does not offer evidence of corruption, fraud, partiality, misconduct, misbehavior, or refusals to postpone hearings or hear evidence. It argues the arbitrator exceeded his authority, *see* Renewed Mem. Vacate at 11-12, ECF No. 33-1, disregarded the Tribe's status as a sovereign nation, *id.* 13-14, and irrationally allowed a private agreement to supersede a binding ordinance, *id.* at 14-15. These arguments can fairly be characterized as contentions that the arbitrator "exceeded [his] powers" or "imperfectly executed them" under section 10(a)(4). The court will measure the award in this case against that standard.

That said, this is a "highly deferential" standard. *PowerAgent Inc. v. Elec. Data Sys. Corp.*, 358 F.3d 1187, 1192 (9th Cir. 2004). Awards cannot be vacated under section 10(a)(4) just because an arbitrator has misinterpreted the law or applied it incorrectly. *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 997 (9th Cir. 2003) (en banc). Nor do factual errors alone justify a vacatur. *Coutee v. Barington Cap. Grp., L.P.*, 336 F.3d 1128, 1133-34 (9th Cir. 2003). District courts do not weigh evidence again or revisit factual disputes in response to motions to vacate, nor do they decide whether the arbitrator's legal reasoning was right or wrong. *See Bosack v. Soward*, 586 F.3d 1096, 1106 (9th Cir. 2009). To

prevail, the party challenging an award must show the award was "'completely irrational' or exhibits a 'manifest disregard of law." *Kyocera*, 341 F.3d at 997 (first quoting *French v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 784 F.2d 902, 906 (9th Cir. 1986), then quoting *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1059-60 (9th Cir. 1991)). "[P]lausible" and "arguabl[e]" reasoning withstands a motion under section 10. *See U.S. Life*, 591 F.3d at 1178 (first quoting *Emps. Ins. of Wausau v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 933 F.2d 1481, 1486 (9th Cir. 1991), then quoting *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987)).

The Tribe has not shown the arbitrator exceeded his powers or executed them "imperfectly" under this standard. Contrary to the Tribe's motion, the arbitrator did not "disregard" the Tribe's sovereignty, Renewed Mem. Vacate at 13; refuse to recognize the Tribe as a "sovereign government with legislative authority," *id.* at 11; or "unreasonably subordinate[] the TLRO" to an "illegal" private agreement, i.e., the parties' 2017 Memorandum of Agreement, *id.* at 12-13, 14-15. He considered and rejected the Tribe's argument that its ordinance was "a law that is made as a sovereign." Award at 19. He concluded the Tribe had "ceded its power to regulate labor relations" to California based on evidence about the compact's negotiation and language within the ordinance. *Id.* For that reason, in his view, the labor ordinance "was not a sovereign act but a compact obligation to the State," and it "did not affect the Tribe's obligations under the MOA it negotiated with the Union." *Id.* at 20. Right or wrong, that conclusion is not "completely irrational." *Kyocera*, 341 F.3d

at 997 (quoting *French*, 784 F.2d at 906). As the arbitrator explained, the Tribe agreed to pass the ordinance as part of its gaming compact. It added prefatory language to its ordinance implying it would not have adopted that ordinance if it had not been required to do so. *See* Award at 6-7.

The Tribe also contends the arbitrator exceeded his authority by enforcing the Tribe's 2017 agreement with the Union rather than its labor ordinance. *See, e.g.*, Reply at 8. That is, by the Tribe's argument, the only authority the arbitrator had was to enforce the ordinance, which meant any other decision would go beyond his authority. *See id.* ("The Arbitrator clearly exceeded his authority by giving effect to a contract over the statutory rights of the Tribe (to enact legislation as a sovereign) and the statutory rights of the Casino employees under the TLRO, thereby violating public policy."). But the Tribe agreed in the arbitration that the arbitrator's role was to decide "[w]hether the Union must comply with the TLRO . . . or the Tribe must comply with the MOA . . . ." Award at 3. The Tribe cannot agree to arbitrate whether the labor ordinance or 2017 agreement is applicable, then contend in this court in a motion to vacate that the arbitrator had authority only to enforce the ordinance. As the Ninth Circuit has put it, a party cannot agree to arbitrate a particular issue, "await the outcome and, after an unfavorable decision, challenge the authority of the arbitrators to act on that very issue." *PowerAgent*, 358 F.3d at 1192.

Nor did the arbitrator act irrationally by "discounting" testimony by the Tribe's former Chairman, as the Tribe contends. *See* Renewed Mem. Vacate at 12. The arbitrator

heard and considered the former chairman's testimony, found he was not "credible," and explained why. Award at 11, 16-17. His reasons were not irrational: the chairman was not present during the negotiations in question, and his opinions were not logical in the broader context of the Tribe's negotiations. This court cannot now second-guess these conclusions, even if they were wrong, as the Tribe contends. *See, e.g.*, *Bosack*, 586 F.3d at 1106 ("We have repeatedly held that an award may not be vacated even where there is a clearly erroneous finding of fact.").

Finally, the Tribe contends in reply that the arbitrator disregarded paragraph two of the 2017 agreement. *See* Reply at 6-7. That paragraph states the parties' joint position "that the Tribal Labor Relations Ordinance governs labor relations at the Casino." MOA ¶ 2. The arbitrator did not disregard that paragraph. He quoted it and explained two reasons why the Tribe's arguments were "unconvincing." Award at 18-19. First, although several other tribes had entered similar agreements and had passed similar ordinances, none had advanced the argument the Tribe was then making. *See id.* at 18. Second, the Tribe's position would render paragraph 7, which created the card check procedure, "surplusage." *Id.* The arbitrator declined to adopt "an interpretation of one part of a contract that makes another part surplusage." *Id.*

In sum, the record shows the arbitrator considered the parties' 2017 agreement, the Tribe's labor ordinance, and the negotiations and histories behind each of those documents, then weighed the evidence and arguments each side presented. He considered the Tribe's arguments

and rejected them, and he explained why. Right or wrong, his conclusions were rational. This court cannot vacate the award under section 10 of the Federal Arbitration Act, which is the applicable legal standard.

IV. CONCLUSION

The court **denies** the motion to vacate (ECF No. 33). The parties are **ordered to show cause within fourteen days** why this action should not be closed and judgment entered in favor of the Union.

IT IS SO ORDERED.

APPENDIX C — *WILTON RANCHERIA V. UNITE HERE*, MINUTE ORDER, DKT. NO. 23, 25-CV-02413 (E.D. CAL. APR. 30, 2026)

U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Wilton Rancheria v. Unite Here
2:25-cv-02413-DJC-SCR

MINUTE ORDER issued by Courtroom Deputy for District Judge Daniel J. Calabretta on 4/30/2026: The Court has considered the parties' positions in the joint status report (ECF No. [22]) on whether to lift the stay entered on 1/13/2026. Considering all the circumstances, the Court concludes that a stay is no longer warranted, and accordingly, the stay is LIFTED. No later than May 15, 2026, the parties shall file simultaneous supplemental briefing addressing the impact, if any, of the Ninth Circuit's decision, No. 25-234, affirming the district court's denial of the Tribe's motion to vacate in 2:23-cv-02767-KJM-SCR, *Unite Here v. Wilton Rancheria*. IT IS SO ORDERED. [TEXT ONLY ENTRY] (Deputy Clerk GJM)

APPENDIX D — *WILTON RANCHERIA AND UNITE HERE INT'L*, NB 4229, AAA-01-23-00003-6907 (MAR. 17, 2024)

NB 4229
AAA-01-23-00003-6907
Sky River Casino

In the Matter of an Arbitration Between

WILTON RANCHERIA

Tribe

- and -

UNITE HERE INTERNATIONAL

Union

AWARD & OPINION

Arbitrator: Norman Brand, Esq.

Date: March 17, 2024

Background

By letter dated November 8, 2023, the American Arbitration Association ("AAA") informed the Arbitrator he had been chosen from the Tribal Labor Panel to serve in this dispute between the Wilton Rancheria d/b/a Sky River Casino ("Tribe") and UNITE HERE International

Union ("Union").[1] After making disclosures, on December 15, 2023, the Arbitrator held a case management call to resolve a dispute over the issue. Based on the Tribe's description of the issue in the demand it filed with AAA[2], the Arbitrator deemed the dispute was whether the election/certification procedure in the Tribal Labor

1. On November 18, the Union notified the Arbitrator, through his website calendar, that he had been chosen by the parties to arbitrate this dispute. Both the TLRO and the MOA contain arbitration clauses. While the TLRO requires a member of the Tribal Labor Panel, the MOA permits any agreed upon arbitrator. Both documents contain limited waivers of sovereign immunity, for compelling or confirming an arbitration award. Thus, regardless of which document, the Arbitrator has authority to hear and decide this dispute.

2. Grievance: Pursuant to the Tribal-State Gaming Compact between the State of California and Wilton Rancheria, Wilton Rancheria was required to adopt and maintain Tribal Law identical to the Tribal Labor Relations Ordinance attached to the Compact. To comply with this requirement, Wilton Rancheria enacted the Tribal Labor Relations Ordinance of 2019 ("TLRO"), codified as Chapters of the Wilton Rancheria Labor Code, on April 18, 2019. The TLRO provides for a two-step certification process before an arbitrator from the Tribal Labor Panel: (1) dated and signed authorization cards from thirty percent (30%) or more of the Eligible Employees; and (2) a secret ballot election requiring more than fifty percent (50%) of Eligible Employees. The TLRO requires all issues to be resolved by a resolution by the Tribal Labor Panel. Respondent refuses to comply with the two-step certification process and the dispute resolution mechanism identified in the TLRO, relying on a Memorandum of Agreement (MOA) signed by the parties on August 7, 2017, prior to the enactment of the Tribe's TLRO.

Relations Ordinance ("TLRO") enacted April 18, 2019, or the card check/recognition procedure in the Memorandum of Agreement ("MOA") signed August 7, 2017, must be followed. The Union proposed that if the Arbitrator determines the MOA applies, he should conduct the review of authorization cards required by the MOA, as well as decide another pending issue under the MOA. The Tribe asserted no issue could be added to its demand for arbitration without its approval and refused to approve. The Arbitrator declined to decide any additional issues under the MOA, if it applies, or to review the authorization cards.

The parties agreed to pre-hearing briefs and reply briefs, all of which were timely filed in accordance with their agreed upon timetable. The Arbitrator held a hearing on February 8, 2024, in Sacramento, CA. Both parties were present and represented by counsel. Each had a full opportunity to examine and cross-examine witnesses, present evidence, and argue its position. Neither party objected to the conduct of the hearing. A court reporter recorded the proceedings. At the close of the evidentiary hearing the parties asked to schedule a further date to make oral closing arguments. The Arbitrator heard oral arguments on February 15, 2024, and declared the hearing closed when he received the transcript of the closing oral arguments on February 28, 2024.

Appendix D

Issue

The parties agreed the issue is:

> Whether the Union must comply with the TLRO promulgated April 18, 2019, or the Tribe must comply with the MOA signed by the parties on August 7, 2017.[3]

History

Two histories are relevant to this dispute: 1) the history of the creation of the mandatory model TLRO in State of California/Tribal Compacts; and 2) the negotiating history of the MOA between the Tribe and Union. There was testimony about both.

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3. The issue was stated broadly to allow agreement, but the essential dispute is narrower. The TLRO contains provisions for an organizing campaign leading to an election and potential certification of the Union and negotiation/mediation of a first agreement. The MOA contains provisions for an organizing campaign leading to a neutral review of authorization cards and potential recognition of the Union and negotiation/mediation of a first agreement. Both contain essentially similar dispute resolution provisions. Each provides a complete process from organizing through establishment of a first collective bargaining agreement. Those competing processes are at issue. The TLRO, however, has additional provisions that - as became clear at the hearing - are not at issue (*e.g.* §3-203 "Non-Interference with Regulatory or Security Activities;" §3-209 "Indian Preference Explicitly Permitted;" and, §3-212 Decertification of a Bargaining Agent.") Thus, compliance with the MOA does not affect compliance with those provisions.

Appendix D

Mandatory Model TLRO

Howard Dickstein, who has been practicing Indian law for over 40 years, represented the United Auburn Indian Community, Yocha Dehe Wintun Nation (then called Rumsey Rancheria), Pala Band of Mission Indians, and Jackson Rancheria in the 1999 Compact negotiations with the State of California. (Tr. 95:3-5; 97:15-25)[4] He was the only lawyer on the tribal side, and he negotiated what became the model Compact that approximately 60 tribes entered into. (Tr. 104:10-11; 98:7-10) The negotiations had to be completed and the Compacts signed in time for the legislature to approve them. This was particularly important because US Attorneys were "breathing down the necks" of tribes conducting Class 2 gaming without a Compact, threatening to shut them down unless they had Compacts. Negotiations concluded just an hour or two before the legislature adjourned. (Tr. 99:10-25)

According to Dickstein, the legislature had taken the position that it would not ratify Compacts that failed to give unions organizational and representational rights at the casinos established under those Compacts. Negotiations on union organizational and representational rights were not completed before the legislature adjourned. Consequently, the legislature approved Compacts that contained language nullifying them unless such rights were subsequently made part of the

4. There are two transcripts with non-sequential page numbering. The citation "Tr." refers to the transcript of the hearing on February 8, 2024. The citation "Tr.II" refers to the transcript of closing arguments on February 15, 2024.

Compact.[5] (Tr. 101:19-102:5) The negotiations over union organizational rights continued after the legislature adjourned. The parties agreed on a "Model Tribal Labor Relations Ordinance," providing union organizational and representational rights, later in September.[6] There was no bilateral mechanism to put these rights into effect after the Compacts had been approved by the legislature. Therefore, there had to be unilateral action by the Tribes to effectuate the rights contained in the Model TLRO that was part of each compact. Dickstein explained:

> it would be unilateral at that point, so it was called an ordinance really for that reason, so the tribe could implement it, but the tribe was implementing it as really a part of the compact and the negotiation of the compact

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5. *See*, e.g. Pala/State Compact Sec. 10.7. Labor Relations.

Notwithstanding any other provision of this Compact, this Compact shall be null and void if, on or before October 13, 1999, the Tribe has not provided an agreement or other procedure acceptable to the State for addressing organizational and representational rights of Class III Gaming Employees and other employees associated with the Tribe's Class III gaming enterprise, such as food and beverage, housekeeping, cleaning, bell and door services, and laundry employees at the Gaming Facility or any related facility, the only significant purpose of which is to facilitate patronage at the Gaming Facility. State/Pala Compact, September 10, 1999.

6. The negotiating parties apparently reached agreement on September 14, 2099, since that is the date on the first Model TLRO. *See*, e.g. "Tribal-State Compact between the State of California and the Agua Caliente Band of Cahuilla Indians" http://www.cqcc.ca.qov/?paqeID=compacts accessed March 17, 2024.

> .... It was unlike any ordinance that you would otherwise see because it was an ordinance in form, in name, but it was actually negotiated pursuant to the compact, and then made a part of the compact with its own dispute resolution mechanisms... So it was not an ordinance like any other I'd ever seen. (Tr. 102:16-103:2)

Once it had been negotiated, the State required all Tribes to adopt the TLRO and maintain it in effect to avoid termination of its Compact.[7] Dickstein was "the only attorney [on the tribal side] who negotiated that TLRO..." (Tr. 104: 10-11) At the time it was assumed the National Labor Relations Act ("NLRA") did not apply to tribal casinos. (Tr. 103:6-10)[8] Dickstein, who had experience with the NLRA. knew the State administration and unions wanted to replicate the NLRA and the TLRO was "modeled on it." (Tr. 103:14-20) Dickstein was aware of what the NLRA "said about elections and card check

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7. In compliance with Section 10.7 of the Compact, the Tribe agrees to adopt an ordinance identical to the Model Tribal Labor Relations Ordinance attached hereto, and to notify the State of that adoption no later than October 12,1999. If such notice has not been received by the State by October 13, 1999, this Compact shall be null and void Failure of the Tribe to maintain the Ordinance in effect during the term of this Compact shall constitute a material breach entitling the State to terminate this Compact No amendment of the Ordinance shall be effective unless approved by the State. State/Pala Compact, September 28, 1999. The Tribe notified the State it had adopted the TLRO that same day.

