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Supplement**

**Mashantucket Pequot Tribal Laws**

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*This replaces 28 M.P.T.L. in its entirety*

## **TITLE 28 RIGHT TO WORK LAW**

### **Section 1. Findings, Purpose, and Authority**

a. The Tribe finds that:

(1) It has exercised its sovereignty in enacting laws to govern employment relationships on the Reservation, and has determined that it is in the best interests of all Employees on the Reservation to have the right to choose to work and not be prohibited from working on the Reservation based upon requirements of membership in, affiliation with, or financial support of a labor organization.

(2) Employees should have the right to work and not be discriminated against due to either membership or non-membership in a labor organization.

(3) It is the public policy of the Tribe that in order to maximize individual freedom of choice in the pursuit of employment and to encourage and enhance an employment atmosphere conducive to economic growth, the right of individuals to work on the Reservation shall not be denied or hindered based upon membership in a labor organization.

(4) It has the inherent authority to exclude persons from the Reservation and to place conditions on entry, on continued presence and on conduct within the Reservation.

(5) The Tribe's position is that the National Labor Relations Act does not apply to it as a government given the significant impact its application would have on the Tribe's exercise of sovereignty, including the numerous laws adopted that currently govern employment on the Reservation. However, given the uncertain climate of the issue before the courts, even if a court were to determine that the NLRA applies to the Tribe as an employer, it would not preempt the Tribe's right to enact this law providing all Employees on the Reservation, whether working for the Tribe or not, with the right to work and not requiring any Employee to affiliate with, join, or financially support a labor organization in order to work on the Reservation.

(6) It has enacted the Mashantucket Pequot Labor Relations Law under which Tribal employees have the right to elect to be represented by a labor organization and in order to encourage labor organizations to utilize tribal law and to preserve tribal sovereignty the Tribe, notwithstanding the above findings, recognizes an exception to the absolute prohibitions under Section 3(a) of this Law when Tribal Employees are represented by a labor organization certified under tribal law.

b. The purpose of this law is to ensure for all persons on the Reservation the right to work and pursue employment without the restraints of mandatory affiliation with, membership in, or payment of dues, fees, or assessments to a labor organization.

c. The Mashantucket Pequot Tribal Council, the governing body of the Tribe, enacts this law governing employment and labor on its Reservation pursuant to the Tribe's inherent sovereign authority to govern activities on the Reservation, whether the activities are of tribal members, non-members, Indians, or non-Indians, and whether based on consensual relationships with the Tribe or conduct which impacts and affects the health, safety, political and economic integrity of the Tribe and the Reservation community including members, Employees, vendors, patrons and others who enter the Reservation.

### **Section 2. Definitions**

a. "Employee" means any individual employed by an Employer.

b. "Employer" means any person, firm, association, corporation and other entity operating in or upon the Mashantucket Pequot Reservation and directly or indirectly employing one or more Employees to perform work, and includes the Tribe. This Law does not apply to any such person, firm, association, corporation or other entity which has a principal place of business located outside the Mashantucket Pequot Reservation and operates in or upon the Mashantucket Pequot Reservation pursuant to an agreement with the Tribe to perform construction-related activities.

c. "Labor organization" means any organization or agency or group of Employees or Employee committee or plan in which Employees participate that is organized or exists for the purpose of dealing with an employer or employers concerning hours of employment, wages, rates of pay, working conditions or grievances of any kind relating to employment.

d. "Tribe" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation and includes any subdivision, agency, arm or department thereof including but not limited to the Mashantucket Pequot Gaming Enterprise, the Pequot Pharmaceutical Network, the Mashantucket Pequot Museum & Research Center, but does not include any legal entity established and organized by the Tribe under the laws of any state with a principal place of business located outside of the Reservation.

e. "Mashantucket Pequot Reservation" means the "reservation" as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe and all other lands subject to the jurisdiction of the Tribe.

f. "Person" means any individual, labor organization, corporation, partnership, company, association or other legal entity.

g. "Union dues" means dues, fees, assessments or other charges of any kind or amount or their equivalents paid or payable, directly or indirectly, to a labor organization or its agents and includes payments to any charity or other third party in lieu of such payments to a labor organization.

### **Section 3. Right to Work**

a. No person shall be required, in order to obtain employment or as a condition of employment or continuation of employment on the Mashantucket Pequot Reservation, to do any of the following:

1. Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
2. Become or remain a member of a labor organization or be affiliated with a labor organization; or
3. Pay union dues as defined in this Law.

Provided, however, that a Labor Organization certified as the exclusive bargaining representative under Tribal Law may lawfully enter into a union security agreement with a Tribal Employer where said agreement does not violate the Indian Civil Rights Act, 25 U.S.C. § 1302, or the Tribal Civil Rights Code, 20 M.P.T.L. ch. 1, Section 1<sup>1</sup> and no election has been conducted by a special master or a MERO Board in which a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement.

b. Except as specifically provided in this Law, any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and any Employer that requires Employees of such Employer to obtain or maintain membership in any labor organization or to pay union dues as defined in this Law or otherwise violates the rights of Employees as defined by this Law, is against the public policy of the Tribe and is hereby declared to be null and void and of no legal effect.

c. No Employer shall deduct labor organization dues, charges, fees, contributions, fines or assessments from an Employee's earnings, wages or compensation, unless the Employer has first received from the Employee a written order or consent signed by the Employee, which written order or consent shall be terminable at any time by the Employee by giving at least thirty days written notice of such desire to terminate the order or consent to the Employer.

