

2009 Winter Conference Tulalip, Washington

RESOLUTION #09 - 14

“SUPPORTING TREATMENT OF INDIAN TRIBES AS GOVERNMENTS IN THE EMPLOYEE FREE CHOICE ACT (“EFCA”) AND FOR ALL PURPOSES UNDER FEDERAL LABOR LAWS”

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of ATNI; and

WHEREAS, Indian tribes are sovereign governments, recognized by the Constitution and Indian treaties guaranteed tribal rights of self-government; and

WHEREAS, the New Deal Policy for Indian tribes is the Indian Reorganization Act of 1934 (“IRA”), which affirms the existing right of Indian tribes to self-government, including the vested right of Indian tribes employ agents and representatives in furtherance of tribal self-government; and

WHEREAS, the National Labor Relations Act of 1935 (“NLRA”) is the New Deal Labor Policy and recognized the right of employees to organize labor unions to negotiate with private industry, established fair trade practices, and created the National Labor Relations Board (“NLRB”) to enforce the Act; and

WHEREAS, Federal, state, and local governments are excluded from the definition of “employer” and are not covered by the “NLRA”; and

WHEREAS, for thirty years, tribal governments were treated by the “NLRB” as governmental employers excluded from the definition of the “NLRA” and when the New Deal Labor Policy for Indian Tribes, the Indian Reorganization Act, is read together with the “NLRA”, it is clear that the contemporary policy was to treat Indian tribes as governments; and

WHEREAS, in 2004, the “NLRB” ruled on a complaint from the Hotel Employees and Restaurant Employees Union (“HERE”) that *San Manuel Bingo* had provided preferred access to its employees to the Communication Workers of America Union (CWA) over HERE; and

WHEREAS, the “NLRB” reversed thirty years of prior rulings and wrongly held that the “NLRB” applied to Indian gaming employees because it found that Indian gaming is a quasi-commercial activity; and

WHEREAS, the Federal Court of Appeals for the District of Columbia erroneously affirmed the “NLRB” decision in 2007 No. 05-1392 in derogation of tribal rights to self-government; ruling that despite the statutory language of the Indian Gaming Regulatory Act (“IGRA”) (Indian gaming is intended to build “strong tribal governments”), Indian gaming is similar to a commercial enterprise and so covered by the “NLRA”; and

WHEREAS, in a companion decision *Yukon Kuskokwim Health Corp.* (2004), the “NLRB” ruled that when conducting traditional tribal government activities, such as providing health care, tribal governments are excluded by the “NLRA”; and

WHEREAS, the “NLRA” establishes the framework for labor organization and bargaining with private industry and is administered by the National Labor Relations Board (“NLRB”); and

WHEREAS, when 30% of the employees in a bargaining unit sign cards to organize a union, “NLRB” calls a secret ballot election to determine if the majority of the covered employees want to be represented by the union; and

WHEREAS, under the “NLRA”, if a majority of employees vote to organize, the union then represents them in collective bargaining for a union contract with the employer; and

WHEREAS, if no contract is concluded, the Federal Mediation and Conciliation Service (FCMS) can be called in to mediate the labor dispute and while the “NLRB” can order continued negotiation, there is no provision for a mandatory contract; and

WHEREAS, the proposed Employee Free Choice Act (“EFCA”) extends the “NLRA” by the following:

- **Card Check:** If 50% +1 employee signs card checks seeking to unionize, “EFCA” would eliminate the right of employers to call for a secret ballot and recognize the union as the representative of the bargaining unit triggering a requirement for the employer to begin labor contract negotiations;
- **Mandatory Arbitration:** If no labor contract is reached within 180 days, “EFCA” would permit the union to call in FCMS for 60 days of mediation, and if no labor contract is reached then, “EFCA” provides for mandatory arbitration to conclude a labor contract; and

WHEREAS, eliminating secret ballot elections and mandatory arbitration fundamentally changes the “NLRA”, yet “EFCA” does not treat Indian tribes as government employers (but continues to treat the Federal, state and local governments as government employers); and

WHEREAS, Indian gaming is a tribal governmental activity that raises essential revenue for tribal governments; and

WHEREAS, Congress enacted the Indian Gaming Regulatory Act expressly to protect the pre-existing tribal government right to engage in Indian gaming as a means of generating tribal revenue and building strong tribal governments (25 U.S.C. sec. 2702); and

WHEREAS, Congress has recognized that Indian tribes are engaged in the governmental activity of gaming to raise revenue for essential government services, including police and fire protection, education, health care, transportation, water and sanitation services; and

WHEREAS, state lotteries are recognized as governmental activities under the “NLRA”, and Indian gaming should be treated equally; and

WHEREAS, tribal governments have enacted employee protections, grievance procedures, and consistent with an employment preference for tribal government citizens, anti-discrimination laws and policies and will continue to provide tribal law protection for tribal employees; and

WHEREAS, tribal governments are not opposed to labor unions; many of our people are union members; and through the Iron Workers Union and others, Native Americans

have participated in raising the high rise towers that are the foundation of city skylines;
and

WHEREAS, many tribes have agreements with the building trades in constructing gaming and hotel facilities; and

WHEREAS, our tribal lands are reserved as homelands where tribal governments provide the primary, day-to-day governmental services and in our homelands, tribal law and our inherent rights to self-government must be respected; now


THEREFORE BE IT RESOLVED, that the Affiliated Tribes of Northwest Indians does hereby support the position, consistent with the right of Indian tribes to self-government and the Constitution's recognition of Indian tribes as governments, Indian tribes must be treated as governments for all purposes under Federal labor laws; and

BE IT FURTHER RESOLVED, ATNI requests that Congress include Indian tribes in the definition of governments under the "NLRA" and the "EFCA"; and

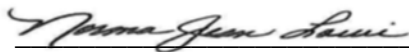
BE IT FINALLY RESOLVED, ATNI and its Member Tribes must oppose the "EFCA" unless it is amended to treat Indian tribes as governments.

CERTIFICATION

The foregoing resolution was adopted at the 2009 Winter Conference of the Affiliated Tribes of Northwest Indians, held at the Tulalip Resort and Casino, Tulalip, Washington on February 16-19, 2009 with a quorum present.



Brian Cladoosby, President



Norma Jean Louie, Secretary