

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

FOXWOODS RESORT CASINO

and

Case No. 34-RC-2230

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE &  
AGRICULTURAL IMPLEMENT WORKERS OF  
AMERICA (UAW), AFL-CIO

**PETITION TO REVOKE SUBPOENA**

Pursuant to Section 102.66(c) of the Board's Rules and Regulations and any other applicable measure, the Mashantucket Pequot Gaming Enterprise (the "Gaming Enterprise"), being in receipt of the attached Subpoena Duces Tecum issued by the union and addressed to "Mashantucket Pequot Gaming Enterprises [sic] d/b/a Foxwoods Resort Casino," hereby petitions to revoke said subpoena on the following grounds:

**1.**

The Gaming Enterprise, an arm of the Mashantucket Pequot Tribal Nation (the "Nation"), is not properly subject to the jurisdiction of the National Labor Relations Board. The Nation has maintained throughout this case that it is not subject to the National Labor Relations Board's jurisdiction, and the Gaming Enterprise does not consent to such jurisdiction, nor waive any arguments that either the Gaming Enterprise or the Nation may have relating to lack of jurisdiction, by filing this Petition.

## 2.

This union subpoena should also be revoked because it is barred by the Nation's sovereign immunity, which demonstrates another reason why the exercise of jurisdiction by the Board over governmental employers is unworkable. The Nation, as a federally recognized Indian tribe, enjoys immunity from suit. See, e.g., Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978) ("Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.") While tribal immunity may be abrogated or waived, "[t]o abrogate tribal immunity, Congress must 'unequivocally' express that purpose, and to relinquish its immunity, a tribe's waiver must be 'clear.'" Chayoon v. Chao, 355 F.3d 141, 143 (2d Cir. 2004). Neither has occurred here. *Id.* As an arm of the Nation's government, the Gaming Enterprise is immune from suit to the same extent as the Nation. Bassett v. Mashantucket Pequot Tribe, 204 F.3d 343, 358 (2d Cir. 2000); Worrall v. Mashantucket Pequot Gaming Enterprise, 131 F. Supp. 2d 328, 331 (D. Conn. 2001).

It is well-settled that tribal sovereign immunity necessarily means that an Indian tribe is not subject to legal process such as a subpoena for the production of documents or testimony. See Bishop Paiute Tribe v. County of Inyo, 291 F.3d 549, 556-560 (9<sup>th</sup> Cir. 2002), vacated and remanded on other grounds, 538 U.S. 701 (2003). In Catskill Development, LLC v. Park Place Entertainment Corp., 206 F.R.D. 78 (S.D.N.Y. 2002), the court held a tribe's sovereign immunity shielded it from, *inter alia*, subpoenas for records. *Id.* at 86-89. As in *Catskill*, here the subject subpoena similarly seeks documents from an arm of a tribe. And since there is no abrogation or waiver, immunity

similarly shields the Nation from responding to the subpoena and providing the requested material.

**3.**

In addition to the jurisdictional infirmities, the subpoena is overbroad and seeks information that does not relate to any matter under investigation or in question in the proceedings.

**4.**

The subpoena does not describe with sufficient particularity the evidence whose production is required.

**5.**

The subpoena is overly burdensome in that it seeks to require the Gaming Enterprise to search literally thousands of its employees' files to determine the national origin and immigration status of every employee in order to respond to said subpoena. Additionally, the subpoena seeks to require the Gaming Enterprise to review each employee's file, or in the alternative interview each employee in question, to determine each employee's fluency in both written and spoken English, Traditional Chinese, and Simplified Chinese.

**6.**

The subpoena seeks personal and confidential information relating to employees.

For these reasons, the Mashantucket Pequot Gaming Enterprise requests that the purported Subpoena be revoked.

Respectfully submitted,

/s/

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**STATEMENT OF SERVICE**

This is to certify that I have served a true and correct copy of the  
**PETITION TO REVOKE SUBPOENA** upon the following persons, by hand  
delivery:

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This 15<sup>th</sup> day of January, 2008

/s/  
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Alston D. Correll  
Attorney for Employer