

**POKAGON BAND OF POTAWATOMI INDIANS
LABOR ORGANIZATIONS AND COLLECTIVE BARGAINING CODE**

§ 1: Declarations, Findings, and Purpose

The Pokagon Band of Potawatomi Indians exercises powers of self-government over its members and territory. The Band has inherent authority to govern labor relations within its jurisdiction, and this includes regulating the terms and conditions under which collective bargaining may or may not occur within its territory. The Band's inherent authority further includes the right to protect the health, welfare, and political integrity of the Band from being harmed or threatened by the activities of non-members within the Band's territory. The purpose of this Code is to protect essential attributes of tribal self-government and the health and welfare of the members of the Band if labor organizations seek to conduct business within the jurisdiction of the Band.

The Band finds that the Pokagon Gaming Commission is well-suited to investigate and license entities engaged in business within the territorial jurisdiction of the Band. As a result, the Band utilizes the expertise of the Commission for the investigation and licensing of labor organizations operating within the territorial jurisdiction of the Band, whether or not such activities are directly related to the Band's "Class II" or "Class III" gaming operations under the Indian Gaming Regulatory Act.

§ 2: Definitions

(a) *Band* means the Pokagon Band of Potawatomi Indians, a federally recognized Indian Tribe, whose federally-recognized status was reaffirmed by Congress through enactment of the Pokagon Restoration Act, 25 U.S.C. §§ 1300j-1300j-8. The term *Band* includes every department, agency, or organizational entity of the Band engaged in the governmental operations of the Band, including the Four Winds Casino Resort.

(b) *Employer* means the Band and any person, firm, association, corporation or other business entity chartered, organized or otherwise established, which is located within, and employs any person within, the territorial jurisdiction of the Band. The term *Employer* shall not include any person, firm, association, corporation or other business entity chartered, organized or otherwise established, which has its principal place of business outside of the territorial jurisdiction of the Band and operates within the territorial jurisdiction of the Band to perform construction-related activities.

(c) *Governmental Operations of the Band* means the operations of the Pokagon Band of Potawatomi Indians exercised pursuant to its inherent self-governing authority as a federally recognized Indian tribe or pursuant to its governmental activities expressly recognized or supported by Congress, including, but not limited to (1) the provision of health, housing, education, and other governmental services and programs to its members; (2) the generation of revenue to support the Band's governmental services and programs, including the operation of "Class II" and "Class III" gaming within its territorial jurisdiction; and (3) and the exercise and operation of its administrative, regulatory, and police power authorities within its territorial jurisdiction.

(d) *Indian Gaming Regulatory Act* means 25 U.S.C. §§ 2701-2721.

(e) *Labor organization, labor association, or labor union* means any organization of employees organized for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment.

(f) *Four Winds Casino Resort* means the Band's gaming enterprise, including related hotel, restaurant, retail, and other services, which is located at 11111 Wilson Rd., New Buffalo, Michigan, through which the Band operates "Class II" and "Class III" gaming to generate governmental revenue for the Band pursuant to the inherent self-governing authority of the Band and the Indian Gaming Regulatory Act.

(g) *Lock Out* means any action by the Band that prevents its employees from going to work for the purpose of coercing employees to accept terms or conditions sought by the Band in a negotiation with a labor organization representing the employees.

(h) *Pokagon Gaming Commission* means the Pokagon Gaming Commission established pursuant to the Pokagon Band Gaming Regulatory Act, as amended and approved by the National Indian Gaming Commission on June 1, 2007.

(i) *Strike* means failing to report for duty in concerted action with other employees, the willful absence from one's position, or the abstinence, in whole or in part, from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of employment.

(ji) *Territorial Jurisdiction of the Pokagon Band of Potawatomi Indians* means all lands taken into trust for the benefit of the Band by the Secretary of the

Interior.

§ 3: Freedom of choice guaranteed

With respect to employment or the terms or conditions of employment with any Employer:

(a) The right to work must be protected and maintained free from undue restraints and coercion. The right of persons to work shall not be denied or abridged by any Employer or by any labor organization on account of membership or non-membership in any labor union, labor organization, or association.

(b) No person shall be required to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment.

(c) No person, as a condition of employment or continuation of employment, shall be required to pay any dues, fees, or other charges of any kind to any labor union or labor organization or to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessment or other charges regularly required of members of a labor organization.

(d) No person shall be required, as a condition of employment or continuation of employment to be recommended, approved, referred, or cleared by or through a labor organization.

(e) It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the Employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the Employer.

(f) No person shall be required by any Employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

(g) It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or Employer, or officer or agent thereof, by any threatened or actual intimidation of an employee or prospective employee or his parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to his/her property, to compel or attempt to compel such employee or prospective employee

to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit his/her rights as guaranteed by the provisions of this Code.

(h) It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or Employer, or officer or agent thereof, to cause or attempt to cause a prospective employee to be denied employment or an employee to be disciplined or discharged from employment, or to induce or attempt to induce any other person to refuse to work with such employee because of support or nonsupport of a labor organization.

(i) Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and an Employer which violates the rights of employees as guaranteed by the provisions of this Section is hereby declared to be against public policy, an illegal combination or conspiracy in restraint of trade, null and void and of no legal effect.

(j) Any strike, picketing, boycott, or other action by a labor organization for the sole purpose of inducing or attempting to induce an Employer to enter into any agreement prohibited by this Section is hereby declared to be for an illegal purpose and is a violation of this Code.

§ 4: Strikes affecting governmental operations of the Band prohibited

(a) *Declaration and findings.* The governmental operations of the Band are critical to the public health, safety, and welfare of the Band. No employee or labor organization shall interfere with, threaten, or undermine the governmental operations of the Band.

