

TITLE 28 RIGHT TO WORK LAW

28 M.P.T.L. § 1

§ 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.

28 M.P.T.L. § 2

§ 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.

28 M.P.T.L. § 3

§ 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 1¹ 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.

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

¹ 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.

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.

28. M.P.T.L. § 4

§ 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.

28. M.P.T.L. § 5

§ 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

Historical Notes

Derivation.

Effective August 16, 2007 - EXTCR081607-01 enacted the Mashantucket Pequot Right to Work Law.

Amendments.

October 28, 2008 - EXTCR102808-01 of 02 - amends EXTCR081607-01.