



Mashpee Wampanoag Tribe

TRIBAL ORDINANCE

2016-ORD-007

TRIBAL LABOR RELATIONS

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The Mashpee Wampanoag Tribal Council does ordain as follows:

Section 1. FINDINGS

- (a) The Mashpee Wampanoag Tribe (the "Tribe") is a federally-recognized Indian Tribe with a duly-enacted Constitution and the governing body of the Tribe is the Mashpee Wampanoag Tribal Council (the "Tribal Council") pursuant thereto.



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- (b) Article VI, § 2.A. of the Constitution provides that the Tribal Council is empowered to promote and protect the peace, morals, political integrity, economic security and general welfare of the Tribe and its members.
- (c) Article VI, § 2.C. of the Constitution provides that the Tribal Council is empowered to establish procedures and ordinances for the conduct of all tribal government business operations.
- (d) Article VI, § 2.L. of the Constitution provides that the Tribal Council may establish and enforce all ordinances.
- (e) On March 19, 2013, the Tribe and Commonwealth of Massachusetts entered into a compact (the "Compact") with respect to the operation of Gaming on the Tribe's Indian lands pursuant to the Indian Gaming Regulatory Act, as amended, and codified at 25 U.S.C. §§ 2701 to 2721, inclusive, and 18 U.S.C. §§ 1166 to 1168, inclusive.
- (f) In Part 18.6 of the Compact, the Tribe agreed that the Gaming Operation authorized under the Compact may only commence after the Tribe has adopted a labor ordinance identical to the Tribal Labor Relations Ordinance (the "Ordinance") attached as Appendix C to the Compact, which Ordinance shall only be applicable to the Eligible Employees of the Tribe's Gaming Facility when such Facility is employing at least 250 or more persons.
- (g) The Tribe Council, therefore, deems it in the best interests of the Tribe and its Tribal members to adopt the Tribal Labor Relations Ordinance as set forth in Appendix C of the Compact.

Section 2. Definitions. This Ordinance includes by reference the definitions of the Compact.

Section 3. Authority and Purpose

- (a) **Authority.** The authority for this Ordinance is found in Article VI, § 2.A, § 2.C and § 2.L. of the Constitution.
- (b) **Purpose.** The purpose of this Ordinance is to adopt Tribal laws regarding labor relations in the Facility as required in Appendix C of the Compact, which Ordinance shall only be applicable to the Eligible Employees of the Tribe's Gaming Facility when such Facility is employing at least 250 or more persons.



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Section 4. Enactment and Applicability

- (a) This Tribal Labor Relations Ordinance (“TLRO”) is enacted by and pursuant to the laws of the Mashpee Wampanoag Tribe (“Tribe”) in compliance with subpart 18.6 of the tribal-state gaming compact entered into between the Tribe and the Commonwealth of Massachusetts pursuant to the Indian Gaming Regulatory Act (25 U.S.C. Sec. 2701 et seq.) (the “Compact”), and shall remain in effect as provided below until the Compact terminates or provides otherwise through an amendment of this Ordinance or the Compact in accordance with their terms.
- (b) Terms used in this Ordinance are intended to be defined as set forth in the Compact unless otherwise expressly set forth herein.
- (c) Upon the employment of 250 or more persons in a Facility that is open to the public, the provisions of this Ordinance shall become effective immediately.
- (d) Upon the request of a labor organization, the Tribal Gaming Commission shall certify the number of employees in the Facility. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel.

Section 5. Eligible Employees. The provisions of this Ordinance shall apply to any person (“Eligible Employee”) who is employed within the Facility, except for any of the following:

- (a) any employee who is a supervisor, defined as any individual employed at the Facility having authority, in the interest of the Enterprise, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility 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;
- (b) any employee of the Tribal Gaming Commission; and
- (c) any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment.

Section 6. Non-interference with regulatory or security activities. The application of this Ordinance shall not interfere in any way with the authorized duties of any Tribal, State or federal regulatory agency. Furthermore, the exercise of rights hereunder shall in no way interfere with the Facility’s surveillance/security systems or any other internal controls system designed to protect the integrity of the Enterprise or Gaming Operations. The Tribal Gaming Commission is specifically excluded from the definition of Tribe and its agents.



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Section 7. Eligible Employees free to engage in or refrain from concerted activity.