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<sup>1</sup> In determining whether an agreement violates these laws, the Tribal Court should be guided by the federal court decisions interpreting similar limitations found in the U.S. Constitution applicable to public sector employees.

d. No Employer shall discriminate or retaliate against any Employee on the basis of an Employee's decision to participate or refrain from participating in any labor organization, or based upon an Employee's activities related to such participation in or refusal to participate in any labor organization.

e. No Person, labor organization, or officer, agent or member thereof, or Employer, or officer or agent thereof shall threaten or intimidate, in any manner, any Person, Employer, or Employee or prospective employee or any member of an Employee's family to compel or attempt to compel such Employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit rights guaranteed under this Law.

#### **Section 4. Jurisdiction**

a. The Mashantucket Pequot Tribal Court shall have jurisdiction over all causes of action alleging violations of this Law.

b. The Tribe hereby expressly waives its sovereign immunity from suit for claims alleging violations of this Law against the Tribe in the Mashantucket Pequot Tribal Court. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe in the state or federal courts, or any other forum or context.

#### **Section 5. Civil Remedies**

a. Any person injured as a result of any violation or threatened violation of the provisions of this Law shall be entitled to petition the Mashantucket Pequot Tribal Court for injunctive relief from or against any person who violates or threatens any violation of this Law, and may, in addition thereto, file a claim to recover any and all damages, including costs and reasonable attorney's fees, resulting from the violation or threatened violation. The remedy shall be independent of and in addition to any other penalties and remedies prescribed by applicable Law.

b. Any claim brought under this Law must be commenced by the filing of a complaint with the Tribal Court in accordance with the Mashantucket Pequot Rules of Civil Procedure and within 180 days from the date of the violation(s) or threatened violation(s) of the Law which form the basis of the complaint

**Legislative History: Derivation.** Effective August 16, 2007 – EXTCR081607-01 enacted the Mashantucket Pequot Right to Work Law. Amended October 28, 2008 - EXTCR102808-01 of 02 – amends EXTCR081607-01.

*This replaces 32 M.P.T.L. in its entirety*

## TITLE 32 MASHANTUCKET PEQUOT LABOR RELATIONS LAW

### CHAPTER 1.

#### Section 1. Title; Authority

This act may be cited as the “Mashantucket Pequot Labor Relations Law”. This act is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket Pequot Tribe, to regulate employment and labor relations within the Reservation. Further, the Tribe has the inherent authority to exclude persons from the Reservation and to place conditions on entry and continued presence on the Reservation, and to govern conduct within the Reservation.

#### Section 2. Findings

The Mashantucket Pequot Tribe, through the Mashantucket Pequot Tribal Council, finds that:

a. The public policy of the Tribe is that all employees working within tribal territory be treated fairly: that there be fair and appropriate employment practices; fair and comprehensive wages and benefits; and fair and impartial procedures for resolving employment and labor relations issues. In furtherance of this public policy, the Tribe has adopted employment laws governing tribal employment, and the Judicial and Administrative Support Committees of the Tribal Council recently reviewed the employment practices and procedures applicable to all employers on the Reservation and developed a phased approach to create the Mashantucket Employment Rights Office and related labor and employment laws. Based upon those recommendations, the Tribal Council adopted Title 31 of the Mashantucket Pequot Tribal Laws, establishing the Mashantucket Employment Rights Office, to fully regulate employment and labor relations on the Reservation and to provide administrative review and enforcement of tribal employment and labor relations laws.

b. The Tribe, as an employer, provides excellent employment to thousands of people on its Reservation through the Mashantucket Pequot Gaming Enterprise, the Mashantucket Pequot Museum & Research Center, the Pequot Pharmaceutical Network, the Child Development Center, and other departments, divisions, entities or enterprises of the Tribe. The Tribe, as a government, has guaranteed, through tribal employment and labor relations laws and policies, fair treatment to its employees.

c. Employees have the right under Tribal law to form, join, or assist labor organizations, to engage in collective bargaining and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as specifically provided in the Law and the right to refrain from any such activities. Based on the recent reversal of 30 years of precedent by a federal agency and a federal court, the Tribe acknowledges that labor organizations may seek the right to represent tribal employees pursuant to federal law, commonly known as the National Labor Relations Act (“NLRA”) 29 U.S.C. §§ 151-169.

d. The NLRA was adopted in 1935 to encourage the practice of collective bargaining and to protect the exercise of self-organization by employees for the purpose of negotiating the terms and conditions of their employment with employers in the private sector. The NLRA expressly exempts federal, state and local governments from its definition of “employer,” recognizing, among other things, that government employees provide essential services to their communities and that labor strikes could inflict unique harms in those communities. Nonetheless, pursuant to their inherent authority, the vast majority of state governments and the federal government have adopted legislation to govern labor relations between the respective government as an employer and its employees. Generally, to protect the public interest, as well as the orderly operation and functioning of the government, such legislation limits the scope of collective bargaining, prohibits strikes by employees and creates a procedure for the resolution of labor disputes.