(b) *No right to strike.* Employees of the Band have no right to strike.

(c) *Strikes prohibited.* Strikes, work stoppages, or slowdowns against the Band are contrary to the public health, safety and welfare of the Band, and are, therefore, prohibited. No employee or labor organization shall engage in, cause, instigate, encourage or support an employee strike, work stoppage or slowdown with respect to the Band.

§ 5: Lock outs prohibited

The Band shall not engage in any action constituting a lock out.

§ 6: Licensing and registration of labor organizations

(a) No labor organization shall engage in organizing employees working for any Employer, including solicitation of union membership in any manner, without a license, issued by the Pokagon Gaming Commission, which shall provide as follows:

(1) the right of such labor organization to be present and conduct business within the Band's territorial jurisdiction is a privilege, subject to the consent and regulatory authority of the Band;

(2) the consent of the Band to allow such labor organization to be present and conduct business within the territorial jurisdiction of the Band is conditioned upon such labor organization's agreement to be subject to the laws of the Band and its regulatory authority, including this Code;

(3) in consideration of the Band's consent to such labor organization's conduct of business within the territorial jurisdiction of the Band, such labor organization agrees to (A) comply with all rules, regulations, and laws of the Band, (B) submit to the jurisdiction of the Band, including its Tribal Court, and (C) pay an annual business license fee in the amount of \$500.00.

(4) such labor organization agrees that a license issued by the Band for conducting business within the territorial jurisdiction of the Band may be revoked by the Band at any time, with or without hearing, for any failure to comply with the laws of the Band; and

(5) such other requirement as the Pokagon Gaming Commission may require under its regulations.

(b) Subject to the requirements of subsection 6(a), the Pokagon Gaming Commission is hereby authorized by the Pokagon Band Tribal Council to enact such regulations as it sees fit to investigate and license any labor organization seeking to conduct business within the territorial jurisdiction of the Band.

(c) Every labor organization applying for a license to conduct business within the territorial jurisdiction of the Band shall file a report with the Office of General Counsel. The report, which shall be executed by the president of the labor organization, or such other authorized individual as approved by the Office of General Counsel, shall contain the following information:

(1) The name and address of the labor organization;

(2) The names and addresses of the president, secretary, treasurer, and business agent of the labor organization;

- (3) The name and address of the national and/or international organization, if any, with which the labor organization is affiliated;
- (4) A copy of the current constitution, by-laws, or other written rules governing the organization;
- (5) All information regarding (A) qualifications for or restrictions on membership; (B) levying of assessments; (C) participation in insurance or other benefit plans; (D) authorization for disbursement of labor organization funds; (E) audit of labor organization financial transactions; (F) the calling of regular and special meetings; (G) the selection of officers and stewards and any representatives to other bodies composed of labor organizations' representatives; (H) a specific statement of the manner in which each current officer was elected, appointed, or otherwise selected; (I) discipline or removal of officers or agents for breaches of their trust and a specific statement regarding any past disciplinary action of removal of officers or agents for breach of their trust; (J) impositions of fines, suspensions and expulsions of members including the grounds for such action and any provisions made for notice, hearing, judgment on the evidence, and appeal procedures, along with a detailed statement regarding any imposition of fines, suspensions and expulsions of members in the past calendar year; and
- (6) A copy of the Labor Organization's Annual Report, as reported on the U.S. Department of Labor's Form LM-2.

(c) The president or other authorized individual of any such labor organization described in subsection (b) shall file with the Office of General Counsel for the Band a notice of any changes to the information required above within ten (10) days after the changes are made and provide any additional information requested by the Office of General Counsel.

(d) Should a labor organization establish representation of any employees for any Employer, it shall provide the foregoing registration information and renew its business license on an annual basis, no later than the first Monday in January, which is not otherwise designated a national or Pokagon Band holiday.

(e) It shall be a violation of this Section for any labor organization or any person acting on behalf of any labor organization to fail to attain a license or fail to register or to make any false statements on any application for a license or any report required to be filed pursuant to this Section.

§ 7: Tribal employment preferences not subject to collective bargaining

(a) *Declaration and findings.* In the exercise of its inherent self-governing authority over its members and territory, the Band ensures that members of the Band be given priority for employment, promotion, and retention of employment over non-members of the Band. The provision of such employment preferences for tribal members promotes the public health and welfare of the Band by allowing the benefits of economic development within the territorial jurisdiction of the Band to be realized by members of the Band.

(b) *Prohibition of Collective Bargaining Affecting Tribal Employment Preferences.* Any and all policies, laws, or regulations of the Band or of any Employer providing employment preferences to members of the Band, including preferences given to tribal members for hiring, training, promotions, and retention in the context of reductions in force, shall not be subject to bargaining with any labor organization.

§ 8: Enforcement

(a) Any employee or labor organization, and any employee or agent of any labor organization, who violates, or seeks to violate, the provisions of this Code shall be subject to a civil action by the Band for injunctive relief in the Pokagon Band of Potawatomi Indians Tribal Court. Upon a finding of any such violation by a labor organization, the Court may impose civil remedies, including a fine not to exceed \$5,000 for each violation and temporary or permanent exclusion from the territorial jurisdiction of the Band. Upon a finding of any such violation by an employee, the Court may impose civil remedies, including a fine not to exceed \$1,000 for each violation. Any Employer or the Band shall have the right to suspend or terminate the employment of any employee found to be in violation of this Code.

(b) An employee or labor organization shall have the right to seek injunctive relief in the Pokagon Band of Potawatomi Indians Tribal Court against the Band to enforce the prohibition against lock outs set forth in Section 5 of this Code, and the Band hereby waives its sovereign immunity from suit solely for actions for injunctive relief under this subsection (b).