8. *See*, Fort Apache Timber Co., 226 N.L.R.B. 503 (N.L.R.B-BD 1976)

agreements" and he and his tribal clients understood it. In response to a question about whether the TLRO language meant card check would not be allowed, he said the TLRO "was a floor from which tribes could take off ... because that was the way the NLRA had interpreted it ..." (Tr. 104:13-25)[9, 10]

Raymond C. Hitchcock, as Chairperson of Wilton Rancheria, signed the Compact between the State of California and Wilton Rancheria on June 29, 2017. The Compact provides, at Section 12.10 Labor Relations:

> 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.

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9. "It is a long established Board policy to promote voluntary recognition and bargaining between employers and labor organizations..." *MGM Grand Hoel, Inc.* 329 NLRB 464, 466 (1999)

10. Dickstein's description of negotiations is consistent with the more contemporary description in *Coyote Valley Band of Pomo Indians v. Cal. (In re Indian Gaming Related Cases Chemehuevi Indian Tribe)*, 331 F.3d 1094 (9th Cir. 2003)

Appendix D

On April 18, 2019, the Tribe adopted the required TLRO. While it is identical to the ordinance required by the Compact, the Tribe added four prefatory sections, denominated "Article 1". (Exhibit 4 to Tribe's Opening Brief) What is denominated "Article H" of the TLRO is explained in the third prefatory section, 3-103 Background, which recites:

> Article II of this Ordinance is identical to the ordinance attached to the Tribe's January 22, 2018, compact.[11]

The fourth prefatory section in Article I, Section 3-104 Scope reads:

> This Ordinance shall be narrowly construed to apply to Eligible Employees to the extent the Ordinance provisions are lawfully required by an effective tribal-state gaming compact between the Tribe and the State of California.

By limiting the TLRO to what can be "lawfully required by an effective tribal-state gaming compact," the Tribe recognized it had ceded its sovereign power to legislate labor relations in its Compact with the State. Nevertheless, it attempts to limit that grant of sovereign power by making it contingent on what the State can lawfully require it to do in a Compact. This appears to

11. The ordinance recites the effective date of the Compact, January 22, 2018, when it was published in the Federal Register, rather than the date it was signed.

be an attempt to provide an avenue to change terms of the TLRO if the State's power to negotiate labor relations provisions is limited in the future.[12]

MOA between the Tribe and Union

Mr. Kevin Kline, a vice president of UNITE HERE International Union, and Mr. Brian Larson, a vice president of Boyd Gaming, negotiated the MOA between the Tribe and the Union.[13] They had previously negotiated card check agreements for commercial casinos managed by Boyd in Tunica and Biloxi Mississippi. (Tr. 75:8-23)[14]

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12. While the validity of negotiating any labor relations provision in a compact was decided in *Coyote Valley Band of Pomo Indians v. Cal. (In re Indian Gaming Related Cases Chemehuevi Indian Tribe)*, 331 F.3d 1094 (9th Cir. 2003), it does not appear that the specifics of such provisions have been challenged. The question of NLRA preemption of TLROs continues to be litigated. *See*, *Unite Here Local 30 v. Sycuan Band of the Kumeyaay Nation*, 35 F.4th 695 (9th Cir. 2022). Additionally, regular attempts have been made to legislate a change to the NLRA to exclude tribes from its coverage. *See,* e.g. Tribal Labor Sovereignty Act of 2015, S.248 https://www.conqress.qov/bill/114th-conqress/senate-bill/248 last visited March 17, 2024 and Tribal Labor Sovereignty Act of 2023, S. 1328 https://www.qovtrack.us/conqress/bills/118/s1 328/summary last visited March 17, 2024.

13. Boyd Gaming became the "development partner" and manager of the Sky River casino for the first seven years of its operation as the result of providing "a lot of money to help the tribe get recognized." (Tr. 17:14-23; 26:9-16) Neither Mr. Larson, nor anyone else from Boyd Gaming testified.

14. The term "card check agreement" denominates an arrangement in which an employer agrees that it will recognize

Kline had also negotiated a card check agreement in June 2016 with Penn National, another national gaming company in Las Vegas, which managed the casino for the Jamal Indian Village of California. (Union Ex E)[15] Because both Kline and Larson are in Las Vegas, they conducted the negotiations at Boyd's offices in Las Vegas. Kline never met or communicated with any other representative of the Tribe. (Tr. 77:18-78:5)

Kline did not have copies of the versions of the MOA that were exchanged prior to agreeing on the final version of the MOA. (Tribe Ex. 2) Larson did not testify. The Tribe's General Counsel at the time, Ms. Rose Weckenmann, participated in the negotiations on behalf of the Tribe by redlining a copy of the Union's initial MOA proposal with Larson. (Tr. 25:15-26:16) She did not testify. Mr. Raymond Hitchcock, Chairperson of the Tribe from 2014 to 2020, was the only witness for the Tribe. He was not present at any negotiations. Hitchcock testified that when he was no longer Chairperson, he "lost access" to emails and that he "gained some access to emails" when

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a union if the union presents union authorization cards from a majority of all Eligible Employees. This contrasts with a secret ballot election, where only a majority of those voting is required. (Tr. 76:8-19) The agreement itself generally contains many other terms, but the essence is substituting the card check process for an election.

15. Between 2001 and 20012, Mr. Jack Gibbons, the Union's California Political Director, negotiated five card check MOAs with California tribes. (Union Exs. F. G, H. I, K) In 2019 Mr. David Gleason, the Union's Organizing Director, negotiated a card check MOA with the Buena Vista Rancheria. (Union Ex. J)

he became the "Wilton Rancheria gaming authority ... but there's a lot of missing stuff there." (Tr. 25:15-28:12) The Tribe provided no emails or earlier drafts of the MOA, either from its own, or Boyd's, records. It relied solely on Hitchcock's testimony.

Kline presented the first proposal for an MOA to Larson in July 2017. Paragraph 1, which recites that the MOA "covers all employees defined as Eligible Employees by the Tribal Labor Relations Ordinance..." was "originally very general" but was negotiated to the MOA language. (Tr. 78:25-79:12) The final language defines specific excluded classifications and "confidential employees as defined in Section 2(1 1)" of the NLRA to exclude others.[16] Kline testified that paragraph 7 ("¶7"), which requires the Tribe to recognize the Union as the Eligible Employees' collective bargaining representative if a majority have chosen the Union through authorization cards or membership, is unchanged from the Union's original proposal.

Hitchcock contradicted Kline, testifying that the Union wanted to be recognized if 30% of the employees chose it, but the Tribe insisted on 50%. (Tr. 31:1-12) It is not believable that a sophisticated Union negotiator would propose this to an experienced management lawyer, both of whom would know NLRA requirements. As Kline testified, that testimony makes "zero sense because we have to have a majority status to be recognized. (Tr. 80:25-

16. The parties stipulated that the initial draft of what became the MOA did not contain a reference to the TLRO in paragraph 2 ("¶2"). (Tr. 48:1-6)

81:10) In his Declaration, Hitchcock claimed to have heard "cautionary stories" of union representatives aggressively soliciting employees from "officials and leaders of other tribes." Because of these stories, he claimed, he would not have signed the MOA if he did not believe it provided for secret ballot elections. When asked who he claimed to have spoken with, he first evaded the question, then refused to answer, insisting "you'll have to subpoena."[17] (Tr. 36:4-38:1)

Kline testified that toward the end of their bargaining Larson requested examples of other card check agreements the Union had negotiated. Kline provided the MOA between the Union and the Federated Tribes of Graton Rancheria, under which the Union had gained recognition through a card check procedure. (Tr. 81:20-82:15; 74:2-18) That MOA differs in at least two ways from what the parties had negotiated up to that point. First, there is an explicit promise to politically support the Tribe's effort to enter the gaming market and to oppose its competitors. It reads:

> The Union hereby agrees to actively support before the appropriate federal, state, and local administrative, bureaucratic, regulatory, and legislative bodies for the Tribe's efforts to remain competitive in, and gain entry to, casino and related markets in which the Tribe chooses to participate pursuant to the IGRA. For purposes of this Agreement "active support" includes letter writing, consultation

17. Declaration, Paragraph 10.

> with and lobbying of elected and appointed officials, availability of members for events in furtherance of the Tribe's goals, opposition to competitor's efforts to prohibit the Tribe's entry into tribal government gaming on its lands in Sonoma or Marin Counties, California, and assistance with local government relations. (Union F, paragraph 9)

Second, the Graton MOA explicitly refers to the TLRO in multiple sections and incorporates it into the MOA:

> 1. Purpose
>
> The purpose of the Agreement is *to ensure an orderly environment for the exercise by Eligible Employees of their rights under the Tribal Labor Relations Ordinance...*
>
> 4. Applicability
>
> All card check procedures and any recognition of the Union provided for by this Agreement shall be in accordance with and applicable only to "Eligible Employees" of the Casino as defined in the TLRO, *which will be attached hereto as Attachment 1. and made part of this Agreement.*
>
> 13. Compliance with TLRO
>
> Nothing herein shall be construed to be inconsistent with or derogate from the obligation

> of the Union and the Tribe to conform to the TLRO.

After reviewing the Graton MOA, the Tribe proposed and the Union agreed to paragraph 14 (Tr. 83:5-16), which contains substantially similar language to the Graton MOA:

> 14. The Union hereby agrees to actively support before the appropriate federal, state, and local administrative, bureaucratic, regulatory, and legislative bodies, the Tribe's efforts to obtain ratification of the Compact by the California legislation, and to take all reasonable and necessary steps to assist the Tribe in connection therewith. For purposes of this Agreement, "active support" includes letter writing, consultation with and lobbying of elected and appointed officials, availability of members for events in furtherance of the Tribe's goals, opposition to competitor's efforts to prohibit the Tribe's entry into tribal government gaming on its lands in Elk Grove, California, and assistance with local government relations.

Hitchcock asserted that neither the Tribe nor its attorney reviewed the Graton MOA. Instead, he insisted that the Tribe looked only at TLROs from other tribes. (Tr. 32:21-33:19) Given the uniformity of State required TLROs, and their irrelevance to negotiating the MOA, that testimony is implausible. The Arbitrator accepted Hitchcock's Declaration (Tribe 10), only after striking

paragraph 10 (42:21) and paragraph 6. (Tr. 46:13-14) The Arbitrator noted further:

> ...the declaration is a piece of paper. There is a person here who is live and under oath and I will regard what he says here today and is able to be cross-examined on as the evidence before me. (Tr. 15:10-13)

After considering his declaration and testimony the Arbitrator finds that Hitchcock was an unreliable witness whose testimony was not credible. Kline's testimony is the only credible evidence concerning the negotiation of the MOA.

Kline testified that when the Tribe proposed the political support language, it also proposed:

> ...something about tribal authority ... we didn't want in ... this was our counter to that ... traditional language we have in a lot of our card check agreements in tribal country referring to the TLRO because that's ... part of the compact ... they have to have that. (Tr. 84:13-85:2)

The parties agreed to the Union's counter on paragraph 2:

> The parties agree that the Tribal Labor Relations Ordinance governs labor relations at the Casino, and *to hereby establish the following procedure for the purpose of ensuring an orderly environment for Employees*

> *to exercise their rights under the Tribal Relations Ordinance* to organize collectively, should employees choose to do so, and to avoid picketing and/or other economic action directed at the Tribe in the event the Union decides to conduct an organizing campaign among the Employees.

Neither Larson nor anyone else from Boyd suggested this language invalidated the card check provision. Kline testified that he would not have signed the MOA if they had because the "whole goal was to get a card check neutrality agreement. That's the purpose of our bargaining and our negotiations." (Tr. 85:12-25) The parties signed the MOA in August 2017.

Additional Facts

In the 2017 MOA the Union agreed to support the Tribe in its effort to get legislative approval for its Compact with the State, which would allow it to build and run a casino with Class III gaming. (¶14) The evidence shows the Union fulfilled its agreement to provide legislative support by appearing at committee hearings and arguing for approval of the Compact. In the MOA the Tribe agreed the Union could seek recognition as the collective bargaining representative through a card check procedure. with the Tribe "taking a neutral approach to unionization of Employees." (¶7)

What has occurred was described in the uncontradicted testimony of Mr. Aamir Deen, president of UNITE HERE

Local 49. He met with Mr. Gibase, the general manager of the Sky Casino, shortly after the casino opened in August 2022. Gibase agreed to provide a list of employees and investigate access to employee for the Union. The Union received the list and access in April 2023 and began collecting cards in June 2023.[18] On June 20, 2023, Deen wrote Gibase and the Casino's VP Human resources. Deen asserted the Union had collected authorization cards from a majority of employees in the bargaining unit and requested recognition in accordance with of the MOA. The Tribe has taken no steps toward recognizing the Union under ¶7. (Tr. 133:23-143:3) Thus, the evidence shows the Tribe has not followed the MOA.

Discussion

The Tribe makes four arguments to support its position that it did not agree the Union could organize employees and potentially obtain recognition through a card check.[19] First, the Tribe asserts as a general matter that:

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18. In November 2022, Gibase wrote Deen saying there appeared to be conflicts between the MOA and the compact. (Union Ex. M)

19. The Arbitrator has not considered the Tribe's argument that it did not know what a card check agreement was, or that because the MOA is not titled "card check agreement" it was misled. The negotiations were conducted by the Tribe's partner, an attorney at Boyd who had negotiated other card check agreements with Kline. The Tribe's own Counsel redlined the proposed agreement with Larson. It is not plausible that the actual negotiators were misled because of their naivete.

Appendix D

> The purpose of the MOA, as stated by the MOA, is to memorialize the tribe's promise to maintain neutrality while allowing the union to organize in exchange for the union's support of ratification of the compact. (Tr.II 8:5-8)

While the TLRO makes it an unfair labor practice to "to interfere with, restrain, coerce eligible employees in the exercise of their rights ...Paragraph 3 of the MOA goes farther and that's where the consideration comes in." (Tr. II 10:4-8) That is, the Union got a neutrality provision in return for supporting the Tribe politically. The Tribe agreed to the MOA because it understood ¶2 negated ¶7. Hitchcock signed the MOA because he reasonably believed that it meant the election procedures in the TLRO would be followed. (Tr.II 12:17-13:4)

Second, the Tribe asserts that the word "governs," in the phrase "The parties agree that the Tribal Labor Relations Ordinance governs labor relations at the Casino," is dispositive. Taken together with the statement that the "purpose" of the MOA is to ensure "an orderly environment for Employees to exercise their rights under the Tribal Relations Ordinance," ¶2 means that the entire MOA is subordinate to the "mandatory and all-inclusive" TLRO. Because the TLRO governs and it does not specifically provide for a card check, the Union cannot use the card check procedure negotiated in ¶7. The Union can only use the election procedure in §3-210 of the TLRO.

Third, in its opening brief the Tribe asserts the TLRO provides for a mandatory two-step certification process

which, if not followed, "could subject the Tribe to a claim for breaching its Compact with the State of California." (Brief, 15:23-24) In closing argument, the Tribe said:

> We are not saying that the State of California does not allow a card check process. It does. We are saying that Wilton Rancheria is not allowing a card check process without a secret ballot because that is in the TLRO and that is a right it didn't give up. (TrII. 60:8-12)

Consequently, the Arbitrator does not address the argument about potentially breaching the Compact.

