

NLRB Defends Attempt To Encroach On Tribal Sovereignty

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On May 23, the National Labor Relations Board (NLRB) argued to the U.S. Supreme Court that it has authority over labor practices at two Michigan tribal casinos. This argument stems from petitions filed earlier this year by both casino tribes — the Little River Band of Ottawa Indians and the Saginaw Chippewa Indian Tribe. The casinos urged the court to reverse a Sixth Circuit ruling, which upheld NLRB authority over the tribes' employment practices. At issue is an ordinance enacted by the Little River Band's tribal council prohibiting casino employees from engaging in strikes, work stoppages or slowdowns. The NLRB sought a cease and desist order to prohibit enforcement of parts of the tribal law which conflicted with the National Labor Relations Act (NLRA). The Sixth Circuit agreed with the NLRB and held that the tribe's no-strike law violated the NLRA. In doing so, the Sixth Circuit squarely rejected a contrary decision by the Tenth Circuit, which sustained tribal labor laws. The tribes now challenge the Sixth Circuit ruling. They argue that the casinos are exempt from the National Labor Relations Act as government employers. The NLRB contends that no circuit conflict exists and that earlier decisions did not address how the NLRA applies to a tribe acting as an employer. Moreover, the board argues that applying the NLRA to the casinos, which mostly employ non-Indians and serve non-Indian customers, is consistent with both tribal sovereignty and the NLRA's purpose.

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