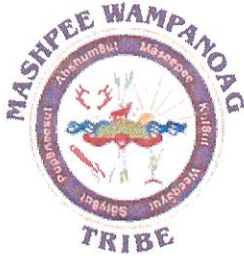
Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

Section 8. Unfair labor practices for the Tribe. It shall be an unfair labor practice for the Tribe and/or employer or their agents:

- (a) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- (b) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the Tribe and/or employer and a certified labor organization from agreeing to union security or dues check off;
- (c) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance;
- (d) to refuse to bargain collectively with the representatives of Eligible Employees.

Section 9. Unfair labor practices for a labor organization. It shall be an unfair labor practice for a labor organization or its agents:

- (a) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;
- (b) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a primary or secondary boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to section 14 of this TLRO;
- (c) to force or require the Tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO except as provided otherwise by law;



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- (d) to refuse to bargain collectively with the Tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein; or
- (e) to attempt to influence the outcome of a Tribal governmental election, provided, however, that this section does not apply to Tribal members.

Section 10. Tribe and union neutrality

- (a) The Tribe agrees that if a labor organization first commits in writing (i) that it will not engage in any type of strikes, picketing, boycotts, attack websites, or other economic activity at or in relation to the Facility, (ii) that it will not disparage the Tribe for purposes of organizing Eligible Employees, and (iii) that it and its local affiliates will agree to resolve all issues, including collective bargaining impasses, through binding dispute resolution mechanisms set forth in Section 16 herein, the Tribe shall thereafter:
 - (1) recognize the labor organization if it is certified pursuant to Section 13, subdivision (f) of this TLRO; and
 - (2) not express or imply any opposition to Eligible Employees choosing to be represented by a labor organization for purposes of collective bargaining, as guaranteed in this TLRO, nor express or imply any opposition to the selection by Eligible Employees of that particular organization to be their representative in collective bargaining or any preference for another labor organization.
- (b) If a United States Court of Appeals issues a final order upholding National Labor Relations Board jurisdiction over a Facility that is not later superseded by a decision of the United States Supreme Court, then the labor organization's offer in subdivision (a) shall be deemed to be an offer to accept the entirety of this Ordinance as a bilateral contract between the Tribe and the labor organization and a waiver by the labor organization of any right to file any form of action or proceeding with the National Labor Relations Board, and the Tribe agrees to accept such offer.
- (c) Except as agreed in subdivision (a) above, the Tribe's and labor organization's expression of any view, argument or opinion or the dissemination thereof whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference, restraint, or coercion if such expression contains no threat of reprisal or force or promise of benefit.

Section 11. Access to Eligible Employees



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- (a) Access shall be granted to the labor organization upon reasonable advance written notice to the Tribe for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the Facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The Tribe may require the labor organization and or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the Facility, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.
- (b) The Tribe, in its discretion, may also designate additional voluntary access to the labor organization in such areas as employee parking lots and non-Casino facilities located on tribal lands.
- (c) In determining whether organizing activities potentially interfere with normal tribal work routines, the labor organization's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the Facility in the following areas:
- (1) security and surveillance systems throughout the Facility, and reservation;
 - (2) access limitations designed to ensure security;
 - (3) internal controls designed to ensure security;
 - (4) other systems designed to protect the integrity of the Tribe's gaming operations, tribal property and/or safety of casino personnel and patrons, employees or tribal members, residents, guests or invitees.
- (d) The Tribe shall provide to the labor organization, upon a thirty percent (30%) showing of interest to the Tribal Labor Panel eligibility list containing the full first and last name of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known address within ten (10) working days. Nothing herein shall preclude the Tribe from voluntarily providing an eligibility list at an earlier point of a union organizing campaign.
- (e) The Tribe agrees to facilitate the dissemination of information from the labor organization to Eligible Employees at the Facility by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the Tribe already posts announcements pertaining to Eligible Employees, provided that such information does



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not contain any profanity or discriminatory references, disparaging remarks or similar inappropriate language. Actual posting of such posters, notices, and other materials shall be by employees desiring to post such materials.

Section 12. Indian preference explicitly permitted. Nothing in this Ordinance shall preclude the Tribe from giving preference in employment, promotion, seniority, lay-offs or retention to members of the Tribe or other federally recognized Indian tribes and their immediate families, or shall in any way affect the Tribe's right to follow tribal law, ordinances, personnel policies or the Tribe's customs or traditions regarding said preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the Tribe's customs and traditions regarding said preference and this Ordinance, the tribal law, tribal ordinance, or the Tribe's customs and traditions shall govern.