Fourth, the Tribe asserts that the TLRO it enacted in 2019 is the act of a sovereign. Because the MOA does not limit the Tribe's authority to regulate union activities in "unmistakable terms," as a sovereign the Tribe was free to enact a law that is inconsistent with the MOA and which takes precedence over it. *United States v. Winstar Corp.*, 518 U.S. 839, 868 (1996) Thus, regardless of what it might have agreed to in the MOA, the Union must follow the election process in the TLRO because that is enacted Tribal law.

The Union makes five arguments. First, it asserts the Tribe's reading of the MOA disregards its core promise. In ¶2 the parties agreed that the purpose of the MOA is to ensure "an orderly environment for Employees to exercise their rights" under the TLRO to "organize collectively." In ¶7 the parties agreed on the method by which employees would exercise their TLRO right to organize collectively. Having agreed to card check recognition as a method for

employees to exercise their rights under the TLRO in 2017, the Tribe cannot claim in 2023 that its unexpressed intent in 2017 was to require a secret ballot election.

Second, there is no conflict between the TLRO's election procedure and the MOA'S card check procedure. They are simply alternative means for the Union to achieve recognition. Section 10 of the TLRO, which was negotiated as part of the Compacts in 1999, contains the same four step procedure for an election as the NLRA: notification of interest by the Union, a 30% showing of interest, a secret ballot election conducted by a neutral party ("election officer" or NLRB), and certification of the Union as the exclusive representative if it has majority support. Both the NLRA and TLRO are silent about card check recognition.

Although the NLRA both contains an election procedure and is silent about voluntary recognition through a card check procedure, that silence is not evidence that voluntary recognition is forbidden. To the contrary. As one court said:

> Voluntary recognition by employers of bargaining units would be discouraged, and the objectives of our national labor policy thwarted if recognition were to be limited to Board-certified elections *NLRB v. Broad St. Hosp. & Med. Ctr.*, 452 F.2d 302, 305 (3d Cir. 1971)

Similarly, the TLRO's silence about a voluntary card check procedure is not evidence that it is forbidden. Assuming arguendo the TLRO governs, there is no conflict between

it and the MOA. They are simply alternatives. Viewing them as alternate paths to recognition avoids making ¶7 surplusage and is consistent with contract construction principals: "a document should be read to give effect to all its provisions and to render them consistent with each other. *Mastrobuono v. Shearson Lehman Hutton*, 514 U.S. 52, 63, (1995) The Tribe's interpretation of the MOA gives no effect to ¶7.

Third, the Tribe must comply with the MOA even if the TLRO precludes card check recognition because: a) the Tribe surrendered any right it had to regulate union organizing at its casino when it entered the Compact; b) federal law would preempt the TLRO if it were Tribal law and not an agreement between the State and Tribe; and, c) the TLRO is not a law at all, but an agreement with the State. The Tribe is not excused from complying with the MOA because it entered into another inconsistent agreement. *W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber*, 461 U.S. 757, 767 (1983)

The Arbitrator finds the Tribe must comply with the MOA signed by the parties on August 7, 2017. There are three reasons for this finding.

First, the Tribe agreed to the MOA, whose essential promises are Tribal neutrality in an organizing campaign and card check recognition, in return for the Union's support in the Tribe's efforts to have the legislature approve its compact with the State. The credible bargaining history is unequivocal. The testimony of Hitchcock, who was not at the negotiations, about what he "believed" was neither competent, nor credible. The

Tribe's assertion that it was misled on labor relations matters through naivete, ignores the experience of its negotiator - a lawyer who had previously negotiated card check agreements with the Union. Nothing 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 ¶7.

Second, the Tribe's contention that the purpose of the MOA is:

> ...to memorialize the tribe's promise to maintain neutrality while allowing the union to organize in exchange for the union's support of ratification of the compact. (Tr.II 8:5-8)

finds no support in the evidence, logic, or the MOA. Kline credibly testified that the whole purpose of the negotiation was to get a card check agreement. That position is logical because the Union could have most of what it negotiated in the MOA - without supporting ratification of the Compact - if it sought certification through an election under the TLRO. Section 3-207 provides an opportunity for union that seeks recognition through an election to create a bilateral contract with the Tribe, by agreeing to certain non-onerous condition.[20] That contract requires

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20. Not engage in strikes, picketing, boycotts, attack websites, or other economic activity at or in relation to the tribal casino or related facility; and refrain from engaging in strike-related picketing on Indian lands as defined in 25 U.S.C. § 2703(4);

b. Not disparage the Tribe for purposes of organizing Eligible Employees;

the Tribe to provide a list of eligible employees, access, resolve all issues through arbitration, and provide limited neutrality.[21] Thus, 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.

Moreover, the Tribe's argument about the meaning of ¶2 is unconvincing for at least two reasons. First, the Tribe relies on an improbable analysis of the language of ¶2 of the MOA. The paragraph says the parties agree the TLRO "governs labor relations at the Casino" and they:

> establish the following procedure for the purpose of ensuring an orderly environment for Employees to exercise their rights under the Tribal Relations Ordinance to organize collectively ...

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c. Not attempt to influence the outcome of a tribal government election; and

2. Resolve all issues, including collective bargaining impasses, through the binding dispute resolution mechanisms set forth in Section 3-213 herein.

21. Tribe will not do any action nor make any statement that directly or indirectly states or implies any opposition by the Tribe to the selection by such employees of a collective bargaining agent, or preference for or opposition to any particular union as a bargaining agent. This includes refraining from making derisive comments about unions; publishing or posting pamphlets, fliers, letters, posters, or any other communication which could reasonably be interpreted as criticizing the union or advising Eligible Employees to vote "no" against the union.

Taken together, the Tribe says, the two phrases mean the Union agreed that it must follow the election procedure in the TLRO because that procedure is exclusive. That reading is implausible and inconsistent with the interpretation of other card check MOAs. All six card check MOAs in evidence assert their purpose is to ensure an orderly environment for employees to exercise their rights under the TLRO (or Ordinance). Graton goes further and makes the TLRO part of the MOA and says nothing will be done in derogation of it (Union Ex. F); Red Hawk says the TLRO is part of the MOA (Union Ex. 1); Enterprise attaches the TLRO, saying it will be adopted. (Union Ex. K) None of these other tribes claimed incorporating or acknowledging the TLRO vitiates the card check process that is part of their MOA.

Additionally, the Tribe's interpretation of ¶2 makes the entirety of ¶7 surplusage. Canons of construction counsel avoiding an interpretation of one part of a contract that makes another part surplusage.

> " '[i]f possible, significance should be given to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose' " and " 'a construction making some words surplusage is to be avoided.' " [citation omitted] see Code Civ. Proc., § 1858 ["In the construction of a statute ... where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all."].*Picayune Rancheria of Chukchansi Indians v. Brown*, 229 Cal. App. 4th 1416, 1428, (2014)

The Tribe's interpretation of ¶2 is implausible and unconvincing.

Third, the Tribe fails to show that the TLRO is a law it made as a sovereign that takes precedence over the MOA. The TLRO is in the Tribe's compact with the State that allows it to operate a casino with Class III gaming. In agreeing to that compact, the Tribe voluntarily gave up its right to legislate about labor relations. It explicitly agreed:

> 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. (Compact, Section 12.10)

In passing the TLRO as an Ordinance, the Tribe created a framework in "Article 1" that explicitly recognizes the TLRO exists only because the Tribe ceded its power to regulate labor relations to the State:

> This Ordinance shall be narrowly construed to apply to Eligible Employees to the extent the Ordinance provisions are lawfully required

> by an effective tribal-state gaming compact between the Tribe and the State of California.

This framework allows the Tribe to attempt to repudiate any portion of the TLRO that is found to be beyond the State's power to require. It further demonstrates that passing the TLRO was not a sovereign act. As Dickstein, who negotiated the TLRO on behalf of the tribes, observed:

> it was called an ordinance ...so the tribe could implement it, but the tribe was implementing it as really a part of the compact and the negotiation of the compact, ... because it was an ordinance in form, in name, but it was actually negotiated pursuant to the compact... So it was not an ordinance like any other I'd ever seen. (Tr. 102:16-103:2)

The evidence shows that by passing the TLRO the Tribe was not engaging in a sovereign act but acting on a requirement of its compact with the State in which it had agreed to give up its sovereign power legislate labor relations in return for a compact that permitted it to engage in Class III gaming in its casino.

The credible evidence shows that the Tribe agreed to the 2017 MOA with the Union. The MOA provide for, among other things, card check recognition of the Union as the exclusive collective bargaining representative the employees. In its compact with the State, the Tribe agreed to enact a specific TLRO 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. The evidence shows the Union fulfilled its obligation to support legislative passage of the compact. It also shows the Tribe has not fulfilled its reciprocal obligation under ¶7 of the MOA. It has not appointed an arbitrator to review authorization cards and membership information, to decide the Union's claim to represent a majority of the employees. The Tribe is obliged to do so under the MOA.

Award

The Tribe must comply with the MOA signed by the parties on August 7, 2017.

San Francisco, California
March 17, 2024

/s/ Norman Brand
Norman Brand

APPENDIX E — WILTON RANCHERIA TRIBAL LABOR RELATIONS ORDINANCE OF 2019, 7 WRC § 3-101, *et seq.*

WILTON RANCHERIA CODE TITLE 7 — LABOR CODE CHAPTER 3 — TRIBAL LABOR RELATIONS ORDINANCE OF 2019

CITE AS: 7 WRC § 3-101, ET SEQ. ENACTED: APRIL 18, 2019

ARTICLE I GENERAL

SECTION 3-101 TITLE

This Ordinance shall be titled the Tribal Labor Relations Ordinance of 2019 and shall be codified as Chapter 3 of the Tribe's Labor Code.

SECTION 3-102 AUTHORITY

A. Article VI, Section 2 of the Constitution of Wilton Rancheria ("Constitution") authorizes the Tribal Council to make the Tribe's laws.

B. Article VI, Section 2(a) of the Constitution grants the Tribal Council the power to make all laws, including resolutions, codes, and statutes.

C. Article VI, Section 2(c) of the Constitution grants the Tribal Council the power to pass laws regulating the Tribe's elections, enrollment, employment, and all other matters so long as those laws are consistent with the Constitution.

Appendix E

SECTION 3-103 BACKGROUND

This Ordinance governs the rights, responsibilities and limitations of any labor union or organization that desires to organize employees of the Tribe's class III casino or related facilities that facilitate patronage of the Tribe's class III gaming operations. It is enacted in accordance with Section 12.10 of the Tribal-State Gaming Compact between the State of California and Wilton Rancheria, effective January 22, 2018, which provides that the gaming activities authorized by the compact may only commence after the Tribe has adopted an ordinance identical to the Tribal Labor Relations Ordinance attached to the compact, and the gaming activities may only continue as long as the Tribe maintains the ordinance. Article II of this Ordinance is identical to the ordinance attached to the Tribe's January 22, 2018 compact.

SECTION 3-104 SCOPE

This Ordinance shall be narrowly construed to apply to Eligible Employees to the extent the Ordinance provisions are lawfully required by an effective tribal-state gaming compact between the Tribe and the State of California.

SECTION 3-105 DEFINITIONS

A. "Eligible Employee" has the meaning given to it in Section 3-202 of this Ordinance.

B. "Ordinance" means this Tribal Labor Relations Ordinance of 2019.

C. "Tribe" means the Wilton Rancheria, a federally recognized Indian tribe.

ARTICLE II APPLICABILITY, RIGHTS, DUTIES, DISPUTE RESOLUTION

SECTION 3-201 THRESHOLD OF APPLICABILITY

A. This Ordinance shall apply only if the Tribe employs 250 or more persons in a tribal casino and related facility. For purposes of this Ordinance, a "tribal casino" is one in which class III gaming is conducted pursuant to the tribal-state compact. A "related facility" is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.

B. Upon the request of a labor union or organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in subsection (A) of this Section 3-201. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel, which is defined in Section 3-213 herein.

SECTION 3-202 DEFINITION OF ELIGIBLE EMPLOYEES

A. The provisions of this Ordinance shall apply to any person (hereinafter "Eligible Employee") who is

employed within a tribal casino in which class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the class III gaming operations, except for any of the following:.

1. any employee who is a supervisor, defined as any individual having authority, in the interest of the Tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

2. any employee of the Tribal Gaming Commission;

3. any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;

4. any cash operations employee who is a "cage" employee or money counter; or

5. any dealer.

B. On July 1 of each year, the Tribal Gaming Commission shall certify the number of Eligible Employees employed by the Tribe to the administrator of the Tribal Labor Panel.

Appendix E

SECTION 3-203 NON-INTERFERENCE WITH REGULATORY OR SECURITY ACTIVITIES

Operation of this Ordinance 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 Indian Gaming Commission-approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the tribal casino's surveillance/security systems, or any other internal controls system designed to protect the integrity of the Tribe's gaming operations. The Tribal Gaming Commission is specifically excluded from the definition of Eligible Employees.

SECTION 3-204 ELIGIBLE EMPLOYEES FREE TO ENGAGE IN OR REFRAIN FROM CONCERTED ACTIVITY

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

SECTION 3-205 UNFAIR LABOR PRACTICES FOR THE TRIBE

It shall be an unfair labor practice for the Tribe and/or employer or their agents:

A. To interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

B. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the Tribe and/or employer and a certified union from agreeing to union security or dues check off;

C. To discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance; or

D. After certification of the labor organization pursuant to Section 3-210, to refuse to bargain collectively with the representatives of Eligible Employees.

SECTION 3-206 UNFAIR LABOR PRACTICES FOR THE UNION

It shall be an unfair labor practice for a labor organization or its agents:

A. To interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

B. To engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a primary or secondary

boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to Section 3-211;

C. To force or require the Tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this Ordinance;

D. To refuse to bargain collectively with the Tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein; or

E. To attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

SECTION 3-207 TRIBE AND UNION RIGHT TO FREE SPEECH

A. The Tribe's and union's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference with, restraint, or coercion if such expression contains no threat of reprisal or force or promise of benefit.

B. The Tribe agrees that if a union first offers in writing that it and its local affiliates will comply with (B)(1) and (B)(2), the Tribe shall comply with the provisions of (C) and (D).

1. For a period of three hundred sixty-five (365) days following delivery of a Notice of Intent to Organize (NOIO) to the Tribe:

a. Not engage in strikes, picketing, boycotts, attack websites, or other economic activity at or in relation to the tribal casino or related facility; and refrain from engaging in strike-related picketing on Indian lands as defined in 25 U.S.C. § 2703(4);

b. Not disparage the Tribe for purposes of organizing Eligible Employees;

c. Not attempt to influence the outcome of a tribal government election; and

d. During the three hundred sixty-five (365) days after the Tribe received the NOIO, the Union must collect dated and signed authorization cards pursuant to Section 3-210 herein and complete the secret ballot election also in Section 3-210 herein. Failure to complete the secret ballot election within the three hundred sixty five (365) days after the Tribe received the NOIO shall mean that the union shall not be permitted to deliver another NOIO for a period of two years (730 days).

2. Resolve all issues, including collective bargaining impasses, through the binding dispute resolution mechanisms set forth in Section 3-213 herein.