e. The NLRA and its extensive legislative history are silent in relation to its application to Indian tribal governments as employers. This is not surprising given the fact that the U.S. Congress had just addressed the status of Indian tribes in the Indian Reorganization Act of 1934 (“IRA”), 25 U.S.C. § 461 et seq., which protects tribal self-governance and promotes tribal economic development through enterprises operated directly by Indian tribes. As a matter of federal policy, the IRA sought to achieve two distinct but inseparable objectives: tribal self-governance and tribal economic self-sufficiency. By promoting both, the

IRA sought to “rehabilitate the Indian’s economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.” H.R. Rep. No. 73-804 (1934).

f. Since 1934, the United States government has consistently strengthened its policy of protecting tribal self-government and promoting tribal economic self-sufficiency through legislation, including, but not limited to the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 450 et seq. (“the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities”); the Indian Tribal Justice Act of 1993, 26 U.S.C. § 3601 (“the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government”); the Indian Financing Act of 1974, 25 U.S.C. § 1451 (“to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources”); the Tribal Self-Governance Act of 1994, 25 U.S.C. §§ 450a, 458aa et seq. (“transferring control to tribal governments ...over funding and decision making for Federal programs, services, functions and activities strengthens the Federal policy of Indian self-determination”); and the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 et seq. (“to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments”).

g. Given its inherent authority over employment and labor relations on the Reservation, the tribal regulation of employment on the Reservation, and the longstanding federal policy protecting tribal self-government and promoting tribal self-sufficiency, the Tribe finds that the NLRA does not apply to the tribal government as an employer. Application of the NLRA to the tribal government as an employer would substantially impair the ability of the Tribe to exercise its sovereign authority, including undermining tribal employment laws, subjecting the tribal government to the threat of strikes, and disrupting the tribal government’s ability to provide essential services to the community.

h. The Tribe has various departments, subdivisions and agencies within its government, including the Mashantucket Pequot Gaming Enterprise, an arm of the tribal government, which operates (under the Tribal Council’s control and oversight) the tribal gaming operation known as Foxwoods Resort Casino. As provided by the Indian Gaming Regulatory Act, the Tribe’s gaming operation funds the tribal government including various governmental services such as police, fire, utilities, education, the judicial system, environmental, health, social services and parks and recreational facilities. As an arm of the government, the tribal employees at the Gaming Enterprise are government employees and have a recognized property right in their employment through various decisions of the Mashantucket Pequot Tribal Court. See *Johnson v. Mashantucket Pequot Gaming Enterprise*, 1 MPR 15 (1996).

i. The Tribe has considered and determined that it is appropriate to provide tribal employees with a procedure under Tribal law to determine whether they wish to be represented by a labor organization for the purposes of collective bargaining as defined in this Law.

### **Section 3. Purpose**

The purpose of the Mashantucket Pequot Labor Relations Law is to provide tribal employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between the Tribe as an employer and tribal employees, and to protect the health, safety, political integrity and economic security of the Tribe.

### **Section 4. Definitions**

a. “Tribal Employer” or “Tribe” means the Mashantucket Pequot Tribe, also known as the Mashantucket Pequot Tribal Nation including any subdivision, agency, arm, department, entity or business thereof, but shall not include any entity created by the Tribe under the laws of any state and which is located principally outside of the Reservation of the Tribe.

b. “Tribal Employee” means any employee of a Tribal Employer except:

1. Appointed or elected officials of the Tribe including but not limited to Tribal Councilors and their staff, Tribal Court Judges, the Mashantucket Pequot Tribal Gaming Commissioners, the Workers Compensation Commissioner, or officials of any other commission or regulatory body of the Tribe, or
2. Supervisory employees, Managerial employees, or Confidential employees (as those terms of defined herein),

c. "Supervisory employees" or "supervisor" means any individual having authority, in the interest of a Tribal Employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

d. "Managerial employees" or "manager" means any individual who represents a Tribal Employer's interest and who formulates and effectuates a Tribal Employer's policies by expressing and making operative the decisions of the Tribal Employer.

e. "Confidential employees" means any individual who assists and acts in a confidential capacity to persons who formulate, determine, and effectuate a Tribal Employer's policies with regard to confidential matters including, but not limited to, employee relations, labor relations, business plans or performance, tribal government, and other tribal interests, or those who regularly substitute for employees having such duties.

f. "MERO" means the Mashantucket Pequot Employment Rights Office established pursuant to Title 31 of the Mashantucket Pequot Tribal Laws.

g. "MERO Commission" means the commission established pursuant to Title 31 of the Mashantucket Pequot Tribal Laws.

h. "Labor organization" means any lawful organization whose primary purpose is the representation of Tribal employees in collective bargaining.

i. "Exclusive representative" means a labor organization that, as a result of certification under this Law, has the right to represent Tribal employees in an appropriate bargaining unit for the purpose of collective bargaining.

