

Best Practices for Tribes When Faced with Union Organizing Activity

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Earlier this year, the U.S. Supreme Court declined to hear a case involving a dispute between the Saginaw Chippewa Indian Tribe and the **National Labor Relations Board (NLRB)**. The U.S. Supreme Court's decision effectively leaves *Soaring Eagle Casino v. NLRB*, a decision out of the Sixth Circuit, as binding precedent. The Sixth Circuit held in *Soaring Eagle Casino v. NLRB* that the National Labor Relations Act (NLRA) applies to tribes on trust land within reservations, despite the tribe's inherent sovereignty. The holding in *Soaring Eagle* grants the NLRB jurisdiction to regulate employment practices, including union organizing efforts, at tribal businesses, including casinos. In a letter addressed to U.S. Senate leaders just this week, a coalition of 130 Native American tribes, tribal corporations, and intertribal associations urged the Senate to include in "must pass" legislation, prior to the end of this session of Congress, legislation which would exempt casinos and other tribal business from NLRB jurisdiction.

While the impact of the U.S. Supreme Court's decision and the possibility of legislative relief are not yet known, it is quite probable that unions will begin to expand their organizing efforts to tribal casinos and other tribal businesses within the Sixth Circuit (which includes the states of Michigan, Ohio, Kentucky, and Tennessee). Tribes within these states must be prepared to respond to union organizing efforts accordingly. It is important that tribes become familiar with the rules and restrictions encompassed within the NLRA regarding union activities.

Tribal businesses can best avoid unionization by ensuring that their employees are satisfied with their current employment. Employees typically join unions because they are displeased with how management treats them and believe that a union can improve working conditions. Supervisors and managers should listen to employee concerns, follow up on those concerns, proactively find a resolution to those concerns, and communicate the steps taken with the employee. Fostering an open and welcoming work culture can go a long way in avoiding unionization.

Additionally, supervisors and managers should be trained to detect and correctly respond to unionization efforts. It is critical that supervisors and managers do not threaten or punish employees who engage in union activity, interrogate employees regarding union activity, promise employees wage increases or other special concessions to not unionize, or spy on employee union representatives by attending union meetings or other such undercover activities. However, supervisors and managers can keep non-employee organizers off business premises, inform

employees of the disadvantages of belonging to a union, and remind employees of the benefits they currently enjoy as non-union employees.

Tribal casinos and other businesses should also implement non-solicitation and non-distribution policies. Tribes may ban employees from soliciting other employees in the workplace if either the soliciting or solicited employee is on working time. Additionally, tribes may ban the distribution of union literature if the distribution is within a working area or the distributing employee is on working time. However, any such bans must be applied neutrally, uniformly, and consistently to all solicitations and distribution: they cannot discriminate against union activity or else they will violate the NLRA.

A union-free workplace is never guaranteed, but tribes should be prepared to respond if and when union organizing efforts are taken.

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