C. Upon receipt of a NOIO, the Tribe shall:

1. Within two (2) days provide to the union an election eligibility list containing the full first and last names of the Eligible Employees within the sought-after bargaining unit and the Eligible Employees' last known addresses and telephone numbers and email addresses;

2. For period of three hundred sixty-five (365) days thereafter, Tribe will not do any action nor make any statement that directly or indirectly states or implies any opposition by the Tribe to the selection by such employees of a collective bargaining agent, or preference for or opposition to any particular union as a bargaining agent. This includes refraining from making derisive comments about unions; publishing or posting pamphlets, fliers, letters, posters or any other communication which could reasonably be interpreted as criticizing the union or advising Eligible Employees to vote "no" against the union. However, the Tribe shall be free at all times to fully inform Eligible Employees about the terms and conditions of employment it provides to employees and the advantages of working for the Tribe; and

3. Resolve all issues, including collective bargaining impasses, through the binding dispute resolution mechanisms set forth in Section 3-213 herein.

D. The union's offer in subsection (B) of this Section 3-207 shall be deemed an offer to accept the entirety of this Ordinance as a bilateral contract between the Tribe and the union, and the Tribe agrees to accept such offer. By entering into such bilateral contract, the union and Tribe mutually waive any right to file any form of action or proceeding with the National Labor Relations Board for the three hundred sixty-five (365)-day period following the NOIO.

E. The Tribe shall mandate that any entity responsible for all or part of the operation of the casino and related facility shall assume the obligations of the Tribe under this Ordinance. If at the time of the management contract, the Tribe recognizes a labor organization as the representative of its employees, certified pursuant to this Ordinance, the labor organization will provide the contractor, upon request, the election officer's certification which constitutes evidence that the labor organization has been determined to be the majority representative of the Tribe's Eligible Employees.

SECTION 3-208 ACCESS TO ELIGIBLE EMPLOYEES

A. Access shall be granted to the union for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or related facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The Tribe may require the union and

or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the casino or related facility, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.

B. The Tribe, in its discretion, may also designate additional voluntary access to the Union in such areas as employee parking lots and non-casino facilities located on tribal lands.

C. In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the casino:

1. Security and surveillance systems throughout the casino, and reservation;

2. Access limitations designed to ensure security;

3. Internal controls designed to ensure security; or

4. Other systems designed to protect the integrity of the Tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.

D. The Tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the tribal casino by allowing posters, leaflets and other

written materials to be posted in non-public employee break areas where the Tribe already posts announcements pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials shall be by employees desiring to post such materials.

SECTION 3-209 INDIAN PREFERENCE EXPLICITLY PERMITTED

Nothing herein shall preclude the Tribe from giving Indian preference in employment, promotion, seniority, lay-offs or retention to members of any federally recognized Indian tribe or shall in any way affect the Tribe's right to follow tribal law, ordinances, personnel policies or the Tribe's customs or traditions regarding Indian preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the Tribe's customs and traditions regarding Indian preference and this Ordinance, the tribal law, tribal ordinance, or the Tribe's customs and traditions shall govern.

SECTION 3-210 SECRET BALLOT ELECTIONS

A. The election officer shall be chosen within three (3) business days of notification by the labor organization to the Tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided, however, that if the election officer resigns, dies, or is incapacitated for any other reason from performing the functions of this office, a substitute election officer

shall be selected in accordance with the dispute resolution provisions herein. Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election. The election officer shall make a determination as to whether the required thirty percent (30%) showing has been made within one (1) working day after the submission of authorization cards. If the election officer determines the required thirty percent (30%) showing of interest has been made, the election officer shall issue a notice of election. The election shall be concluded within thirty (30) calendar days of the issuance of the notice of election.

B. Upon the showing of interest to the election officer pursuant to subsection (A), within two (2) working days the Tribe shall provide to the union an election eligibility list containing the full first and last names of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known addresses and telephone numbers and email addresses. Nothing herein shall preclude a Tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign with or without an election. The election shall be conducted by the election officer by secret ballot pursuant to procedures set forth in a consent election agreement in substantially the same form as Attachment 1. In the event either that a party refuses to enter into the consent election agreement or that the parties do not agree on the terms, the election officer shall issue an order that conforms to the terms of the form consent election agreement and shall have authority to decide any terms

upon which the parties have not agreed, after giving the parties the opportunity to present their views in writing or in a telephonic conference call. The election officer shall be a member of the Tribal Labor Panel chosen in the same manner as a single arbitrator pursuant to the dispute resolution provisions herein at Section 3-213(B)(2). All questions concerning representation of the Tribe and/or Eligible Employees by a labor organization shall be resolved by the election officer.

C. The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the support of a majority of the Eligible Employees in a secret ballot election that the election officer determines to have been conducted fairly. The numerical threshold for certification is fifty percent (50%) of the Eligible Employees plus one. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or union, the election officer may order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor Practices by the Tribe, or in the event the union made the offer provided for in Section 3-207(B) that the Tribe violated its obligations under Section 3207(C), that interferes with the election process and precludes the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the employees in the unit at any time before or during the course of the Tribe's misconduct, the election officer shall certify the labor organization as the exclusive bargaining representative.

D. The Tribe or the union may appeal within five (5) days any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties, provided that the Tribal Labor Panel must issue a decision within thirty (30) days after receiving the appeal.

E. A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this Ordinance at that particular casino or related facility until one (1) year after the election was lost.

SECTION 3-211 COLLECTIVE BARGAINING IMPASSE

A. Upon recognition, the Tribe and the union will negotiate in good faith for a collective bargaining agreement covering bargaining unit employees represented by the union.

B. Except where the union has made the written offer set forth in Section 3-207(B), if collective bargaining negotiations result in impasse, the union shall have the right to strike. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. § 2703(4).

C. Where the union makes the offer set forth in Section 3-207(B), if collective bargaining negotiations result in impasse, the matter shall be resolved as set forth in Section 3-213(C).

Appendix E

SECTION 3-212 DECERTIFICATION OF BARGAINING AGENT

A. The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified union, will result in a secret ballot election. The election officer shall make a determination as to whether the required thirty percent (30%) showing has been made within one (1) working day after the submission of authorization cards. If the election officer determines the required thirty percent (30%) showing of interest has been made, the election officer shall issue a notice of election. The election shall be concluded within thirty (30) calendar days of the issuance of the notice of election.

B. The election shall be conducted by an election officer by secret ballot pursuant to procedures set forth in a consent election agreement in substantially the same form as Attachment 1. The election officer shall be a member of the Tribal Labor Panel chosen in the same manner as a single arbitrator pursuant to the dispute resolution provisions herein at Section 3-213(B)(2). All questions concerning the decertification of the union shall be resolved by an election officer. The election officer shall be chosen upon notification to the Tribe and the union of the intent of the Eligible Employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office,

a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

C. The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the Eligible Employees support decertification of the labor organization in a secret ballot election that the election officer determines to have been conducted fairly. The numerical threshold for decertification is fifty percent (50%) of the Eligible Employees plus one (1). If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or the union the election officer may order a re-run election or dismiss the decertification petition.

D. A decertification proceeding may not begin until one (1) year after the certification of a labor union if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than ninety (90) days and no less than sixty (60) days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed any time after the expiration of a collective bargaining agreement.

E. The Tribe or the union may appeal within five (5) days any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel chosen in accordance with Section 3-213(C), provided that the Tribal Labor Panel must issue a decision within thirty (30) days after receiving the appeal.

Appendix E

SECTION 3-213 BINDING DISPUTE RESOLUTION MECHANISM

A. All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein.

B. The method of binding dispute resolution shall be a resolution by the Tribal Labor Panel, consisting of ten (10) arbitrators appointed by mutual selection of the parties which panel shall serve all tribes that have adopted this Ordinance. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine units, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Ordinance.

1. Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Academy of Arbitrators.

2. Unless either party objects, one (1) arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three (3)-member panel, unless arbitrator scheduling conflicts prevent the arbitration from occurring within thirty (30) days of selection of the arbitrators, in

which case a single arbitrator shall render a decision. If one (1) arbitrator will be rendering a decision, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more than two (2) names. If the dispute will be decided by a three (3)-member panel, seven (7) Tribal Labor Panel names will be submitted and each party can strike no more than two (2) names. A coin toss shall determine which party may strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator must render a written, binding decision that complies in all respects with the provisions of this Ordinance within thirty (30) days after a hearing.

C. 1. Upon certification of a union in accordance with Section 3-210 of this Ordinance, the Tribe and union shall negotiate for a period of ninety (90) days after certification. If, at the conclusion of the ninety (90)-day period, no collective bargaining agreement is reached and either the union and/or the Tribe believes negotiations are at an impasse, at the request of either party, the matter shall be submitted to mediation with the Federal Mediation and Conciliation Service. The costs of mediation and conciliation shall be borne equally by the parties.

2. Upon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties. Mediation shall proceed for a period of thirty (30) days. Upon expiration of the thirty

(30)-day period, if the parties do not resolve the issues to their mutual satisfaction, the mediator shall certify that the mediation process has been exhausted. Upon mutual agreement of the parties, the mediator may extend the mediation period.

3. Within twenty-one (21) days after the conclusion of mediation, the mediator shall file a report that resolves all of the issues between the parties and establishes the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the exhaustion of the mediation process. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record.

D. In resolving the issues in dispute, the mediator may consider those factors commonly considered in similar proceedings.

E. Either party may seek a motion to compel arbitration or a motion to confirm or vacate an arbitration award, under this Section 3-213, in the appropriate state superior court, unless a bilateral contract has been created in accordance with Section 3-207, in which case either party may proceed in federal court. The Tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming or vacating an arbitration award issued pursuant to the Ordinance in the appropriate state superior court or in federal court. The parties are free to

put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.

Legislative History:

2/14/2019	Submitted for public review by Tribal Council Resolution No. 2019-11 by vote of 7 for, 0 against, 0 abstaining.
2/20/2019	Thirty (30) day public review phase began.
3/7/2019	Public hearing held at Tribal Office.
3/21/2019	Thirty (30) day public review phase ended.
3/28/2019	Seven (7) day final review phase began.
4/18/2019	Tribal Council passed the Ordinance by Resolution No. 2019-23 by vote of 5 for, 0 against, 0 abstaining.
4/18/2019	Chairperson concurrence; the Ordinance is codified as Chapter 3 of the Labor Code.

Appendix E

Attachment 1

CONSENT ELECTION AGREEMENT PROCEDURES

Pursuant to the Tribal Labor Relations Ordinance adopted pursuant to section 12.10 of the compact, the undersigned parties hereby agree as follows:

1. Jurisdiction. Tribe is a federally recognized Indian tribal government subject to the Ordinance; and each employee organization named on the ballot is an employee organization within the meaning of the Ordinance; and the employees described in the voting unit are Eligible Employees within the meaning of the Ordinance.

2. Election. An election by secret ballot shall be held under the supervision of the elections officer among the Eligible Employees as defined in Section 3-202 of the Ordinance of the Tribe named above, and in the manner described below, to determine which employee organization, if any, shall be certified to represent such employees pursuant to the Ordinance.

3. Voter Eligibility. Unless otherwise indicated below, the eligible voters shall be all Eligible Employees who were employed on the eligibility cutoff date indicated below, and who are still employed on the date they cast their ballots in the election, i.e., the date the voted ballot is received by the elections officer. Eligible Employees who are ill, on vacation, on leave of absence or sabbatical, temporarily laid off, and employees who are in the military service of the United States shall be eligible to vote.

4. Voter Lists. The Tribe shall electronically file with the elections officer a list of eligible voters within two (2) business days after receipt of a Notice of Election.

5. Notice of Election. The elections officer shall serve Notices of Election on the Tribe and on each party to the election. The Notice shall contain a sample ballot, a description of the voting unit and information regarding the balloting process. Upon receipt, the Tribe shall post such Notice of Election conspicuously on all employee bulletin boards in each facility of the employer in which members of the voting unit are employed. Once a Notice of Election is posted, where the union has made the written offer set forth in Section 3-207(B) of the Tribal Labor Relations Ordinance of 2019, the Tribe shall continue to refrain from publishing or posting pamphlets, fliers, letters, posters or any other communication which should be interpreted as criticism of the union or advises employees to vote "no" against the union. The Tribe shall be free at all times to fully inform employees about the terms and conditions of employment it provides to employees and the advantages of working for the Tribe.

6. Challenges. The elections officer or an authorized agent of any party to the election may challenge, for good cause, the eligibility of a voter. Any challenges shall be made prior to the tally of the ballots.

7. Tally of Ballots. At the time and place indicated below, ballots shall be co-mingled and tabulated by the elections officer. Each party shall be allowed to station an authorized agent at the ballot count to verify the tally

of ballots. At the conclusion of the counting, the elections officer shall serve a Tally of Ballots on each party.

8. Objections and Post-election Procedures. Objections to the conduct of the election may be filed with the elections officer within five (5) calendar days following the service of the Tally of Ballots. Service and proof of service is required.

9. Runoff Election. In the event a runoff election is necessary, it shall be conducted at the direction of the elections officer.

10. Wording on Ballot. The choices on the ballot shall appear in the wording and order enumerated below.

FIRST: [***]
SECOND: [***]
THIRD: [***]

11. Cutoff Date for Voter Eligibility: [***]

12. Description of the Balloting Process. A secret ballot election will take place within thirty (30) days after delivery of the voter list referenced in paragraph 4. The employer will determine the location or locations of the polling places for the election. There must be at least one (1) neutral location (such as a high school, senior center, or similar facility) which is not within the gaming facility and employees must also be afforded the option of voting by mail through procedures established by the elections officer. Such procedures must include provisions that

provide meaningful protection for each employee's ability to make an informed and voluntary individual choice on the issue of whether to accept or reject a union. Such procedures must also ensure that neither employer nor union representatives shall observe employees personally marking, signing, and placing their ballot in the envelope. Only voters, designated observers and the election officer or supporting staff can be present in the polling area. Neither employer nor union representatives may campaign in or near the polling area. If the election officer or supporting staff questions an employee's eligibility to vote in the election, the ballot will be placed in a sealed envelope until eligibility is determined. The box will be opened under the supervision of the election officer when voting is finished. Ballots submitted by mail must be received by the elections officer no later than the day of the election in order to be counted in the official tally of ballots.

13. Voter List Format and Filing Deadline: Not later than two (2) business days after receipt of the Notice of Election, the Tribe shall file with the elections officer, at [**address**], an alphabetical list of all eligible voters including their job titles, work locations and home addresses.

Copies of the list shall be served concurrently on the designated representative for the [***]; proof of service must be concurrently filed with elections officer.

In addition, the Tribe shall submit to the elections officer on or before [***], by electronic mail, a copy of the voter

list in an Excel spreadsheet format, with columns labeled as follows: First Name, Last Name, Street Address, City, State, and Zip Code. Work locations and job titles need not be included in the electronic file. The file shall be sent to [***].

14. Notices of Election: Shall be posted by the Tribe no later than [***].

15. Date, Time and Location of Counting of Ballots: Beginning at [**time**] on [**date**], at the [**address**].

16. Each signatory to this Agreement hereby declares under penalty of perjury that s/he is a duly authorized agent empowered to enter into this Consent Election Agreement.

(Name of Party)	
By	
(Title)	(Date)

(Name of Party)	
By	
(Title)	(Date)

(Name of Party)	
By	
(Title)	(Date)

(Name of Party)	
By	
(Title)	(Date)

Date approved: _____

[**Author**]
Elections Officer

APPENDIX F — 9 U.S.C. §§ 1–16 (FEDERAL ARBITRATION ACT)

TITLE 9 — ARBITRATION

§ 1—"Maritime transactions" and "commerce" defined; exceptions to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

§ 2—Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing

to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 3—Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

§ 4—Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such

arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

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§ 5—Appointment of arbitrators or umpire

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

§ 6—Application heard as motion

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

§ 7—Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which

may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

§ 8—Proceedings begun by libel in admiralty and seizure of vessel or property

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

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§ 9—Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

§ 10—Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) 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.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

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§ 11—Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

§ 12—Notice of motions to vacate or modify; service; stay of proceedings

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed

by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

§ 13—Papers filed with order on motions; judgment; docketing; force and effect; enforcement

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

§ 14—Contracts not affected

This title shall not apply to contracts made prior to January 1, 1926.