j. "Certification" means the designation by the MERO of a labor organization as the exclusive representative for all Tribal employees in an appropriate bargaining unit.

k. "Appropriate bargaining unit" means a group of Tribal employees designated as such by the MERO in accordance with the provisions of this Law and particularly subsection 12(g) for the purpose of collective bargaining.

l. "Collective bargaining" is defined in Section 9 of this Law.

m. "Impasse" means failure of a Tribal Employer and an exclusive representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

n. "Lockout" means an act by a Tribal Employer which prevents its employees from going to work for the purpose of pressuring Tribal employees and/or their bargaining representative to accept the Tribal Employer's bargaining proposals.

o. "Strike" means a Tribal employee's refusal, in concerted action with other Tribal employees, to report for duty or his willful absence 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 Tribal employment;

p. "Tribal Court" means that Mashantucket Pequot Tribal Court as created and established by Title I of the Mashantucket Pequot Tribal Laws.

## **Section 5. Rights and Duties of Tribal Employers, Tribal Employees, and Labor Organizations**

a. Tribal Employees shall have the right of free choice to refrain from or engage in self-organization, from forming, joining, or assisting labor organizations, from bargaining collectively through representatives of their own choosing, and from engaging in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to engage in any or all such activities.

b. When a labor organization has been designated by the MERO through the processes provided hereunder as the representative of the majority of Tribal Employees in an appropriate bargaining unit, that labor organization shall be recognized by the Tribal Employer as the exclusive bargaining agent for the Tribal Employees of such unit.

c. When a labor organization has been designated in accordance with the provisions of this Law as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit, it shall have the right to act for and to negotiate agreements covering all Tribal Employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard

to labor organization membership; and such labor organization shall have the duty of fair representation to the members of that unit.

d. A Tribal Employee represented by a labor organization may at any time present a grievance directly to a Tribal Employer and the Tribal Employer may address said grievance directly with the Tribal Employee without intervention of a labor organization; provided that the resolution of such grievance may not violate the terms of a collective bargaining agreement then in effect and the bargaining representative has been given the opportunity to be present at the adjustment of said grievance.

e. The Tribal Employer and such labor organization as has been designated as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit, through appropriate officials or their representatives, shall have the duty to bargain collectively, as defined herein in Section 9 of this Law.

## **Section 6. Prohibited Practices**

- a. A Tribal Employer shall not:
1. Interfere with, restrain or coerce Tribal Employees in the exercise of their rights set forth in this Law;
  2. Dominate or interfere with the formation, existence or administration of any labor organization;
  3. Discriminate in regard to hire or tenure of employment or any term or condition of employment because of the Tribal Employee's exercise of rights under this Law, including because a Tribal Employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony or filed a claim or charges under this Law;
  4. Refuse to bargain collectively in good faith with a labor organization that has been designated in accordance with this Law as the exclusive representative of the Tribal Employees in an appropriate bargaining unit; and
  5. Refuse to comply with a collective bargaining agreement that has been entered into by the Tribal Employer and the exclusive representative.
- b. A labor organization shall not:
1. Interfere with, restrain or coerce any Tribal Employee in the exercise of any right set forth in this Law;
  2. Restrain or Coerce a Tribal Employer in the selection of its exclusive representative for purposes of collectively bargaining or the adjustment of grievances;
  3. Discriminate against a Tribal Employee with regard to labor organization Membership, or because of race, color, religion, creed, age, sex, national original or membership in a Native American Tribe;
  4. Force or require a Tribal Employer to recognize or bargain with a particular labor organization as the representative of Tribal Employees if another labor organization has been certified as the exclusive representative of such Tribal Employees under the provisions of this Law;
  5. Refuse to bargain collectively in good faith with a Tribal Employer, if it has been designated as the exclusive representative of Tribal Employees in an appropriate bargaining unit under the provisions of this Law;
  6. Refuse or fail to comply with a collective bargaining or other agreement with the a Tribal Employer;
  7. Attempt to influence the outcome of a Tribal government election in any manner, provided, however, that this subsection does not apply to a Tribal Employee who is a Tribal Member acting in his or her individual capacity;
  8. Picket homes or private businesses of elected Tribal officials or Tribal employees;
  9. Breach a labor organization's duty of fair representation as provided in subsection 5(c) of this Law.

## **Section 7. Dispute Resolution for Prohibited Practices Questions.**

a. Filing a Claim; Adjudication of Claim. When a question arises as to whether a practice prohibited by this Law has been committed, a claim may be filed with the MERO for a determination of whether the prohibited practice alleged has been or is being committed. The MERO shall adopt procedures for the

administrative processing of such claims. Unless a party requests a MERO Three Member Board as described below, claims filed with MERO shall be referred to the Tribal Court for the adjudication of the claim. The Tribal Court shall appoint an impartial special master with substantial experience in labor relations and labor law and experience or advanced training in Native American Preference Law and Tribal Law to hear and determine the claim. The person filing the claim must give the other party notice of the filing the same day it is filed. Within five (5) days of a claim being filed, either party may request adjudication of the claim under this Law by a MERO Board. If such a request is filed a panel shall be established consisting of three members appointed at the outset of each case. Within five (5) days of the request for the MERO Board, the Tribal Employer and the Labor organization (or if a claim is filed by a Tribal Employee, the Tribal Employee), will each appoint one member of the Board. The members appointed by each of the parties shall confer and jointly appoint a third member, who shall be the presiding officer of that MERO Board. If the members appointed by the parties cannot agree within 5 days upon a third member, MERO shall request from the American Arbitration Association a random panel of seven (7) arbitrators who are members of the National Academy of Arbitrators and the members appointed by the Tribal Employer and the Labor organization shall select a presiding officer from said list within five (5) days of receipt of the list. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The Tribal Court may adopt special procedures for claims to be heard by a special master; otherwise the Mashantucket Rules of Civil Procedure shall apply and the case shall proceed before the special master and be considered in the same manner as any other civil matter.

