

**EMPLOYEE FREE CHOICE ACT (EFCA)  
PROPOSED AMENDMENT TO THE NATIONAL LABOR RELATIONS ACT (NLRA)**

As you are aware most Indian Tribes implement an Indian Preference Policy in its hiring practices throughout all its levels of employment within the Tribal structure, in both governmental and gaming areas. Many of these Tribes presently conduct Class II and III gaming operations in compliance with the Indian Gaming Regulatory Act (IGRA) and their Tribal-State Gaming Compact. A number of the tribal gaming operations fund a large percentage of their overall tribal budgets, while the remainder of the tribal budgets are supplemented by various governmental grants and other Tribal enterprises. Consistent with IGRA a number of Tribal gaming operations and the revenues generated from those operations benefit and supplement the tribal government budget that financially support programs and services provided by the Tribes to its members.

National Labor Relations Act – NLRA

- The National Labor Relations Act (NLRA) and its provisions do not expressly apply to Indian Tribes, but federal courts have ruled there is no express exemption for tribes either, as a result of the 2007 DC Circuit Court decision in *San Manuel v. NLRB*;
- By comparison, federal, state and local governments are exempted from the NLRA so that governmental functions are not disrupted by striking employees;
- Prior to the *San Manuel* case, the National Labor Relations Board did not exercise jurisdiction over tribal governments or gaming;
- *San Manuel* relied upon the distinction of tribal gaming operations constituting a “commercial activity” as opposed to a “governmental function.” The Court did not take into consideration the fact that Indian gaming can be operated **only by a tribal government as specified in IGRA.**

At present the NLRA specifies that a union which is pursuing a unionization attempt, is required to obtain a simple majority of signed authorization cards in order to petition the National Labor Relations Board for a secret ballot election. In the event of a majority affirmative vote to bring in a union, collective bargaining negotiations would begin between an employer and the representative union.

Proposed Employee Free Choice Act – EFCA

- The proposed Employee Free Choice Act would amend the NLRA to eliminate the petition and the secret ballot election processes, which would allow unions to go directly

to the collective bargaining process upon a majority of signed authorization cards from prospective union members.

- In the event a collective bargaining agreement is not concluded within 90-days, a 30-day mediation may be requested by either party and if still not concluded, then mandatory arbitration would determine an agreement.

**This proposed legislation would make it easier for unions to infiltrate Indian Casinos and organize employees, which appears to be the primary objective and purpose of the EFCA.**

#### Position Statement

- If the EFCA is adopted as currently proposed, it will be a law that has no regard for sovereign tribal governments which conduct tribal gaming operations primarily for the purpose of funding tribal programs and services that provide direct benefits to their memberships;
- Tribal governments, at present exercise Indian Preference policies and laws which enhance the employment of its members;
- In the past, federal case law and federal statutes have supported the practice of Indian Preference. The NLRA, as amended by the EFCA, would make Indian Preference a questionable policy.

It is apparent that the NLRA and EFCA have the ability to diminish Indian Preference through the collective bargaining process. The resulting effect of the proposed legislation would be to negate and undermine the intent of Congress in adopting IGRA as stated at **Section 2701(4) of 25 U.S.C.**,

**The Congress Finds That...(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government...**

by limiting the Tribe's ability to employ its own Tribal Members pursuant to the policy of Indian Preference reflected in Federal Indian law and Tribal law.

In order to reduce or limit the harm to Tribal Governments, **the EFCA must treat tribal governments the same as federal, state and local governments and such treatment should be reflected in the language of the EFCA.**