§ 15—Inapplicability of the Act of State doctrine

Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.

§ 16—Appeals

(a) An appeal may be taken from—

(1) an order—

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order—

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

APPENDIX G — 25 U.S.C. §§ 2701 *et seq.* (INDIAN GAMING REGULATION ACT)

CHAPTER 29—INDIAN GAMING REGULATION

§2701. Findings

The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

(3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

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§2702. Declaration of policy

The purpose of this chapter is—

(1) 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;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

§2703. Definitions

For purposes of this chapter—

(1) The term "Attorney General" means the Attorney General of the United States.

(2) The term "Chairman" means the Chairman of the National Indian Gaming Commission.

(3) The term "Commission" means the National Indian Gaming Commission established pursuant to section 2704 of this title.

(4) The term "Indian lands" means—

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which—

(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and

(B) is recognized as possessing powers of self-government.

(6) The term "class I gaming" means social games solely for prizes of minimal value or traditional forms of

Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(7)(A) The term "class II gaming" means—

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that—

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State,

but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "class II gaming" does not include—

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes,

during the 1-year period beginning on October 17, 1988, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after October 17, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(E) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on December 17, 1991, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 2710(d)(3) of this title.

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

(8) The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

(9) The term "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or

paid for, prizes and total operating expenses, excluding management fees.

(10) The term "Secretary" means the Secretary of the Interior.

§2704. National Indian Gaming Commission

(a) Establishment

There is established within the Department of the Interior a Commission to be known as the National Indian Gaming Commission.

(b) Composition; investigation; term of office; removal

(1) The Commission shall be composed of three full-time members who shall be appointed as follows:

(A) a Chairman, who shall be appointed by the President with the advice and consent of the Senate; and

(B) two associate members who shall be appointed by the Secretary of the Interior.

(2)(A) The Attorney General shall conduct a background investigation on any person considered for appointment to the Commission.

(B) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on

the Commission and shall allow a period of not less than thirty days for receipt of public comment.

(3) Not more than two members of the Commission shall be of the same political party. At least two members of the Commission shall be enrolled members of any Indian tribe.

(4)(A) Except as provided in subparagraph (B), the term of office of the members of the Commission shall be three years.

(B) Of the initial members of the Commission—

(i) two members, including the Chairman, shall have a term of office of three years; and

(ii) one member shall have a term of office of one year.

(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who—

(A) has been convicted of a felony or gaming offense;

(B) has any financial interest in, or management responsibility for, any gaming activity; or

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 2711 of this title.

(6) A Commissioner may only be removed from office before the expiration of the term of office of the member by the President (or, in the case of associate member, by the Secretary) for neglect of duty, or malfeasance in office, or for other good cause shown.

(c) Vacancies

Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term of office until his successor has been appointed, unless the member has been removed for cause under subsection (b)(6) of this section.

(d) Quorum

Two members of the Commission, at least one of which is the Chairman or Vice Chairman, shall constitute a quorum.

(e) Vice Chairman

The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairman. The Vice Chairman shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) Meetings

The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every 4 months.

(g) Compensation

(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5.

(2) The associate members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5.

(3) All members of the Commission shall be reimbursed in accordance with title 5 for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

§2705. Powers of Chairman

(a) The Chairman, on behalf of the Commission, shall have power, subject to an appeal to the Commission, to—

(1) issue orders of temporary closure of gaming activities as provided in section 2713(b) of this title;

(2) levy and collect civil fines as provided in section 2713(a) of this title;

(3) approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 2710 of this title; and

(4) approve management contracts for class II gaming and class III gaming as provided in sections 2710(d)(9) and 2711 of this title.

(b) The Chairman shall have such other powers as may be delegated by the Commission.

§2706. Powers of Commission

(a) Budget approval; civil fines; fees; subpoenas; permanent orders

The Commission shall have the power, not subject to delegation—

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 2717 of this title;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 2713(a) of this title;

(3) by an affirmative vote of not less than 2 members, to establish the rate of fees as provided in section 2717 of this title;

(4) by an affirmative vote of not less than 2 members, to authorize the Chairman to issue subpoenas as provided in section 2715 of this title; and

(5) by an affirmative vote of not less than 2 members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 2713(b)(2) of this title.

(b) Monitoring; inspection of premises; investigations; access to records; mail; contracts; hearings; oaths; regulations

The Commission—

(1) shall monitor class II gaming conducted on Indian lands on a continuing basis;

(2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;

(3) shall conduct or cause to be conducted such background investigations as may be necessary;

(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this chapter;

(5) may use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

(6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) may enter into contracts with Federal, State, tribal and private entities for activities necessary to

the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;

(8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) may administer oaths or affirmations to witnesses appearing before the Commission; and

(10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter.

(c) Omitted

(d) Application of Government Performance and Results Act

(1) In general

In carrying out any action under this chapter, the Commission shall be subject to the Government Performance and Results Act of 1993 (Public Law 103-62; 107 Stat. 285).

(2) Plans

In addition to any plan required under the Government Performance and Results Act of 1993 (Public Law 103-62; 107 Stat. 285), the Commission

shall submit a plan to provide technical assistance to tribal gaming operations in accordance with that Act.

§2707. Commission staffing

(a) General Counsel

The Chairman shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5.

(b) Staff

The Chairman shall appoint and supervise other staff of the Commission without regard to the provisions of title 5 governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.

(c) Temporary services

The Chairman may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(d) Federal agency personnel

Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this chapter, unless otherwise prohibited by law.

(e) Administrative support services

The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

§2708. Commission; access to information

The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this chapter. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

§2709. Interim authority to regulate gaming

Notwithstanding any other provision of this chapter, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before October 17, 1988, relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance

to facilitate an orderly transition to regulation of Indian gaming by the Commission.

§2710. Tribal gaming ordinances

(a) Jurisdiction over class I and class II gaming activity

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

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A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that—

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) there is an adequate system which—

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes—

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal

practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if—

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 2712 of this title,

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 2717(a)(1) of this title for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on October 17, 1988.

(iii) Within sixty days of October 17, 1988, the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II) of this section, the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which—

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after October 17, 1988; and

(B) has otherwise complied with the provisions of this section may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has—

(A) conducted its gaming activity in a manner which—

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706(b) of this title;

(B) the tribe shall continue to submit an annual independent audit as required by subsection (b) (2)(C) of this section and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 2717 of this title in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b) of this section, and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b) of this section.

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that—

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 2711(e)(1)(D) of this title.

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection—

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon

receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 1175 of title 15 shall not apply to any gaming conducted under a Tribal-State compact that—

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7)(A) The United States district courts shall have jurisdiction over—

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that—

(I) a Tribal-State compact has not been entered into under paragraph (3), and

(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith, the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court—

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe

and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates—

(i) any provision of this chapter,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this chapter.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if

such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 2711 of this title.

(e) Approval of ordinances

For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this chapter.

§2711. Management contracts

(a) Class II gaming activity; information on operators

(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 2710(b)(1) of this title, but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity)

having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(3) For purposes of this chapter, any reference to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(b) Approval

The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least—

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term that exceeds five years but does not exceed seven years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c) Fee based on percentage of net revenues

(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the

net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

(2) Upon the request of an Indian tribe, the Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

(d) Period for approval; extension

By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

(e) Disapproval

The Chairman shall not approve any contract if the Chairman determines that—

(1) any person listed pursuant to subsection (a)(1)(A) of this section—

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this chapter or has refused to respond to questions propounded pursuant to subsection (a)(2) of this section; or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this chapter; or

(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

(f) Modification or voiding

The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

(g) Interest in land

No management contract for the operation and management of a gaming activity regulated by this chapter shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.

(h) Authority

The authority of the Secretary under section 81 of this title, relating to management contracts regulated pursuant to this chapter, is hereby transferred to the Commission.

(i) Investigation fee

The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.

§2712. Review of existing ordinances and contracts

(a) Notification to submit

As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to October 17, 1988, adopted an ordinance or resolution authorizing class II gaming or class III gaming or entered into a management contract, that such ordinance, resolution, or contract, including all collateral agreements relating to the gaming activity, must be submitted for his review within 60 days of such notification. Any activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this chapter, or any amendment made by this chapter, unless disapproved under this section.

(b) Approval or modification of ordinance or resolution

(1) By no later than the date that is 90 days after the date on which an ordinance or resolution authorizing class II gaming or class III gaming is submitted to the Chairman pursuant to subsection (a) of this section, the Chairman shall review such ordinance or resolution to

determine if it conforms to the requirements of section 2710(b) of this title.

(2) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section conforms to the requirements of section 2710(b) of this title, the Chairman shall approve it.

(3) If the Chairman determines that an ordinance or resolution submitted under subsection (a) of this section does not conform to the requirements of section 2710(b) of this title, the Chairman shall provide written notification of necessary modifications to the Indian tribe which shall have not more than 120 days to bring such ordinance or resolution into compliance.

(c) Approval or modification of management contract

(1) Within 180 days after the submission of a management contract, including all collateral agreements, pursuant to subsection (a) of this section, the Chairman shall subject such contract to the requirements and process of section 2711 of this title.

(2) If the Chairman determines that a management contract submitted under subsection (a) of this section, and the management contractor under such contract, meet the requirements of section 2711 of this title, the Chairman shall approve the management contract.

(3) If the Chairman determines that a contract submitted under subsection (a) of this section, or the

management contractor under a contract submitted under subsection (a) of this section, does not meet the requirements of section 2711 of this title, the Chairman shall provide written notification to the parties to such contract of necessary modifications and the parties shall have not more than 120 days to come into compliance. If a management contract has been approved by the Secretary prior to October 17, 1988, the parties shall have not more than 180 days after notification of necessary modifications to come into compliance.

§2713. Civil penalties

(a) Authority; amount; appeal; written complaint

(1) Subject to such regulations as may be prescribed by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed $25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this chapter, any regulation prescribed by the Commission pursuant to this chapter, or tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management

contractor is engaged in activities regulated by this chapter, by regulations prescribed under this chapter, or by tribal regulations, ordinances, or resolutions, approved under section 2710 or 2712 of this title, that may result in the imposition of a fme under subsection (a)(1) of this section, the permanent closure of such game, or the modification or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in common and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(b) Temporary closure; hearing

(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this chapter, of regulations prescribed by the Commission pursuant to this chapter, or of tribal regulations, ordinances, or resolutions approved under section 2710 or 2712 of this title.

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the

Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

(c) Appeal from final decision

A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to chapter 7 of title 5.

(d) Regulatory authority under tribal law

Nothing in this chapter precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with this chapter or with any rules or regulations adopted by the Commission.

§2714. Judicial review

Decisions made by the Commission pursuant to sections 2710, 2711, 2712, and 2713 of this title shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of title 5.

§2715. Subpoena and deposition authority

(a) Attendance, testimony, production of papers, etc.

By a vote of not less than two members, the Commission shall have the power to require by subpoena

the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Geographical location

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Refusal of subpoena; court order; contempt

Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena for any reason, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Depositions; notice

A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or

investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Oath or affirmation required

Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

(f) Witness fees

Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Appendix G

§2716. Investigative powers

(a) Confidential information

Except as provided in subsection (b) of this section, the Commission shall preserve any and all information received pursuant to this chapter as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5.

(b) Provision to law enforcement officials

The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.

(c) Attorney General

The Attorney General shall investigate activities associated with gaming authorized by this chapter which may be a violation of Federal law.

§2717. Commission funding

(a)(1) The Commission shall establish a schedule of fees to be paid to the Commission annually by each gaming operation that conducts a class II or class III gaming activity that is regulated by this chapter.

(2)(A) The rate of the fees imposed under the schedule established under paragraph (1) shall be—

(i) no more than 2.5 percent of the first $1,500,000, and

(ii) no more than 5 percent of amounts in excess of the first $1,500,000,

of the gross revenues from each activity regulated by this chapter.

(B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed 0.080 percent of the gross gaming revenues of all gaming operations subject to regulation under this chapter.

(3) The Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.

(4) Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to the regulations of the Commission, be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required under this chapter for the operation of gaming.

(5) To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity on a pro rata basis against such fees imposed for the succeeding year.

(6) For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 2718 of this title, in an amount equal the amount of funds derived from assessments authorized by subsection (a) of this section for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

§2717a. Availability of class II gaming activity fees to carry out duties of Commission

In fiscal year 1990 and thereafter, fees collected pursuant to and as limited by section 2717 of this title shall be available to carry out the duties of the Commission, to remain available until expended.

Appendix G

§2718. Authorization of appropriations

(a) Subject to section 2717 of this title, there are authorized to be appropriated, for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 2717(a) of this title.

(b) Notwithstanding section 2717 of this title, there are authorized to be appropriated to fund the operation of the Commission, $2,000,000 for fiscal year 1998, and $2,000,000 for each fiscal year thereafter. The amounts authorized to be appropriated in the preceding sentence shall be in addition to the amounts authorized to be appropriated under subsection (a) of this section.

§2719. Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and—

(A) such lands are located in Oklahoma and—

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when—

(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of—

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) of this section shall not apply to—

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B)

and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 465 and 467 of this title, subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Authority of Secretary not affected

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d) Application of title 26

(1) The provisions of title 26 (including sections 1441, 3402(q), 6041, and 60501, and chapter 35 of such title) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after October 17, 1988, unless such other provision of law specifically cites this subsection.

Appendix G

§2720. Dissemination of information

Consistent with the requirements of this chapter, sections 1301, 1302, 1303 and 1304 of title 18 shall not apply to any gaming conducted by an Indian tribe pursuant to this chapter.

§2721. Severability

In the event that any section or provision of this chapter, or amendment made by this chapter, is held invalid, it is the intent of Congress that the remaining sections or provisions of this chapter, and amendments made by this chapter, shall continue in full force and effect.

APPENDIX H — 25 U.S.C. §§ 1301–03 (INDIAN CIVIL RIGHTS ACT OF 1968)

§ 1301. Definitions

For purposes of this subchapter, the term—

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

(3) "Indian court" means any Indian tribal court or court of Indian offense; and

(4) "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies.

Appendix H

§ 1302. Constitutional rights

(a) In general

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory

process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense (except as provided in subsection (b));

(7)(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

(B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of $5,000, or both;

(C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of $15,000, or both; or

(D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than $5,000

A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than $5,000 but not to exceed $15,000, or both, if the defendant is a person accused of a criminal offense who—

(1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

(2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

(c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

(2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any

jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

(3) require that the judge presiding over the criminal proceeding—

(A) has sufficient legal training to preside over criminal proceedings; and

(B) is licensed to practice law by any jurisdiction in the United States;

(4) prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and

(5) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(d) Sentences

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant—

(1) to serve the sentence—

(A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;

(B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c)[1] of the Tribal Law and Order Act of 2010;

(C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

(D) in an alternative rehabilitation center of an Indian tribe; or

(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

(e) Definition of offense

In this section, the term "offense" means a violation of a criminal law.

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1. See References in Text note below.

(f) Effect of section

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.

Appendix H

§ 1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

APPENDIX I — MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT

THIS AGREEMENT is made and entered into by and between Wilton Rancheria (the "Tribe"), Boyd Gaming Corp. (the "Operator") and UNITE HERE International Union (the "Union").