b. Decision; Cease and Desist Orders. If, after all evidence is considered and arguments heard, the special master or the MERO Board, as the case may be, determines that a prohibited practice has been or is being committed, it shall state its findings of fact and conclusions of law, and shall issue and serve on the party committing the prohibited practice an order requiring it or him/her to cease and desist from such prohibited practice, and shall take such further affirmative action as will effectuate the policies of this Law including, but not limited to: (1) reinstatement of an employee discriminated against in violation of this Law, with or without back pay; (2) ordering relief that will make an individual whole; provided that nothing herein shall authorize awarding damages for emotional distress or pain and suffering.

c. Dismissal. If, after all evidence is considered and arguments heard, the special master or the MERO Board, as the case may be, determines that a prohibited practice has not been or is not being committed, it shall state its finding of fact and conclusions of law and shall issue an order dismissing the complaint.

d. Decisions and Appeals. Decisions of a special master and decisions of a MERO Board shall be adopted by the Tribal Court and become a final decision of the Tribal Court, unless the Tribal Court determines, under a clear and convincing evidence standard of review, that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

e. Sovereign Immunity. The Tribe hereby waives its sovereign immunity from suit for claims brought under this section against a Tribal Employer before the Tribal Court or MERO including a MERO Board if one is formed at the request of a party or parties. Nothing contained herein shall be construed as a waiver of the Tribe's sovereign immunity from suit in the state or federal courts or in any state or federal agency or any other forum or context.

f. Sanctions for Frivolous Conduct. If it is ultimately determined that a claimant or Tribal Employer has engaged in frivolous conduct including advancing a claim or defense that had no reasonable basis in fact and law, the special master appointed by the Tribal Court or a MERO Board, as the case may be, may order the party engaging in such conduct to pay the costs and reasonable attorneys' fees of the other party.

g. MERO Commission. The MERO Commission, as defined in Title 31 M.P.T.L., when it is staffed and operational is authorized to hear matters that would otherwise be heard by a special master appointed by the Tribal Court under this section or any other section of this Law; provided that the right of any party to request a MERO Board shall not be affected.

## **Section 8. Free Speech Provision**

The expressing of any views, argument, or opinion by a Tribal Employer or a labor organization, or the dissemination thereof, whether in verbal, written, printed, graphic, or visual form, shall not constitute or be

evidence of an unfair labor practice under any of the provisions of this Law, if such expression contains no threat of reprisal or promise of benefit.

## **Section 9. Collective Bargaining**

a. **Duty to Bargain Collectively.** To bargain collectively is the performance of the mutual obligation of a Tribal Employer and the designated representative of the Tribal Employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, except for those matters excluded from collective bargaining as provided in this Law, or the negotiation of an agreement or any question arising there under, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession or to agree to a proposal that would contradict or violate tribal law. Nothing in Tribal Law shall be construed to preclude a Tribal Employer and the designated representative of Tribal Employees from negotiating under Title 10 M.P.T.L. a procedure for binding resolution of contractual disputes, including disputes related to the discipline or discharge of Tribal Employees; provided that any such procedure shall provide protection for the due process rights of Tribal Employees equal to or greater than the protections provided under Title 8 M.P.T.L.; and provided further, that any Tribal Employee who has a right to review under the Board of Review process and Title 8, shall have the right to elect whether to proceed under the Board of Review and Title 8 or, alternatively, elect to proceed under the procedure established for resolution of contractual disputes pursuant to a collective bargaining agreement.

b. **Exceptions Concerning Tribal Gaming Regulatory Authority.** Nothing contained in this Law shall in any way diminish the authority and power of the Mashantucket Pequot Tribal Gaming Commission or any other agency, commission or regulatory body established by the Tribe to regulate the conduct of gaming on the Reservation and safeguard the integrity of the gaming including the prevention of illegal activity or influences affecting the gaming on the Reservation. Further, nothing contained in this Law or this section shall require a Tribal Employer to bargain concerning gaming regulatory issues including but not limited to:

1. The enforcement of all rules, whether in laws, rules, ordinances or procedures, with respect to the gaming operation and facility, and the power to conduct investigations and hearings with respect thereto;
2. Ensuring the physical safety of gaming operation patrons and employees, and any other person while in the gaming facility;
3. The physical safeguarding of assets transported to, within, and from the gaming facility;
4. The prevention of illegal activity from occurring within the gaming facility or with regard to the gaming operation, including, but not limited to the maintenance of employee procedures and surveillance systems;
5. The recording of any and all occurrences within the gaming facility that deviate from normal operating policies and procedures, which includes maintenance of a closed circuit surveillance system;
6. The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud or the like, consistent with industry practice;
7. The conduct of audits of the gaming operation;
8. The specifications, standards and procedures for each game;
9. The maintenance of a cashier's cage; or
10. Minimum employee and supervisor staffing requirements related to such regulation of gaming.

