

# CWA

Communications Workers of America  
Legislative Department  
Shane Larson, Director



July 21, 2015

The Honorable John Kline  
Chairman  
Committee on Education and the Workforce  
U.S. House of Representatives  
2181 Rayburn HOB  
Washington, D.C. 20515

The Honorable Robert C. "Bobby" Scott  
Ranking Member  
Committee on Education and the Workforce  
U.S. House of Representatives  
2101 Rayburn HOB  
Washington, D.C. 20515

Dear Chairman Kline and Ranking Member Scott:

On behalf of the Communications Workers of America (CWA), I am writing to express our strong opposition to H.R. 511, which is scheduled to be the subject of a markup by the Education and the Workforce Committee tomorrow. While this bill purportedly addresses issues of tribal sovereignty, it strips workers at tribal-owned and -operated enterprises their right to freedom of association and to bargain collectively.

H.R. 511 seeks to overturn a National Labor Relations Board (NLRB) decision in *San Manuel Indian Bingo and Casino*, which applied the National Labor Relations Act (NLRA) to a tribal casino enterprise. The NLRB's finding in *San Manuel* adopted a test to determine whether the NLRA is applicable to businesses operating on tribal lands--if it would "touch exclusive rights of self-governance in purely intramural matters" or "abrogate Indian treaty rights," the NLRA would not apply, but otherwise the decision will be based on a series of factors including whether an entity is a purely commercial enterprise or employs or caters to individuals who are not tribal members.

The *San Manuel* test balances two crucial issues--tribal sovereignty and the right of workers to bargain collectively. The test ensures that truly internal matters of self-governance will continue to be handled by sovereign tribes, while also ensuring that the fundamental rights of workers to organize and advocate for their own interests are properly respected. H.R. 511 would overturn this balance by exempting any enterprise or institution owned and operated by an Indian tribe and located on its land from the requirements of the NLRA – or any other guarantee of workers' fundamental right to organize and collectively bargain.

The practical impact of H.R. 511 would be to exempt a broad swath of businesses from the NLRA, even though, in many cases, they are purely commercial enterprises. For many of these companies--particularly casinos--the majority of their workforce are not members of the tribe employing them and therefore do not have full access to internal, tribal mechanisms for grieving issues or petitioning for change in tribal policies. Their only guaranteed means for a voice on the job is through the NLRA. H.R. 511 strips these workers of that coverage, with no apparent concern for how their fundamental human rights will be protected going forward.

The NLRB considered tribal sovereignty and the fundamental human right to collectively bargain as two important principles that need to accommodate one another when there is apparent conflict. *San Manuel* sought to strike the correct balance. H.R. 511, on the other hand, has little interest in any balance: workers' rights shall yield. This policy preference does not appear to be a part of any broader effort by Congress to enhance the principle of tribal sovereignty, but it does fit with the ongoing attacks on workers' rights at the federal and state levels. While we would welcome serious efforts to ensure both workers' rights and tribal sovereignty are protected, whether via the NLRA or otherwise, it is clear that respecting both principles is not at the heart of this bill.

We strongly urge you to reject H.R. 511 and to instead work to advance an agenda that protects both workers' fundamental human right to organize and tribal sovereignty. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Shane Larson", written in a cursive style.

Shane Larson  
Legislative Director  
Communications Workers of America (CWA)