1. This Agreement shall cover all employees defined as "Eligible Employees" by the Tribal Labor Relations Ordinance (referred to hereinafter as "Employees") at any casino and related facility (collectively the "Casino") which during the term of this Agreement is owned by, operated by or substantially under the control of the Tribe, except that the following classifications shall be excluded: sports book writer, slot machine mechanics, casino guest service representatives, bingo employees, keno runners, keno writers, and office clerical employees, and confidential employees as defined in Section 2(11) of the National Labor Relations Act (along with those classifications excluded from the definition of "Eligible Employee" in the Tribal Labor Relations Ordinance). The term "related facility" shall mean any facility the only significant purpose of which is to facilitate patronage of Class III gaming operations. The term "Tribe" shall be deemed to include any person, firm, partnership, corporation, joint venture or other legal entity substantially under the control of: (a) the Tribe covered by this Agreement; (b) one or more principal(s) of the Tribe covered by this Agreement; (c) a subsidiary of the Tribe covered by this Agreement; or (d) any person, firm, partnership, corporation, joint venture or other legal entity which substantially controls the Tribe covered by this Agreement. The term "Operator" shall be deemed

to include any person, firm, partnership, corporation, joint venture or other legal entity substantially under the control of: (a) the Operator covered by this Agreement; (b) one or more principal(s) of the Operator covered by this Agreement; (c) a subsidiary of the Operator covered by this Agreement; or (d) any person, firm, partnership, corporation, joint venture or other legal entity which substantially controls the Operator covered by this Agreement.

2. The parties agree that the Tribal Labor Relations Ordinance governs labor relations at the Casino, and to hereby establish the following procedure for the purpose of ensuring an orderly environment for Employees to exercise their rights under the Tribal Relations Ordinance to organize collectively, should employees choose to do so, and to avoid picketing and/or other economic action directed at the Tribe in the event the Union decides to conduct an organizing campaign among the Employees.

3. The Tribe and the Operator will take a neutral approach to unionization of Employees. The Tribe and the Operator will not do any action nor make any statement that will directly or indirectly state or imply any opposition by the Tribe or the Operator to the selection by such Employees of a collective bargaining agent, or preference for or opposition to any particular union as a bargaining agent.

4. The Union and its representatives will not coerce or threaten any Employee in an effort to obtain authorization cards.

5. If the Union provides written notice to the Tribe or the Operator of its intent to organize Employees covered by this Agreement, the Tribe and the Operator shall provide access to its premises and to such Employees by the Union. The Union may engage in organizing efforts in nonpublic areas of the Casino during Employees' non-working times (before work, after work, and during meals and breaks) and/or during such other periods as the parties may mutually agree upon. "Organizing" includes communicating with Employees before and after recognition of the Union as provided in Paragraph 7.

6. Within fifteen (15) days following receipt of written notice of intent to organize Employees, the Tribe or the Operator will furnish the Union with a complete list of Employees, including both full and part-time Employees, showing their job classifications, departments, home and email addresses, and telephone numbers. Thereafter, the Tribe or the Operator will provide updated complete lists monthly.

7. The Union is not presently recognized as the exclusive collective bargaining representative of the Employees. The Union may request recognition as the exclusive collective bargaining agent for such Employees. The arbitrator identified in Paragraph 11, or another person mutually agreed to by parties, will conduct a review of Employees' authorization cards and membership information submitted by the Union in support of its claim to represent a majority of such Employees. If that review establishes that a majority of such Employees has designated the Union as their exclusive collective

bargaining representative or joined the Union, the Tribe and the Operator will recognize the Union as such representative of such Employees. The Tribe and the Operator will not file a petition with the National Labor Relations Board for any election in connection with any demands for recognition provided for in this agreement. The parties agree that if any other person or entity petitions the National Labor Relations Board for any election as a result of or despite recognition of the Union pursuant to this Paragraph, (a) the parties will each request that the NLRB dismiss the petition on grounds of recognition bar or, if they have agreed to a collective bargaining agreement covering Employees at the time the petition is filed, on grounds of contract bar, (b) if the petition is not dismissed, the parties shall agree to a full consent election agreement under Section 102.62(c) of the NLRB's Rules and Regulations, and (c) the parties shall at all times abide by the provisions of this Agreement except that the Union may file unfair labor practice charges. Except as provided above, the parties will not file any charges with the National Labor Relations Board in connection with any act or omission occurring within the context of this agreement; arbitration under Paragraph 11 shall be the exclusive remedy.

8. If the Union is recognized as the exclusive collective bargaining representative as provided in paragraph 7, negotiations for a collective bargaining agreement shall be commenced immediately and conducted diligently and in good faith to the end of reaching agreement expeditiously. If the parties are unable to reach agreement on a collective bargaining agreement within 120 days after recognition

pursuant to Paragraph 7, all unresolved issues shall be submitted for resolution to final and binding arbitration pursuant to Paragraph 11. The arbitrator identified in paragraph 11 below shall be the arbitrator, unless another arbitrator is mutually agreed to by the parties. The arbitrator shall be guided by the following considerations: a) Tribe's financial ability; b) size and type of the Tribe's operations; c) cost of living as it affects the Employees; d) ability of the Employees, through the combination of wages, hours and benefits, to earn a living wage to sustain themselves and their families; and e) Employees' productivity.

9. During the term of this Agreement, the Union will not engage in any strike, picketing or other adverse economic or public relations' activity at, or in connection with, the Casino, and the Tribe and the Operator will not engage in a lockout of the Employees. Notwithstanding the termination provision above, if the Tribe or the Operator recognizes any union besides Union as the exclusive collective bargaining representative of Employees, or any of them, this paragraph shall terminate immediately and without notice.

10. The Tribe and the Operator shall incorporate the entirety of paragraphs 3, 5, 6, 7 and 8 of this of Agreement in any contract, subcontract, lease, sublease, operating agreement, franchise agreement or any other agreement or instrument giving a right to any person to operate any enterprise in the Casino employing employees in classifications covered by the Tribal Labor Relations Ordinance, and shall obligate any person taking such interest, and any and all successors and assigns

of such person, to in turn incorporate said paragraphs in any further agreement or instrument giving a right as described above. The Tribe or the Operator shall enforce such provisions, or at its option, assign its rights to do so to the Union. The Tribe or the Operator shall give the Union written notice of the execution of such agreement or instrument and identify the other party(ies) to the transaction within 15 days after the agreement or instrument is signed. The terms "Tribe", "Operator" and "Casino" shall be modified in such agreement or instrument to conform to the terminology in such agreement or instrument but retain the same meaning as in this Agreement, and the terms "Tribe" and "Operator" as used herein shall be modified to refer to the person or persons receiving a right to operate an enterprise in the Casino, and the term "Employees" shall be modified to refer to the employees of such person or persons.

11. The parties agree that any disputes over the interpretation or application of this Agreement shall be submitted to expedited and binding arbitration. The Tribe's and the Union's representatives shall meet within fourteen (14) calendar days after the receipt of a panel of arbitrators from the Federal Mediation and Conciliation Service ("FMCS"). Selection of a sole and impartial arbitrator shall be made by the Tribe and the Union representatives each alternately striking, with Union making the first strike, one (1) name from a seven (7) member panel of arbitrators, received from the ("FMCS"), who are members of the National Academy of Arbitrators and who reside in California, Arizona, New Mexico or Nevada. The person whose name remains will

be requested to serve as the impartial arbitrator. By mutual agreement, the parties may waive the use of the panel named above and refer the matter in dispute to an arbitrator selected from any other source. The arbitrator shall have the authority to determine the arbitration procedures to be followed. The arbitrator shall also have the authority to order the noncompliant party to comply with this Agreement. The parties hereto agree to comply with any order of the arbitrator, which shall be final and binding. The United States District Court for the Eastern District of California shall have exclusive jurisdiction in any action concerning arbitration under this Agreement. The parties consent to the entry of any order of the arbitrator as the order or judgment of the Court, without entry of findings of fact and conclusions of law.

12. For the sole purpose of enabling a suit to compel arbitration or to confirm an arbitration award under this Agreement, the Tribe agrees to a limited waiver of sovereign immunity and consents to be sued in federal court without exhausting tribal remedies, or in the event that the federal court declines jurisdiction, in the appropriate state superior court.

13. This Agreement shall be in full force and effect from the date it is fully executed on behalf of the Tribe, the Operator and the Union until three (3) years from the full public opening of the Casino, or if sooner upon execution of a collective bargaining agreement or issuance of an interest arbitration award which concludes the collective bargaining agreement negotiations, either of which explicitly supersedes this document.

14. The Union hereby agrees to actively support before the appropriate federal, state, and local administrative, bureaucratic, regulatory and legislative bodies, the Tribe's efforts to obtain ratification of the Compact by the California legislation, and to take all reasonable and necessary steps to assist the Tribe in connection therewith. For purposes of this Agreement, "active support" includes letter writing, consultation with and lobbying of elected and appointed officials, availability of members for events in furtherance of the Tribe's goals, opposition to competitor's efforts to prohibit the Tribe's entry into tribal government gaming on its lands in Elk Grove, California, and assistance with local government relations.

15. The Tribal Chairperson has been authorized by an action appropriate under tribal law to enter into this Agreement, including the limited waiver of the Tribe's sovereign immunity as set forth in paragraph 12.

16. In the event that any provision of this Agreement should be rendered invalid by applicable legislation or be declared invalid by any court or regulatory agency of competent jurisdiction, such action shall not invalidate the entire Agreement, it being the express intention of the parties hereto that all other provisions not rendered invalid shall remain in full force and effect. Both parties agree that the subject matter of any provision found to be invalid shall be renegotiated for the purpose of replacing the invalidated provision with a valid substitute which most nearly achieves the same objective. In the even the parties are unable to agree on a substitute, the

matter shall be submitted to arbitration as provided in Paragraph 11; the arbitrator shall choose or formulate a substitute provision which accomplishes the purposes of the preceding sentence.

IN WITNESS WHEREOF, the parties hereto by their duly designated representatives have hereunto set their hands.

FOR THE TRIBE:

Wilton Rancheria

By: s/

Its: Chairman

Date: 8/7/17

FOR THE UNION:

UNITE HERE International Union

By: s/

Its: International Vice pres.

Date: 8/3/17

FOR THE OPERATOR:

Boyd Gaming Corporation

By: s/

Its: EVP, Sec. & General Counsel

Date: 8/2/17

APPENDIX J — CONSTITUTION OF WILTON RANCHERIA

CONSTITUTION OF WILTON RANCHERIA

ENACTED: NOVEMBER 12, 2011
LAST AMENDED AND
RESTATED: DECEMBER 8, 2012

PREAMBLE

We, the people of Wilton Rancheria, pursuant to our inherent sovereignty, in order to form a more perfect government, secure our rights, advance the general welfare, safeguard our interests, sustain and enrich our culture, promote our traditions and perpetuate our existence, achieve and maintain a desirable measure of prosperity, and secure the natural and self-evident right to govern ourselves, do ordain and establish this Constitution for Wilton Rancheria.

ARTICLE I – NAME

The name of the Tribe shall be Wilton Rancheria.

ARTICLE II – TERRITORY AND JURISDICTION

Section 1. Territory. The territory of Wilton Rancheria shall include all lands held by the Tribe or its members, or by the United States for the benefit of the Tribe or its members, and any additional lands acquired by the Tribe or by the United States for the benefit of the Tribe or its members, including but not limited to air, water, surface, subsurface, natural resources, and any interest therein.

Section 2. Jurisdiction. The jurisdiction of Wilton Rancheria shall extend to all territory set forth in Section 1 of this Article and to any and all persons or activities therein, based upon the inherent sovereign authority of the Tribe.

ARTICLE III – MEMBERSHIP

Section 1. Requirements.

The following persons shall be eligible for membership in Wilton Rancheria:

a. All persons listed as distributees or dependant members in *A Plan for Distribution of the Assets of the Wilton Rancheria, According to the Provisions of Public Law 85-671, Enacted by the 85th Congress, Approved August 18, 1958*, as approved by the deputy commissioner of the Interior Department's Bureau of Indian Affairs on July 6, 1959; and

b. All lineal descendents of an individual eligible for membership under subsection (a) above, regardless of whether the individual through whom eligibility is claimed is living or deceased.

Section 2. Dual Enrollment. A person who is officially enrolled with or is a recognized member of some other tribe, band, or rancheria shall not be enrolled with Wilton Rancheria unless he/she relinquishes membership with the other band or tribe. A "recognized member of another

tribe, band, or rancheria" is a person whose name is listed on the membership roll of another tribe recognized by the Secretary of the Interior as possessing a government-to-government relationship with the United States. Inherited interests in trust allotments shall not disqualify a person from membership.

Section 3. Membership Roll. There shall be established an official Wilton Rancheria membership roll which shall include all persons who have presented the necessary and required evidence of eligibility for membership in the Tribe.

ARTICLE IV – ORGANIZATION OF THE GOVERNMENT

Section 1. Organization of Government. The government of Wilton Rancheria shall be composed of a Chairperson, a Vice-Chairperson, a Tribal Council, a General Council, and a Tribal Court.

Section 2. Separation of Functions. Except as provided in this Constitution, the Chairperson, Vice-Chairperson, Tribal Council, General Council, and Tribal Court shall be separate and distinct and shall not exercise the powers and functions delegated to any other officer or entity.

Section 3. Supremacy Clause. The Constitution shall be the supreme law over all territory and persons within and under the jurisdiction of Wilton Rancheria.

Appendix J

ARTICLE V – CHAIRPERSON

Section 1. Powers of the Chairperson. The Chairperson shall lead the Tribe based upon direction received from the Tribal Council and shall be the spokesperson for the Tribe. The Chairperson shall have the power:

a. To execute, administer, and enforce the laws of the Tribe;

b. To represent the Tribe on all matters that concern its interests and welfare;

c. To negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals, provided however that any treaty, compact, contract, or agreement that directly or indirectly waives the Tribe's sovereign immunity must be approved by the Tribal Council;

d. To sign official papers on behalf of the Tribe;

e. To make recommendations to the Tribal Council on matters of interest or benefit to the Tribe;

f. To propose laws and an annual budget to the Tribal Council;

g. To attend Tribal Council meetings and provide regular reports to the Tribal Council regarding activities and business of the Tribe;

h. To veto any decision of the Tribal Council, including its approval of an annual budget, within ten calendar days after passage and written presentation to the Chairperson;

i. To preside over meetings of the General Council;

j. To call Annual and Special Meetings of the General Council;

k. To administer all departments created by the Tribal Council;

l. To administer all boards and committees created by the Tribal Council;

m. To nominate the directors of each department subject to confirmation by the Tribal Council, except that if a confirmation vote is not taken by the Tribal Council within forty-five days, the nomination shall be deemed confirmed;

n. To remove a director of a department;

o. To select, hire, and administer personnel;

p. To contract for accounting services;

q. To administer and direct the Tribe's legal counsel; and

r. To establish and maintain headquarters for the Tribe.

Section 2. Vice-Chairperson. The Vice-Chairperson shall have the power:

a. To exercise any of the Chairperson's authority delegated by the Chairperson;

b. To attend Tribal Council meetings;

c. To vote in the event of a tie during a Tribal Council meeting;

d. To be responsible for the recording of minutes during meetings of the Tribal Council and General Council;

e. To attest the enactment of laws; and

f. To be responsible for maintaining records.

Section 3. Terms of Office. The Chairperson and Vice-Chairperson shall serve staggered four-year terms. However, the Vice-Chairperson elected in 2012 shall serve only until the 2014 General Election.

Section 4. Qualifications. Only tribal members who are at least thirty years of age on the date of the General Election shall be eligible to run for or serve as Chairperson or Vice-Chairperson.

Section 5. Term Limits. The Chairperson and Vice-Chairperson shall each be limited to two consecutive terms. A Chairperson or Vice-Chairperson having served

two consecutive terms must wait one full term before again seeking the same position.

ARTICLE VI – TRIBAL COUNCIL

Section 1. Composition of the Tribal Council. The Tribal Council shall consist of seven members, and each member shall possess one vote and share equally in the power designated to the Tribal Council pursuant to this Constitution.