Provided, however, that the above list is not intended to remove from bargaining subjects that are otherwise appropriate for bargaining and which are not related to the conduct of gaming on the Reservation and safeguarding the integrity of the gaming including the prevention of illegal activity or influences affecting the gaming on the Reservation. Provided further that whenever practicable, a Tribal Employer shall bargain with a duly certified labor organization regarding the implementation and effects of directives of the Mashantucket Pequot Tribal Gaming Commission.

c. **Union Security Clauses.** If a labor organization has been certified as the exclusive bargaining representative under tribal law then a Tribal Employer may lawfully enter into a union security agreement

where said agreement does not violate the Indian Civil Rights Act, 25 U.S.C. § 1302 or the Tribal Civil Rights Code, 20 M.P.T.L. ch. 1, Section 1<sup>2</sup> and no election has been conducted by a special master or MERO Board in which a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. Other than under these conditions, nothing contained in this Law shall require a Tribal Employer to bargain concerning any union security clause, such as union shop, agency shop, and dues check-off provisions. The obligation of a Tribal Employer to bargain collectively pursuant to this law shall not be construed as authorizing the Tribal Employer and a labor organization to bargain and enter into an agreement that would be or is in conflict with the provisions of any other Law of the Tribe, including but not limited to the Tribal Right to Work Law, codified in Title 28 M.P.T.L.

d. Indian and Tribal Preference. Pursuant to existing Tribal law and policy Tribal Employers are required to give preference in employment opportunities, including but not limited to hiring, transfers, promotions, layoffs, and retention to members of the Tribe and to members of other federally recognized Indian tribes. Nothing contained in this Law shall be construed to require or permit a Tribal Employer to bargain concerning the requirements imposed upon employers pursuant to Tribal law and policy regarding Indian and tribal preference, or shall in any way affect a Tribal Employer's obligation to follow tribal law, policies or custom and traditions regarding Indian preference in employment opportunities. In the event of a conflict between the Tribal law and policy regarding Indian and tribal preference and this Law, the Tribal law and policy on Indian and tribal preference shall govern.

e. Modification or Termination of Collective Bargaining Agreement. If there is in effect a collective-bargaining contract covering Tribal Employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification--

1. Serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;
2. Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications; and
3. Complies with Section 11 of this Law prohibiting Strikes and Lock Outs.

## **Section 10. Negotiations Timetable; Dispute and Impasse Resolution**

a. Negotiations Timetable. If either a Tribal Employer or a labor organization which has been designated as the exclusive bargaining representative for an appropriate bargaining unit under this Law desires negotiations with respect to an original or successor collective bargaining agreement, such party shall serve written notice of such desire upon the other party. For successor collective bargaining agreements, such notice must be served upon the other party no earlier than 120 days prior to the expiration of the existing collective bargaining agreement and no later than 60 days prior thereto. Negotiations shall commence within 30 days of such service, unless the parties mutually agree to a different date.

b. Mediation. Upon the joint request of the parties, at any time after negotiations have begun, the Chair of the Tribe's Peacemaker's Council shall designate a Mediation Panel, pursuant to Title 31 of M.P.T.L. to assist the parties in continuing the negotiations and reaching an agreement, or the parties may agree to the designation of a single mediator selected by agreement of the parties.

c. Impasse. If the parties to negotiations do not reach an agreement within 150 days after negotiations have begun, then either party may file a petition with the Tribal Court which shall appoint a special master or, if either party requests within five (5) days of the petition being filed, a MERO Board shall be formed as provided in Section 7(a) of this law to resolve the impasse and all issues on which the parties cannot agree. The party filing the petition must give the other party notice of the filing on the same day that it is filed.

- (i) Upon appointment, the special master or the MERO Board shall immediately adopt procedures for reaching a decision resolving all issues within sixty (60) days of the filing

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<sup>2</sup> In determining whether an agreement violates these laws, the Tribal Court should be guided by the federal court decisions interpreting similar limitations found in the U.S. Constitution applicable to public sector employees.

of the petition and shall convene a hearing to allow the parties to provide evidence and argument to the arbitrator. The parties shall have the right to submit written briefs. The arbitration record is officially closed at the later of the close of the hearing, or the special master's or Board's receipt of briefs.

(ii) Each party shall submit to the special master or the MERO Board, and to each other, a proposal setting forth its position on how each of the unresolved issues shall be resolved.

(iii) The special master's or MERO Board's authority is limited to selecting one party or the other's complete proposal with respect to each issue and shall render a decision or award addressing each of the unresolved issues based on the complete proposal selected for that issue. The special master or Board shall issue an award within 60 days of the filing of the petition, unless the time period is extended by mutual agreement of the parties.

