

## NLRB-Tribe Dispute Heading for En Banc Review?

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We recently [reported](#) on a decision governing the NLRB's jurisdiction over tribal casinos, *NLRB v. Little River Band of Ottawa Indians Tribal Government*. Shortly after that split decision, another panel of the Sixth Circuit handed down a decision that addressed similar issues yesterday, [Soaring Eagle Casino and Resort v. NLRB](#). Apparently, both panels were considering some of the same issues independently, but at the same time. The *Little River* panel issued its decision first, which bound the subsequent *Soaring Eagle* panel. However, in an unusual move, the latter panel expressly disagreed with the prior panel's decision from two weeks ago but nevertheless followed it as it was obliged to do. The second panel held: "Given the legal framework adopted in *Little River* and the breadth of the majority's holding, we must concede in this case that the casino operated by the tribe on trust land falls within the scope of the NLRA, and that the NLRB has jurisdiction over the casino. We do not agree, however, with the *Little River* majority's adoption of the *Couder d'Alene* framework or its analysis of Indian inherent sovereignty rights." This panel then embarks on an extended discussion detailing the error of the prior panel's ways. (It stands to reason that this opinion was initially drafted prior to receipt of the *Little Eagle* opinion, which then generated a need for substantial revisions). Judge White concurred in part and dissented in part, but did agree with the majority that *Little River* was wrongly decided. That means that of the six judges to consider this question in the past month, only two agreed with the framework adopted by *Little River*, but paradoxically that currently prevails as the law of the Circuit.

Needless to say, however, this presents an issue that is ripe for en banc review. Although the Court has been restricting en banc review, such a flagrant disagreement between two panels certainly should attract en banc attention. We will continue to monitor these two cases and see if petitions are filed and how the Court responds to them.

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