Section 2. Powers of the Tribal Council. The Tribal Council shall make the Tribe's laws. The Tribal Council shall have the power:

a. To make all laws, including resolutions, codes, and statutes;

b. To establish administrative departments that shall be administered by the Chairperson, such as a Department of the Treasury, Administration, Business, Housing, Health, Social Services, Education, Personnel, and any other departments deemed necessary by the Tribal Council;

c. To pass laws regulating the Tribe's elections, enrollment, employment, and all other matters so long as those laws are consistent with the Constitution;

d. To create boards and committees and to set qualifications for participation on those boards and committees;

e. To appoint members of the Election Commission;

f. To authorize expenditures by law and appropriate funds in an annual budget;

g. To raise revenue, including the power to levy and collect taxes and license fees;

h. To set its own procedures, to select its officers, and to enact laws governing attendance of its members, including penalties for absences;

i. To require comprehensive reporting from the Chairperson regarding the Tribe's finances, businesses, and other activities;

j. To override a veto by the Chairperson by an affirmative vote of two-thirds of the entire Tribal Council;

k. To choose and employ the Tribe's legal counsel;

l. To approve any treaty, compact, contract, or agreement that directly or indirectly waives the Tribe's sovereign immunity;

m. To issue charters of incorporation, to charter corporations and other organizations for economic or other purposes, and to regulate their activities;

n. To protect and foster the Tribe's religious freedom, culture, language, and traditions;

o. To promote public health, education, charity, and other such services as may contribute to the social advancement of the members of Wilton Rancheria; and

p. To pass laws which further develop and define the Tribal Court so long as those laws are consistent with the Constitution.

Section 3. Quorum. A majority of the Tribal Council shall constitute a quorum. A quorum shall be necessary to transact official business of the Tribal Council.

Section 4. Voting. A majority vote by the quorum shall be necessary to exercise the powers of the Tribal Council. The votes of each member of the Tribal Council shall be recorded in the minutes.

Section 5. Terms of Office. Members of the Tribal Council shall serve four year terms which shall be staggered. However, the three Tribal Council members receiving the lowest percentage of votes in the Tribe's 2012 General Election shall serve only until the 2014 General Election.

Section 6. Qualifications. Only tribal members who are at least twenty-five years of age on the date of the General Election shall be eligible to run for or serve on the Tribal Council.

Section 7. Term Limits. Members of the Tribal Council shall be limited to two consecutive terms. Tribal Council members having served two consecutive terms must wait

one full Tribal Council term before again seeking a seat on the Tribal Council.

Section 8. Election of Tribal Council Members. Members of the Tribal Council shall be elected at-large by the Tribe's eligible voters.

Section 9. Meetings. The Tribal Council shall hold regular meetings at least once per month. The Tribal Council may hold special meetings as necessary. Tribal Council shall attend regular and special meetings and participate in such meetings in a professional manner.

ARTICLE VII – GENERAL COUNCIL

Section 1. Composition of the General Council. All eligible voters of Wilton Rancheria are entitled to participate in the General Council.

Section 2. Powers of the General Council. The General Council shall have the power:

a. To propose amendments to the Constitution pursuant to Article XIV, Section 2;

b. To approve amendments to the Constitution pursuant to Article XIV, Section 1;

c. To elect those officials in electable positions pursuant to Article IX;

d. To remove officers pursuant to Article X, Section 1; and

e. To call a Special Meeting of the General Council pursuant to Section 4 of this Article.

Section 3. Annual Meeting. The General Council shall meet one time each year in a meeting during the second full weekend of June beginning in 2012. During even-numbered years beginning in 2014, the meeting shall occur in conjunction with the Tribe's General Election. Notice shall be provided by the Chairperson for Annual Meetings of the General Council.

Section 4. Special Meetings. Special Meetings of the General Council shall be called by the Chairperson upon written petition by thirty percent of the General Council, or upon written request of a majority of the Tribal Council, or when deemed necessary by the Chairperson. Notice shall be provided by the Chairperson for all Special Meetings of the General Council.

Section 5. Procedures. A majority of the eligible voters of the Tribe present in General Council shall constitute a quorum. Each action of the General Council shall require the presence of a quorum. The Vice-Chairperson shall be responsible for the recording of the minutes of any General Council meeting, including any votes taken. The Vice-Chairperson shall transmit the minutes of the General Council meetings to the Tribal Council.

Appendix J

ARTICLE VIII – TRIBAL COURT

Section 1. Composition of the Tribal Court. There shall be one Chief Judge of the Tribal Court and other Associate Judges as deemed necessary by the Tribal Council. Tribal Court judges shall be appointed by the Tribal Council and shall be admitted to practice law before the highest court of any state.

Section 2. Terms of Office. Tribal Court judges shall serve four-year terms.

Section 3. Powers of the Tribal Court. The judicial power of Wilton Rancheria shall be vested in the Tribal Court. The Tribal Court shall have the power to interpret and apply the Constitution, laws, customs, and traditions of Wilton Rancheria.

Section 4. Jurisdiction of the Tribal Court. The Tribal Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of Wilton Rancheria, including cases in which Wilton Rancheria, or its officials and employees, shall be a party. Any such case or controversy arising within the jurisdiction of Wilton Rancheria shall be filed in the Tribal Court before it is filed in any other court. This grant of jurisdiction by the General Council shall not be construed to be a wavier of the Tribe's sovereign immunity.

Section 5. Composition of Traditional Court. The Traditional Court shall be made up of a pool of elders appointed by the Tribal Council.

Section 6. Purpose of Traditional Court. The Traditional Court shall exist to assist the Tribal Court in the resolution of cases or controversies involving tribal members and to advise the Tribal Court on matters of custom and tradition.

Section 7. Appellate Review. The Tribal Council may create a Tribal Court panel for appellate review. However, no person serving as Chairperson, as Vice-Chairperson, or as a member of Tribal Council may simultaneously serve on any such panel.

Section 8. Conflicts of Interest. Any judge with a direct personal or financial interest in any matter before the Tribal Court shall recuse. The Tribal Council shall appoint a Judge or Justice pro tempore to fill any vacancy due to recusal.

ARTICLE IX – ELECTIONS

Section 1. General Elections. General Elections shall be held during the second weekend in June of even-numbered years beginning in 2014. General Elections shall be held in conjunction with the General Council's Annual Meeting. The Chairperson, Vice-Chairperson, and members of the Tribal Council shall be selected at the General Elections. All elected officials shall take office on the Monday immediately following the election.

Section 2. Run-Off Elections. Run-off elections shall be held during the second weekend in June of even-numbered years beginning in 2014 for all General Election races which end in a tie or in which the Chairperson or Vice-Chairperson fails to obtain more than a majority of the vote. A run-off election shall include only the two individuals who have tied in any race or the two candidates who have received the highest number of votes in the election for Chairperson or Vice-Chairperson.

Section 3. Eligible Voters. Any member of Wilton Rancheria who is at least eighteen years of age shall have the right to vote.

Section 4. Election Commission. The Wilton Rancheria Election Commission shall be an autonomous and permanent entity charged with the administration of Wilton Rancheria's elections, in accordance with this Constitution and the Tribe's election laws. Prior to each election, the Tribal Council shall appoint all members of the Election Commission and will enact laws which will govern the conduct of all elections. Commission members appointed by the Tribal Council shall serve only until the results of the next General Election are certified. However, Commission members may be reappointed.

Section 5. Qualifications. No person shall be eligible to hold elected office in the Tribe who has been convicted of felony. All candidates for office must submit to a criminal background check in order to be included on a ballot. Any elected official convicted of a felony while in office shall be automatically removed from office by the conviction.

Appendix J

ARTICLE X – REMOVAL AND VACANCIES

Section 1. Removal. The Chairperson, Vice-Chairperson, Tribal Council members, Judges, and Traditional Court members may be removed for good cause through the removal process. The Tribal Council may begin the removal process by an affirmative vote of at least two-thirds of the entire Tribal Council to submit the issue to a meeting of the General Council. The removal process may also be initiated upon presentation to the Chairperson of a petition signed by a majority of the eligible voters of the Tribe to submit the issue to a meeting of the General Council. After the issue of removal has been referred to the General Council by the Tribal Council or by a petition of the eligible voters of the Tribe, the General Council may vote to remove the official through a two-thirds vote at a Special Meeting called for that purpose and at which a quorum is present. Any official whom the Tribal Council has requested be removed by the General Council shall be informed of the charges and given an opportunity to prepare and present a defense, including presenting witnesses and other evidence at the Special Meeting.

Section 2. Vacancies. Any vacancy in the position of Chairperson shall be filled by the Vice-Chairperson. If a vacancy occurs in any other elected position because of death, resignation, mental or physical incapacity, removal, assumption of the Chairpersonship by the Vice-Chairperson, or any other reason, such vacancy shall be filled in the following manner:

a. The Chairperson shall appoint a tribal member eligible to hold such position.

b. The Tribal Council shall approve the appointment by a vote of at least two-thirds of the entire Tribal Council.

Section 3. Terms for Vacancies. Persons appointed to fill a vacancy shall serve only until the Tribe's next General Election. If the position is one which would not have been up for election during the next General Election, the individual elected to fill the position during the next General Election will serve for only the two years which would have remained in the position's term.

ARTICLE XI – BILL OF RIGHTS

Wilton Rancheria, in exercising its powers of self-government, shall not:

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for the redress of grievances;

2. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

3. subject any person for the same offense to be twice put in jeopardy;

4. compel any person in any criminal case to be a witness against him or herself;

5. take any private property for a public use without just compensation;

6. deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him or her, to have compulsory process for obtaining witnesses in his or her favor, and at his or her own expense to have the assistance of counsel for his or her defense;

7. require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of three years and a fine of $15,000, or both;

8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

9. pass any bill of attainder or ex post facto law;

10. deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons; or

11. deny any member of his or her membership status, or of the benefits afforded as a result of that membership status, without due process of law; or

12. deny any adult member the right to vote without due process of law.

ARTICLE XII – STATUTES

Section 1. Statutes. All laws passed by the Tribal Council shall be embodied in statutes. Such enactments shall be available for inspection by members of the Tribe during normal business hours.

Section 2. Form. All statutes shall be dated and numbered and shall include a certificate of verification.

Section 3. Codes. All statutes should be organized into codes based on subject matter.

ARTICLE XIII – SOVEREIGN IMMUNITY

Section 1. Immunity of Tribe from Suit. Wilton Rancheria shall be immune from suit except to the extent that the Tribal Council expressly waives its sovereign immunity. Officials and employees of Wilton Rancheria

acting within the scope of their duties or authority shall be immune from suit.

Section 2. Suit against Officials and Employees. Officials and employees of Wilton Rancheria who act beyond the scope of their duties or authority shall be subject in suit in equity only for declaratory and non-monetary injunctive relief in Tribal Court by persons subject to its jurisdiction for purposes of enforcing rights and duties established by this Constitution or other applicable laws. However, nothing in this paragraph shall be held to limit the Tribe itself from bringing an action for civil or criminal liability against its employees or officials.

ARTICLE XIV – AMENDMENTS

Section 1. Requirements. This Constitution may be amended by a two-thirds vote at a Special Meeting of the General Council called for that purpose and at which a quorum is present.

Section 2. Request for Amendment Election. The Chairperson shall call and hold an election to amend the Constitution at the request of two-thirds of the entire Tribal Council, at the request of the General Council, or upon presentation of a petition signed by thirty percent of the eligible voters of the Wilton Rancheria.

ARTICLE XV – SAVINGS CLAUSE

All actions of the Interim Tribal Council of Wilton Rancheria, elected on March 28, 2010, taken before the

effective date of this Constitution shall remain in full force and effect to the extent that they are consistent with this Constitution. All members of the Interim Tribal Council of Wilton Rancheria, elected on March 28, 2010, shall remain in office as an Interim Tribal Council until the first General Election is held. The Interim Tribal Council of Wilton Rancheria, elected on March 28, 2010, shall prepare notice and hold the Tribe's General Election within 150 days from the adoption of this Constitution pursuant to procedures developed by the same and consistent with this Constitution and shall serve as the Election Committee for the Tribe's 2012 General Election. The Interim Tribal Council of Wilton Rancheria, elected on March 28, 2010, shall prepare a membership roll according to the criteria for eligibility for membership provided within this Constitution.

ARTICLE XVI – SUPERSEDES PREVIOUS CONSTITUTION

This Constitution and the provisions contained within overrule, supersede, and repeal the provisions of the Tribe's Constitution enacted on the 7th day of December 1935, of any other constitutions, and of any laws passed or actions taken pursuant to the 1935 Constitution or any other constitution.

ARTICLE XVII – ADOPTION OF CONSTITUTION

This Constitution may be adopted by a majority vote at a meeting called for that purpose, provided that at least forty percent of those entitled to vote shall be present

at the Special Meeting. The Interim Tribal Council of Wilton Rancheria, elected on March 28, 2010, shall provide voters with at least a fifteen-day notice of the meeting. The Constitution shall be effective from the date of such meeting.

Legislative History:

11/12/11 Adopted by Tribe's eligible voters in an election administered by the Bureau of Indian Affairs.

10/11/12 Pursuant to Tribal Council Resolutions 2012-28 and 2012-29, the Tribal Council proposed amendments.

12/08/12 The Tribe's eligible voters adopted the amendment contained within Resolution 2012-29 and rejected the amendments proposed by Resolution 2012-28.

APPENDIX K — APRIL 18, 2019 WILTON RANCHERIA RESOLUTION ENACTING TRIBAL LABOR RELATIONS ORDINANCE

Wilton Rancheria
9728 Kent Street, Elk Grove, CA 95624

Tribal Council Resolution No. 2019-23
RESOLUTION TO ENACT THE TRIBAL LABOR RELATIONS ORDINANCE OF 2019

WHEREAS, Wilton Rancheria ("Tribe") is a federally-recognized Indian tribe eligible for all rights and privileges afforded to recognized Native American tribes; and

WHEREAS, Wilton Rancheria adopted the Constitution of Wilton Rancheria ("Constitution") on November 12, 2011; and

WHEREAS, Article VI, Section 2 of the Constitution authorizes the Tribal Council to make the Tribe's laws; and

WHEREAS, Article VI, Section 2(a) of the Constitution grants the Tribal Council the power to make all laws, including resolutions, codes and statutes; and

WHEREAS, Article VI, Section 2(c) of the Constitution grants the Tribal Council the power to pass laws regulating the Tribe's elections, enrollment, and employment, and all other matters so long as those laws are consistent with the Constitution; and

Appendix K

WHEREAS, the Tribal Council Organization Act of 2012 provides that acts shall be the formal laws passed by the Tribal Council in development of the Tribe's permanent body of law, 4 WRC § 1-303(A); and

WHEREAS, the Tribal Council Organization Act of 2012 provides that all acts and amendments shall go through a legislation process consisting of an internal review phase, a public review phase, and a final review phase, 4 WRC § 1-305; and

WHEREAS, the Tribal Council Organization Act of 2012 provides that during a thirty (30) day public review phase, the Tribal Council shall solicit comments from members of the public regarding a proposed act and shall hold at least one (1) public hearing, 4 WRC § 1-307; and

WHEREAS, the Tribal Council Organization Act of 2012 provides that the final version of a proposed act shall be submitted to each member of the Tribal Council for a final review period of no less than seven (7) days, 4 WRC § 1-308(B); and

WHEREAS, pursuant to Resolution No. 2019-11, the Tribal Council submitted the proposed Tribal Labor Relations Ordinance of 2019 for public review from February 20, 2019 to March 21, 2019; and

WHEREAS, the Tribal Council conducted a public hearing regarding the proposed Tribal Labor Relations Ordinance of 2019 on March 7, 2019 at the Tribe's office; and

Appendix K

WHEREAS, the proposed Tribal Labor Relations Ordinance of 2019 was submitted to each member of the Tribal Council for final review on March 28, 2019.