(iv) The costs of the MERO Board and any fees associated with the Board proceeding shall be shared equally by the parties.

### **Section 11. Strikes and Lockouts prohibited**

Strikes of any kind and lockouts are strictly prohibited. A labor organization shall not cause, instigate, encourage or support a Tribal Employee strike. A Tribal Employer shall not cause, instigate or engage in a lockout of its employees.

### **Section 12. Elections; Labor Organization Designation as Exclusive Representative; Appropriateness of Bargaining Unit; Representational Rights**

a. Petition for Election. A labor organization may file a petition with the MERO Director stating that thirty per cent or more of the Tribal employees in an appropriate bargaining unit, provided for under this Law, desire to be exclusively represented for the purposes of collective bargaining within the unit by the petitioning organization and request the designation of said organization as their exclusive representative. A petition filed hereunder must contain either the signatures of thirty per cent of the Tribal employees in the bargaining unit proposed, or be accompanied by the submission of authorization cards from at least thirty per cent of the Tribal employees in the bargaining unit. The petition must also describe the bargaining unit including a designation of each job category or position which the labor organization states should be included in the bargaining unit.

b. Receipt of Petition for Election. Upon receipt of such a petition the MERO Director shall, unless a party requests a MERO Board as defined in Section 7(a) of this Law, refer the petition to the Tribal Court. The Tribal Court shall appoint an impartial special master with substantial experience in labor relations and labor law to act on the petition. If either party requests a MERO Board, one shall be formed pursuant to the procedures set forth in Section 7(a) of this law. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The special master or the MERO Board shall review the petition, verify the labor organization's showing of interest, certify that it is in compliance with this Law, review and decide any issues or objections raised concerning the petition or the appropriateness of the bargaining unit, and conduct a secret ballot election as provided herein.

c. Hearings. The special master or the MERO Board shall have authority to convene a hearing for the purpose of addressing any and all issues relating to the petition. At the hearing, the parties shall have the opportunity to present evidence on any and all issues relating to the petition. The parties shall have the right to submit briefs to the special master or the MERO Board. The parties may appeal any determinations of the special master or the MERO Board to the Tribal Court and its decision shall be final as to such issues. The Tribal Court shall adopt the decision of the MERO Board or the special master, unless the Tribal Court determines, under a clear and convincing evidence standard of review, that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

d. Secret Ballot Election. When all issues, if any, relating to the petition have been resolved, the special master or the MERO Board shall conduct a secret ballot election if it determines that a valid petition has been filed. The ballot for the special election shall contain the name of any labor organization

submitting a petition in compliance with subsection (a) of this section, and contain clear language providing the Tribal employees with a choice to either select the labor organization that filed the petition as the exclusive representative for the Tribal employees within the bargaining unit or to choose not to be represented by any labor organization.

e. Election Result and Appeal. If a majority (fifty percent plus one) of the Tribal employees in the proposed bargaining unit vote in favor of certification of a labor organization, the special master or MERO Board shall certify the labor organization as the exclusive bargaining representative for the appropriate bargaining unit. If a labor organization does not receive a majority vote for certification, then the labor organization shall not be certified as the exclusive representative of the bargaining unit. If either the Tribal Employer or the labor organization has a good faith reason to believe that the election was not conducted in a fair and impartial manner or that fraud or prohibited practices affected the outcome of the election, the Tribal Employer or labor organization may file such objections with the special master or MERO Board within ten (10) days after the election. The special master or MERO Board shall conduct such investigation as it deems appropriate to resolve such objections. Whether to hold an evidentiary hearing on such objections shall be within the discretion of the special master or MERO Board. Any determination of the special master or MERO Board on such objections to the election may be appealed to the Tribal Court and its decision shall be final on such issues. The Tribal Court shall adopt the decision of the MERO Board or the special master, unless the Tribal Court determines, under a clear and convincing evidence standard of review, that the decision of the special master or the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law. The decision of the Tribal Court, whether based on the adoption of a special master's decision or the decision of a MERO Board, shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

f. Time Limitation. No election shall be directed or held in any bargaining unit within which an election has been conducted in the twelve-month period immediately preceding the proposed representation election.

g. Determination of Appropriateness of Bargaining Unit. In determining the appropriateness of a bargaining unit, the special master or MERO Board shall take into consideration but shall not be limited to considering the following factors:

1. That an appropriate bargaining unit is based on occupational groups or groups of employees who share clear and identifiable communities of interest in employment terms and conditions and related personnel matters;
2. The effects of over-fragmentation;
3. Principles of efficient administration of the tribal government; and
4. Any history of collective bargaining for Tribal employees.

h. Guards or Other Security Personnel. A labor organization shall not be certified as the representative of employees in a bargaining unit of guards or other security personnel if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards or other security personnel.

i. Deauthorization. Upon the filing with the MERO Director, by 30 per centum or more of the employees in a bargaining unit covered by a collective bargaining agreement containing a union security clause, of a petition alleging they desire that the authorization to enter such an agreement be rescinded, the MERO shall, unless a party requests a MERO Board as defined in Section 7(a) of this Law, refer the petition to the Tribal Court. The Tribal Court shall appoint an impartial special master with substantial experience in labor relations and labor law to act on the petition. If either party requests a MERO Board, one shall be formed pursuant to the procedures set forth in Section 7(a) of this law. The costs of the MERO Board and any fees associated with the proceedings shall be shared equally by the parties. The special master or the MERO Board shall hold a secret ballot election of the employees in such unit and certify the results thereof to the affected labor organization and Tribal Employer. If a majority of the employees in the bargaining unit vote to rescind such authorization, then the provision for a union security clause shall be null and void and of no further force or effect. If the secret ballot does not result in a majority of employees voting to rescind, then the provision in the collective bargaining agreement shall remain in full force and effect.

