



Leo W. Gerard
International President

January 9, 2018

U.S. House of Representatives
Washington, D.C. 20515

RE: United Steelworkers oppose inclusion of anti-worker H.R.986, Tribal Labor Sovereignty Act of 2017 in S.140

Dear Representative:

On behalf of the 850,000 members of the United Steelworkers (USW), we strongly urge you to **oppose S.140 on the House floor this week**. Rather than being identical to the Senate bill, **this version includes the anti-worker and undemocratic Tribal Labor Sovereignty Act of 2017 (H.R.986)**.

H.R.986 would exempt all employees of federally recognized Native American-owned commercial enterprises operated on Indian lands from the protections of the National Labor Relations Act (NLRA) and would authorize over 567 distinct and separate labor law jurisdictions in the United States.

To be absolutely clear, **this legislation strips workers - both Native American and non-Native American - of their NLRA protections**. While some organizations have falsely attempted to paint tribal governments as similar entities to states (which are exempt from the NLRA), tribal governments are substantially different than states in one key democratic principal: state governments allow workers an ability to vote for their legislators no matter their ancestry, while most tribal governments require blood quantum or lineal descent to determine who is eligible for membership or citizenship.

Simply put, if H.R.986 becomes law by inclusion in S.140, U.S. citizens working in the United States for tribal commercial enterprises would not be able to vote for the elected representatives who set their labor laws. These workers will lose the ability to petition the government that oversees their working conditions.

The gaming industry, which is an employer for approximately 246 of the 567 federally recognized American Indian tribes; has over 600,000 casino workers on tribal lands, the overwhelming majority of whom are not Native Americans. In 2011 before the Senate Indian Affairs Committee, the National Indian Gaming Commission testified that **the vast majority of employees (up to 75 percent) were non-tribal members**.

Our union understands the importance of the principle of tribal sovereignty; however the fundamental human rights of employees are not the exclusive concern of tribal enterprises or tribal governments. As the International Labor Organization highlighted in a letter on a previous version of this bill, “it is critical that the State (the national authority) takes ultimate responsibility for ensuring respect for freedom of association and collective bargaining rights throughout its territory”¹. That is why we believe the current test set by the NLRB is the best course of action until labor laws are strengthened in the United States.

In 2004, the NLRB under the Bush Administration ruled for the first time that Tribal casino workers should have the benefit of NLRA protections, *San Manuel*, 341 NLRB No. 138 (2204). Yet, since the *San Manuel* ruling, the NLRB has asserted jurisdiction on a case-by-case basis. In 2015, the NLRB declined jurisdiction citing the 1830 Treaty of Dancing Rabbit Creek and 1866 Treaty of Washington stating:

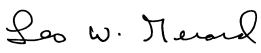
“We have no doubt that asserting jurisdiction over the Casino and the Nation would effectuate the policies of the Act. However, because we find that asserting jurisdiction would abrogate treaty rights specific to the Nation.” *Chickasaw Nation Windstar World Casino*, 362 NLRB 109 92015).

Similarly the NLRB declined jurisdiction:

“..when an Indian tribe is fulfilling a traditionally tribal or governmental function that is unique to its status, fulfilling just such a unique governmental function [*providing free health care services solely to tribal members*],” *Yukon Kuskokwim Health Corporation*, 341 NLRB 139 (2004).

The **NLRB has developed a reasonable and responsible test to determine jurisdiction**. H.R.986 creates significant confusion and jurisdictional issues over labor law enforcement and grossly undermines worker’s rights. Our union urges you to **oppose S.140, with the inclusion of H.R.986**, and asks you to instead work to expand worker’s rights not restrict them further.

Sincerely,


Leo W. Gerard
International President

LWG/cdk

¹ <http://www.usw.org/get-involved/legislative/ILO-opinion-on-Tribal-Labor-Sovereignty-Act.pdf>