Section 13. Selection of representatives

- (a) Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election to be held within thirty (30) working days from presentation to the elections officer.
- (b) The election shall be conducted by the election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning representation of the Tribe and/or employer's Eligible Employees by a labor organization shall be resolved by the election officer. The election officer shall be chosen upon notification by the labor organization to the Tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided, however, that if the election officer resigns, dies, or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.
- (c) The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of Eligible Employees if the labor organization has received the majority of votes by Eligible Employees voting in a secret ballot election that the election officer determines to have been conducted fairly. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or labor organization, the election officer may order a re-run election. If the election officer determines that there was the commission of multiple serious Unfair Labor Practices by the Tribe that interfere with the election process and preclude the holding of a fair election, and the labor organization is able to demonstrate that it had the



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support of a majority of the Eligible Employees in the unit at any point before or during the course of the Tribe's misconduct, the election officer may certify the labor organization. However, this remedy is extraordinary and its use limited to cases involving the most serious violations.

- (d) The Tribe or the labor organization may appeal any decision rendered after the date of the election by the election officer through binding dispute resolution mechanisms set forth in Section 16 herein.
- (e) A labor organization which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this Ordinance at that particular Facility until one year after the election was lost.
- (f) In the event the labor organization makes the written offer set forth in section 10 of this TLRO, dated and signed authorized cards from at least fifty percent (50%) plus one of the Eligible Employees within the bargaining unit verified by the election officer shall result in certification of the labor organization as the exclusive collective bargaining representative of the Eligible Employees. A labor organization seeking to invoke the provisions of this subdivision shall notify the Tribe and the administrator of the Tribal Labor Panel of such intent in writing. If the labor organization fails to be certified as the exclusive collective bargaining representative pursuant to this subdivision within two (2) years following the date of the written notice invoking this subdivision, the labor organization may not invoke any provision of this labor Ordinance for two (2) years thereafter.

Section 14. Collective bargaining impasse

- (a) Upon recognition, the Tribe and the labor organization will negotiate in good faith for a collective bargaining agreement covering bargaining unit Eligible Employees represented by the labor organization.
- (b) Except where the labor organization has made the written commitment set forth in section 10 of this TLRO, if collective bargaining negotiations result in impasse, and the matter has not been resolved by the tribal forum procedures set forth in section 16, subdivision (b) herein, governing resolution of impasse, within sixty (60) working days or such other time mutually agreed by the parties, the labor organization shall have the right to strike and the tribe/employer shall have the right to lockout employees. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. § 2703(4).
- (c) Where the labor organization makes the offer set forth in section 10, subdivision (a), if



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collective bargaining negotiations result in impasse, the matter shall be resolved by the procedures set forth in section 16. The arbitrator shall consider, but not be limited to, the following factors:

- (1) Wages, hours and other terms and conditions of employment of other Indian gaming operations in the region;
 - (2) Size and type of the Tribe's operations at the Facility;
 - (3) Change in the cost of living as it affects the Eligible Employees and measured by the index mutually agreed to by the parties;
 - (4) Regional and local market conditions;
 - (5) The Tribe's financial capacity (if the employer places this in issue); and
 - (6) The competitive nature of the business environment in which the Facility operate.
- (d) If the labor organization violates the terms of the commitment set forth in section 10 of this TLRO by engaging in strikes, picketing, boycotts, attack websites, or other economic activity, the Tribe shall at its option, have the right to withdraw, within thirty (30) working days of a determination of such a violation pursuant to section 16 of this TLRO, from the obligation to resolve impasses pursuant to the procedures set forth in section 16 of this TLRO.

Section 15. Decertification of bargaining agent

- (a) The filing of a petition or statements signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified labor organization, will result in a secret ballot election to be held thirty (30) working days from the presentation of the petition or statements.
- (b) The election shall be conducted by an election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning the decertification of the labor organization shall be resolved by an election officer. The election officer shall be chosen upon notification to the Tribe and the labor organization of the intent of the Eligible Employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided, however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute



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resolution provisions herein.

- (c) The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the Eligible Employees voting in a secret ballot election that the election officer determines to have been conducted fairly vote to decertify the labor organization. If the election officer determines that the election was conducted unfairly due to misconduct by the Tribe and/or employer or the labor organization the election officer may order a re-run election or dismiss the decertification petition.
- (d) A decertification proceeding may not begin until one (1) year after the certification of a labor organization if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than ninety (90) working days and no less than sixty (60) working days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed any time after the expiration of a collective bargaining agreement.
- (e) The Tribe or the labor organization may appeal any decision rendered after the date of the election by the election officer through the binding dispute resolution mechanisms set forth in section 16 herein.