### **Section 13. Decertification of exclusive representative**

a. A Tribal employee or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the Tribal employees in the bargaining unit make a written request to the MERO Commission for a decertification election. If such a request is filed, the MERO Commission shall conduct the decertification election in the same manner as a certification election is conducted pursuant to this Law. A union will be decertified as the exclusive representative of an appropriate bargaining unit if a majority (fifty percent plus one) of the Tribal employees in the bargaining unit vote for decertification.

b. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the MERO Commission no earlier than ninety days and no later than 45 days before the expiration of the collective bargaining agreement or at any time after the agreement has expired; provided, however, that if the term of a collective bargaining agreement is more than three years, a request for decertification may be made at any time after the expiration of the third year.

### **Section 14. Registration of Labor Organization**

a. Requirement to Register. Every labor organization operating within the territorial jurisdiction of the Tribe shall file a report with the Office of Legal Counsel for the Tribe, on or before 60 days after enactment of this Title and thereafter on or before December 31 of each year. The report, which shall be filed by the president of the labor organization or another duly authorized officer of the labor organization, 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 collective bargaining agreement(s) between the labor organization and any employer within the territorial jurisdiction of the Tribe;
5. A copy of the current Constitution and By-laws of the labor organization, as well as any amendments, i.e., the basic written rules governing the organization; and
6. A copy of the Labor Organization's Annual Report.

b. Submission of New Information. The president of the labor organization shall file with the Office of Legal Counsel for the Tribe a notice of any changes to the information required above within 30 days after the changes are made and provide any additional information requested by the Office of Legal Counsel.

c. Violations. It shall be a violation of this subsection for any labor organization or any person acting on behalf of any labor organization to fail to register or to make any false statements on any reports required to be filed pursuant to this Law.

### **Section 15. Licensing of business agents.**

a. No person shall act as a business agent of a labor organization within the territorial jurisdiction of the Tribe unless that person has received a license from the MERO.

1. Any person who seeks such a license shall pay a license fee of \$25, submit a statement signed by the president and the secretary of the labor organization which establishes the individual's authority to act as a business agent for the organization, and agree to undergo a background investigation.
2. No person shall be issued a license to act as a business agent within the territorial jurisdiction of the Tribe if that person has been convicted of a felony, has been convicted of a misdemeanor involving moral turpitude, is currently facing charges on a felony or on a misdemeanor involving moral turpitude or, based on the background investigation, is deemed by the MERO to be of questionable moral character.
3. If at any time after issuance of the license the MERO receives reliable information that the licensee should be deprived of his or her license based on the factors stated above, then the MERO may suspend or revoke the license. The license shall run for the calendar year for which it is issued unless sooner surrendered, suspended, or revoked.

4. All licenses shall expire at midnight on December 31 of each year but may be renewed by the MERO on a form prescribed by the MERO for that purpose and upon payment of an annual renewal fee of \$25. However, if any license has been surrendered, suspended or revoked during the year, then the applicant must go through the requirements set forth in subsection (a)(1) above.

5. Any person denied a license or whose license is suspended shall have the right to a hearing before the MERO Commission to challenge such action and all rules and procedures established by the MERO Commission for hearings shall apply.

b. It shall be a violation of this Article for any person to:

1. Act as a business agent for a labor organization without having obtained a valid license;
2. To act as a business agent of any labor organization without the authority of the labor organization to do so;
3. To make any false statement on any reports required to be filed pursuant to this Law;
4. To make any false statement in an application for a business agent's license.

c. If the MERO Director, after investigation, determines that any person is in violation of this section of the Law, the Director may request that the MERO Commission impose penalties which may include an order of exclusion, or, if the violation affects the Tribe's gaming operation, a referral to the Mashantucket Pequot Tribal Gaming Commission for possible exclusion from the gaming facilities as may be allowed under Title 3, Section 5, of the Mashantucket Pequot Tribal Laws. Any person adversely affected by the imposition of penalties by the MERO Commission shall have the right to a hearing before the MERO Commission to challenge the imposition of any such penalty and all rules and procedures established by the MERO Commission for hearings shall apply.

d. Until such time as the MERO Commission is appointed and the MERO is staffed, the duties and obligations of the MERO under this Section shall be performed by the Mashantucket Pequot Tribal Gaming Commission.

**Legislative History: Derivation.** Effective August 16, 2007 – EXTCR081607-01 enacted the Mashantucket Pequot Labor Law. Amended October 28, 2008 - EXTCR102808-01 of 02 – amends EXTCR081607-01.