NOW BE IT THEREFORE RESOLVED, the Tribal Council does hereby enact the Tribal Labor Relations Ordinance of 2019; and

BE IT FINALLY RESOLVED, the Tribal Chairperson shall fully and faithfully execute, and take any and all action necessary to implement, the Tribal Labor Relations Ordinance of 2019.

APPENDIX L — JUNE 20, 2023 EMAIL FROM A. DEAN TO WILTON

From: Aamir Deen
Sent: Tuesday, June 20, 2023 9:04 PM
To: Chris Gibase <Chris.Gibase@skyriver.com>;
Josh Yeltman <joshua.yeltman@skyriver.com>;
ckazhe@wiltonrancheria-nsn.gov
Subject: UNITE HERE Notification

Please see attached correspondence.

Thanks,

Aamir Deen
President
UNITE HERE Local 49
(916)416-1006

[LOGO] 3800 Watt Avenue, Suite 210 Sacramento, California 95821

Telephone (916) 564-4949 Fax (916) 564-4950

June 20th, 2023

To Whom It May Concern,

UNITE HERE has collected authorization cards from a majority of employees at Sky River Casino in the bargaining unit covered by our Agreement. Pursuant to paragraph 7 of that agreement, UNITE HERE requests

recognition as the exclusive collective bargaining agent for such employees.

Sincerely,

s/ Aamir Deen

Aamir Deen
President
UNITE HERE Local 49

APPENDIX M — JULY 5, 2023 EMAIL FROM C. KAZHE TO K. MARTIN

From: Kristin Martin <klm@msh.law>
Sent: Wednesday, July 5, 2023 5:27 PM
To: Christina Kazhe <ckazhe@wiltonrancheria-nsn.gov>
Subject: RE: Wilton Rancheria and UNITE HERE

I am happy to wait to speak until Kevin returns next week, if you think that would be more productive.

Kristin L. Martin
McCracken, Stemerman & Holsberry, LLP
415-597-7200/msh.law

From: Christina Kazhe <ckazhe@wiltonrancheria-nsn.gov>
Sent: Wednesday, July 5, 2023 1:28 PM
To: Kristin Martin <klm@msh.law>
Subject: Re: Wilton Rancheria and UNITE HERE

Hi Kristin,

Thank you for your prompt response. I was out of the office until today for the holiday weekend.

As you point out, the MOA was signed after execution of the Compact but before the Compact was ratified by the California Legislature and approved/deemed approved by the Department of the Interior. Consequently, in addition to the clear language in the MOA expressing the intention to be subject to the TLRO that was explained in my prior email, Unite Here was fully aware that Wilton was required to adopt a TLRO pursuant to the Compact and

chose to agree to the MOA anyways. There are at least two reasons why Unite Here would choose this.

First, Wilton and Unite Here did not know "exactly what the TLRO said." Every party knew the terms of the model TLRO in the executed Compact, but that model TLRO was not final as the Compact had yet to be appropriately ratified and approved. The terms of the Compact and the model TLRO could have been adjusted upon an initial failure to have the Compact be ratified or approved to include, for example, a provision in the model TLRO that existing agreements are excluded from the terms of the TLRO. Unite Here chose to agree to the MOA with an understanding that Tribal Law was bound to be adopted and incorporated into the MOA and that the exact terms of the applicable Tribal Law were in process. Unite Here, Wilton, Sky River Casino and/or Boyd Gaming cannot now violate applicable law.

Second, your email understandably focuses on the provisions in dispute, but that is not dispositive of the issue of why the MOA was signed in the first place. The TLRO only governs to the extent of its terms. Any provision of the MOA that is not inconsistent with the TLRO maintains its effectiveness. In my prior emails, I have not taken the position that the parties completely ignore the MOA. Rather, I have continuously sought to read the two together and harmonize to the extent possible.

A part of these harmonization efforts includes the selection of an arbitrator, considering the interplay between Paragraph 11 of the MOA and Section 3-213 of the TLRO.

I note that (1) the TLRO's provisions still results in a neutral arbitrator, and (2) Unite Here has previously been successful utilizing similar dispute resolution provisions. *Unite Here v. Pala Band of Mission Indians*, 583 F. Supp. 2d 1190, 1192-93 (S.D. Cal. 2008) ("Unite Here . . . filed this petition to confirm an arbitration award against Respondent Pala Band of Mission lndians. . . . The second level of dispute resolution involves the Tribal Labor Panel, comprised of ten arbitrators mutually appointed by the parties. . . . Unite Here and Pala Band invoked the TLRO's second level of dispute resolution and held a hearing before Arbitrator Sara Adler.")

I believe it would be helpful for all parties to attempt to resolve this matter, or certain issues if the parties cannot agree on the entire dispute, prior to jumping straight into arbitration. I am happy to have a phone call with you on Friday between 9:30-11:30 am. However, as Boyd Gaming is a party to the MOA, Kevin Wadzinski should be on a call that results in any final agreements. As he is out until next week, I am happy to wait until he can attend the call or have a preliminary conversation between just the two of us.

Best,
Christina

[LOGO] Christina Kazhe
General Counsel, Wilton Rancheria
ckazhe@wiltonrancheria-nsn.gov
9728 Kent Street|Elk Grove|CA|95624

Appendix M

From: Kristin Martin <klm@msh.law>
Sent: Monday, July 3, 2023 7:50 PM
To: Christina Kazhe <ckazhe@wiltonrancheria-nsn.gov>
Subject: RE: Wilton Rancheria and UNITE HERE

Hi Christina –

I did not hear back from you, so I will respond to the email you forwarded here. As you point out, UNITE HERE and the Wilton Rancheria signed the MOA in August 2017. But before that occurred, Governor Brown and Chairman Hitchcock executed the Wilton Rancheria's compact -- on July 19 and June 29, 2017, respectively. The Compact was later ratified by the California Legislature and approved by the Secretary of Interior, but without any changes. Thus, when UNITE HERE and Wilton Rancheria signed the MOA, they knew exactly what the TLRO said. It makes no sense that they would enter into an MOA with a detailed card check process and many other provisions that would – under your theory -- be overridden by the TLRO. What purpose would that have served?

The organizing provisions of the MOA could only take effect if the Compact was ratified because without the Compact, there would not be a casino with employees for UNITE HERE to organize.

In any event, the MOA contains a clear promise to arbitrate disputes about the interpretation or application of the MOA. By refusing the select an arbitrator, you are refusing to arbitrate in violation of that promise.

Appendix M

Kristin L. Martin
McCracken, Stemerman & Holsberry, LLP
415-597-7200/msh.law

From: Christina Kazhe <ckazhe@wiltonrancheria-nsn.gov>
Sent: Friday, June 30, 2023 3:12 PM
To: Katherine Pierre <kpierre@msh.law>;
kevin.wadzinski@ppsv.com
Cc: Kristin Martin <klm@msh.law>
Subject: Re: Wilton Rancheria and UNITE HERE

Hello Kristin,

My apologies, I thought the response below went out previously. It addresses our prior correspondence. To the extent there is anything new in today's correspondence, we can review and respond. Please let me know if you would like to discuss next week.

Thank you.

Christina

Kristin,

I have reviewed your letter dated January 24, 2023 to Kevin Wadzinski. Although the letter was drafted at an earlier point in the process, I assume you are asserting similar arguments here. However, your letter mischaracterizes the issue as a conflict between the NLRA on one end and IGRA and the TLRO on the other. Wilton Rancheria asserts no such conflict.

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As you know, Unite Here may obtain recognition through one of two methods: an NLRB-conducted election or by voluntary recognition. *NLRB v. Enter. Leasing Co. Se.*, LLC, 722 F.3d 609, 616 (4th Cir. 2013).

If Wilton Rancheria was attempting to unjustifiably prevent an NLRB-conducted election on the basis of the TLRO, preemption and harmonization considerations would arise. However, Wilton Rancheria is not attempting to prevent an NLRB-conducted election, nor do I believe Unite Here is attempting to seek an NLRB-conducted election. Instead, we are focused on the second recognition method: voluntary recognition.

The parties have a memorandum of agreement (MOA) setting forth the terms surrounding voluntary recognition. It seems you believe Wilton Rancheria is not upholding its side of the bargain by not allowing recognition pursuant to a card-check process. Accordingly, this is not an issue that involves preemption or harmonization between the NLRA, IGRA, and/or the TLRO. This is a contract issue wherein you assert that voluntary recognition is being unjustifiably withheld.

Contracts are always subject to applicable law, which includes Tribal law, either through incorporation or by rendering the agreement invalid as a violation of applicable law. I assume that Unite Here would prefer not to invalidate the MOA, therefore I will explain why the TLRO is incorporated into the MOA.

The last signature of the MOA is dated August 7, 2017. At this time, Wilton Rancheria was in the process of obtaining its Compact with the State of California, with Section 14 of the MOA expressly referencing the process and its timeline, stating "[t]he Union hereby agrees to actively support . . . the Tribe's efforts to obtain ratification of the Compact[.]" Thereafter, the Compact was approved and rendered effective, containing a model Tribal Labor Relations Ordinance that Wilton Rancheria agreed to adopt pursuant to Section 12.10 of the Compact. As required by the Compact, Wilton Rancheria enacted its TLRO on April 18, 2019, establishing Tribal law.

Typically, contracts incorporate the applicable laws in existence at the time of agreement, without consideration of laws enacted after the agreement. However, subsequently-enacted laws may be incorporated if the contract clearly intends such an incorporation. *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) ("'As a general rule, "all applicable laws in existence when an agreement is made, which laws the parties are presumed to know and to have had in mind, necessarily enter into the contract and form a part of it, without any stipulation to that effect, as if they were expressly referred to and incorporated." However, laws enacted subsequent to the execution of an agreement are not ordinarily deemed to become part of the agreement unless its language clearly indicates this to have been the intention of the parties.'").

Appendix M

In addition to the reference to the TLRO in Section 14 of the MOA, the MOA clearly indicates the intention to be subject to the TLRO. Section 2 of the MOA expressly states that "[t]he parties agree that the Tribal Labor Relations Ordinance governs labor relations at the Casino, and to hereby establish the following procedure for the purpose of ensuring an orderly environment for Employees to exercise their rights under the Tribal Relations Ordinance to organize collectively[.]" Section 16 further states that "[i]n the event that any provision of this Agreement should be rendered invalid by applicable legislation . . . such action shall not invalidate the entire Agreement, it being the express intention of the parties hereto that all other provisions not rendered invalid shall remain in full force and effect. Both parties agree that the subject matter of any provision found to be invalid shall be renegotiated for the purpose of replacing the invalidated provision with a valid substitute which most nearly achieves the same objective."

Consequently, the language of the MOA clearly indicates the intention that the TLRO be incorporated into the MOA upon enactment. This requires interpretation and best efforts to substantially comply with both the MOA and the TLRO. I address this requirement below but will address alternative arguments that you may have that I can assume from your letter.

To the extent that you assert that the NLRA preempts the TLRO and therefore the TLRO should be read to have a voluntary recognition provision, it should be clear why this is not the case. The TLRO is not the Tribal equivalent

of the NLRA. The MOA, as subject to and incorporating the TLRO, is the voluntary recognition process afforded pursuant to the NLRA. There is no voluntary recognition of a voluntary recognition.

To the extent that you assert that the NLRA allows parties to contract and therefore the contract can avoid applicable law, it should also be clear that this is not the case. Contracting parties cannot avoid requirements under applicable law solely based on an agreement, even when the agreement addresses voluntary union recognition. *See Joe A. Freitas & Sons v. Food Packers Etc. & Warehousemen*, 164 Cal. App. 3d 1210, 1218 (1985) (Finding a collective bargaining agreement void because the voluntary recognition violated the election requirements of the Agricultural Labor Relations Act).

To the extent that you assert that this position is novel and no other tribes or casinos with agreements with Unite Here have required anything more than a card-check process, that is irrelevant. As private contracting parties, those tribes and casinos are free to assert the contractual arguments they deem necessary. As sovereigns, those tribes are also free to interpret and apply their own tribal law. Neither scenario has any bearing on Wilton Rancheria's interpretation and application of its own contractual provisions or its Tribal law.

To the extent that you assert that the TLRO is not mandatory, this ignores the mandatory and all-inclusive language in the TLRO. Section 3-103 of the TLRO provides that "[t]his Ordinance governs the rights,

responsibilities and limitations of **any** labor union or organization that desires to organize employees of the Tribe's class III casino or related facilities[.]" (emphasis added). Section 3-202(A) of the TLRO provides that "[t]he provisions of this Ordinance shall apply to **any** person . . . who is employed within a tribal casino" (emphasis added) with certain listed exceptions that are not relevant here. Section 3-207(B)(1)(d) of the TLRO provides that "[d]uring the three hundred sixty-five (365) days after the Tribe received the NOIO, the union **must** collect dated and signed authorization cards pursuant to Section 3-210 and complete the secret ballot election also in Section 3-210" and further provides "[f]ailure to complete the secret ballot election within the three hundred sixty-five (365) days after the Tribe received the NOIO **shall** mean that the union **shall not** be permitted to deliver another NOIO for a period of two (2) years (seven hundred thirty (730) days)." (emphasis added in both).

Use of mandatory language, such as "must" and "shall," is spread throughout the TLRO mandating each step of the organizing process. Furthermore, the TLRO is clear where requirements are not mandatory, allowing the Casino the opportunity to choose to avoid formal requirements. For example, Section 3-210(B) of the TLRO provides that "[n]othing herein shall preclude the Tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign with or without an election." If the Casino was permitted to bypass the secret ballot elections, the TLRO would have explicitly provided the permission. No such provision exists. Moreover, in addition to the use of mandatory

language and the lack of any provision allowing the Casino to voluntarily adopt a different procedure, a claim that the TLRO is not mandatory also ignores the clear intention of incorporating the TLRO into the MOA, as addressed above.

Consequently, the MOA and the TLRO must be read together, and any recognition procedure must substantially comply with both to result in an effective voluntary recognition. While the recognition procedure would need to be fully fleshed out in order to ensure compliance, one possible recognition procedure could include: (1) a requirement that Unite Here presents authorization cards to a Tribal Labor Panel arbitrator to meet a 30% threshold before conducting a secret ballot election; and (2) an arbitrator from the Federal Mediation and Conciliation Service (FMCS) reviews the secret ballot election, in addition to the authorization cards and all other information that the parties submit, to determine if Unite Here has the support of the majority of eligible employees. We are happy to work with Unite Here to establish the appropriate recognition procedures. However, we will not simply ignore the TLRO or the secret ballot requirement under the TLRO.

Christina Kazhe
General Counsel, Wilton Rancheria
ckazhe@wiltonrancheria-nsn.gov
9728 Kent Street|Elk Grove|CA|95624

Appendix M

From: Katherine Pierre <kpierre@msh.law>
Sent: Friday, June 30, 2023 1:02 PM
To: Christina Kazhe <ckazhe@wiltonrancheria-nsn.gov>; kevin.wadzinski@ppsv.com <kevin.wadzinski@ppsv.com>
Cc: Kristin Martin <klm@msh.law>
Subject: Wilton Rancheria and UNITE HERE

You don't often get email from kpierre@msh.law. Learn_why_this_is_important

Per Kristin Martin's request, please see attached. Hardcopy to follow via U.S. Mail.

Thank you.

Katy Pierre, Legal Assistant to:
Richard G. McCracken
Kristin L. Martin
Paul L. More
Sarah Grossman-Swenson

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