Section 16. Binding dispute resolution mechanism

- (a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein.
- (b) The first level of binding dispute resolution for all matters related to organizing, election procedures, alleged unfair labor practices, and discharge of Eligible Employees shall be an appeal to a designated tribal forum such as a Tribal Council, Business Committee, or Grievance Board. The parties agree to pursue in good faith the expeditious resolution of these matters within strict time limits. The time limits may not be extended without the agreement of both parties. In the absence of a mutually satisfactory resolution, either party may proceed to the independent binding dispute resolution set forth below. The agreed upon time limits are set forth as follows:
 - (1) All matters related to organizing, election procedures and alleged unfair labor practices prior to the labor organization becoming certified as the collective bargaining representative of bargaining unit Eligible Employees shall be resolved by the designated tribal forum within thirty (30) working days.
 - (2) All matters after the labor organization has become certified as the collective



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bargaining representative and relate specifically to impasse during negotiations, shall be resolved by the designated tribal forum within sixty (60) working days.

(c) The second level of binding dispute resolution shall be a resolution by either a single arbitrator or a three (3) member panel of arbitrators selected from the members of the Tribal Labor Panel as set forth in this section 16. The Tribal Labor Panel shall consist of seven (7) arbitrators appointed by the mutual agreement of the parties, or if the parties cannot mutually agree upon seven (7) members, then such members as may be mutually agreed upon by the parties shall select the remaining members, or if the parties cannot mutually agree upon any members of the Tribal Labor Panel, then each party will select two (2) members, with the four (4) members so selected by the parties selecting the remaining three (3) members.

(1) Each member of the Tribal Labor Panel shall be a member of the American Academy of Arbitrators and have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Arbitration Association.

(2) Unless either party objects, one arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three (3) member panel of the Tribal Labor Panel. Arbitrator(s) will be selected as follows:

i. In the event there is to be only one arbitrator, and the parties cannot agree on which person is to serve, each party may strike no more than three (3) names, by alternating picks. A coin toss shall determine which party may strike the first name. The parties shall repeat the process until only one name is remaining. If there is no agreement as among more than one remaining possible arbitrator, the arbitrator shall be determined by drawing lots.

ii. In the event there are to be three arbitrators, each party may strike no more than two (2) names. A coin toss shall determine which party may strike the first name. If there is no agreement as among more than one remaining possible arbitrator, the arbitrators shall be determined by drawing lots.

(3) The arbitrator(s) will render a binding decision and shall have the authority to conduct elections, determine units, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to



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fulfill its obligations under this Tribal Labor Relations Ordinance. The arbitrator(s) will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator(s) must render a written, binding decision that complies in all respects with the provisions of this Ordinance.

- (d) Under the third level of binding dispute resolution, either party may seek a motion to compel arbitration or a motion to confirm an arbitration award in Tribal Court, which may be appealed to federal court. If the Tribal Court does not render its decision within ninety (90) working days, or in the event there is no Tribal Court, the matter may proceed directly to federal court or, if such court lacks or declines jurisdiction, to the state superior court. The Tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming an arbitration award issued pursuant to the Ordinance in the applicable Tribal, federal or state court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the arbitrator(s).

Section 17. REPEALER. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed.

Section 18. SEVERABILITY. If any section, subsection, paragraph, sentence, or other portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

Section 19. EFFECTIVE DATE. This Ordinance shall take immediate effect and be enforced from and after its passage and publication according to Tribal law.

Passed by the Mashpee Wampanoag Tribal Council on June 14, 2016.




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CERTIFICATION

We, the undersigned Chairman and Secretary of the Tribal Council of the Mashpee Wampanoag Tribe hereby certify that the Tribal Council is composed of 13 members, of whom 10 constituting a quorum, were present at a regular meeting thereof, duly and regularly called, noticed, convened and held on the 14th day of June 2015, and that the foregoing Ordinance, 2016-ORD-007, was duly adopted by the affirmative vote 9 of members, with 1 opposing, and with 0 not voting.

DATED THIS 14th day of June, 2016.


Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council


ATTEST:



Marie A. Stone, SECRETARY
Mashpee Wampanoag Tribe
Notary Public, Commission Expires 04-16-2023

CERTIFICATION OF POSTING

This is to certify that the Ordinance titled 2015-ORD-007, Tribal Labor Ordinance has been posted in accordance with 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions.

DATED this 14th day of June, 2016.


Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council


Marie A. Stone, SECRETARY
Mashpee Wampanoag Tribal Council
Notary Public, Commission Expires 04-16-2023