



A bold voice for transportation workers

November 16, 2015

Oppose the Tribal Labor Sovereignty Act; Ensure Basic Labor Rights and Protections

Dear Representative:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I urge you to vote NO on the Tribal Labor Sovereignty Act (H.R. 511) when it is considered on the House floor. This bill would exempt all tribal-owned and operated commercial enterprises located on Indian lands from coverage of the National Labor Relations Act (NLRA), and deny critical labor protections to hundreds of thousands of workers, the majority of whom are not Native Americans. In addition to the over 600,000 tribal casino workers, this bill would cover mining operations, power plants, smoke shops, saw mills, construction companies, ski resorts, high-tech firms, hotels, and spas, stripping all workers in these commercial enterprises of their rights and protections under the NLRA.

H.R. 511 seeks to overturn a decision by the National Labor Relations Board (NLRB) in San Manuel Indian Bingo and Casino, 341 NLRB No. 138 (2004), which applied the NLRA to a tribal casino enterprise. In San Manuel, the NLRB looked to Supreme Court and circuit court precedent to articulate a test for whether the NLRB should assert jurisdiction over tribal enterprises, whether located on tribal lands or outside them. Under the San Manuel test, the NLRA will not apply if its application would “touch exclusive rights of self-governance in purely intramural matters.” Nor will the NLRA apply if it would “abrogate Indian treaty rights.” The Board in San Manuel also considered other factors, including that the casino in question was a typical commercial enterprise, it employed non-Native Americans, and it catered to non-Native American customers.

The NLRB has been deliberative in its application of the San Manuel test, and has been careful to balance the interests of tribal sovereignty with federal labor law protections provided through the NLRA. In San Manuel, the Board concluded that applying the NLRA would not interfere with the tribe’s autonomy, and the effects of the NLRA would not “extend beyond the tribe’s business enterprise and regulate intramural matters.” In a companion case, however, the Board tipped the balance the other way, and the NLRB didn’t assert jurisdiction. Yukon Kuskokwim Health Corporation, 341 NLRB No. 139 (2004).

Transportation Trades Department, AFL-CIO

815 16th Street NW / 4th Floor / Washington DC 20006

Tel:202.628.9262 / Fax:202.628.0391 / www.ttd.org

Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



TTD supports the principle of sovereignty for tribal governments, and believes that more can and should be done to promote economic development in these communities where poverty is all too common. However, this principle should not be used to deny workers their basic collective bargaining rights and freedom of association. Tribal sovereignty is important for truly internal, self-governance matters, but the fundamental human rights of employees are not the exclusive concern of tribal enterprises or tribal governments. In fact, the vast majority of employees of these commercial enterprises, such as the casinos, are not Native Americans. They therefore have no voice in setting tribal policy, and no recourse to tribal governments for the protection of their rights.

An across the board exemption from the NLRA, as proposed in H.R. 511, would be a fundamental blow to basic labor rights and principles, and would deny Tribal Member and non-Tribal members alike their ability to collectively bargain their wages, hours and working conditions. Vote NO on the Tribal Labor Sovereignty Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a stylized, cursive flourish.

Edward Wytkind
President