



**Testimony of Rodney Butler**

**Chairman, Mashantucket Pequot Nation**

Before the House Subcommittee on Health, Employment, Labor and Pensions

On H.R. 511, The Tribal Labor Sovereignty Act of 2015

June 16, 2015

Good Afternoon Chairman Roe, Ranking Member Polis, and distinguished members of the Committee. I am Rodney Butler and I am Chairman of the Mashantucket Pequot Tribal Nation in Connecticut. I want to thank you for inviting me to testify in support of the Tribal Labor Sovereignty Act, and ask that the entirety of my written testimony (and appendix) be submitted into the record of this hearing. This legislation is critically important to protect the sovereign rights of tribal governments.

First, I would like to thank Congressman Rokita for introducing this legislation and the nearly fifty bi-partisan co-sponsors of this legislation. Indian Country has always received bi-partisan support in Congress and I hope this bill will continue that tradition.

H.R. 511, the Tribal Labor Sovereignty Act is a very straightforward bill. The legislation expressly confirms that Indian Tribes are on equal footing with state and local governments under the National Labor Relations Act (NLRA).<sup>1</sup> That is all it does. It re-affirms the fact that Tribes are sovereign governments and should be treated that way under all federal laws. The issue of tribal government parity has been a priority in Indian Country for decades. We have successfully worked with Congress to re-affirm our tribal sovereignty under the Violence Against Women Act, Federal Unemployment Taxation, General Welfare tax issues and a host of other laws. Today, we continue to fight for tribal parity on issues relating to municipal bonds, pensions, the bankruptcy code and the NLRA. I am pleased that all of these efforts have been supported in Congress on a bi-partisan basis.

However, I am concerned that some people have tried to portray this legislation as being anti-union. I wholeheartedly disagree with that assessment. I would like to share with the Committee our experience with organized labor at our Foxwoods gaming facility. In 2007, the United Auto Workers (UAW) filed a petition with the NLRB to organize the dealers at Foxwoods. Applying its wrongly decided *San Manuel*

---

<sup>1</sup> While the Nation has maintained that the NLRA should be read to include Indian tribes in the exclusion from the definition of employer, this legislation will make that clear and stop the continued application of the wrongly decided *San Manuel* decision.

standards, the NLRB asserted jurisdiction over the Mashantucket Pequot Tribal Nation and our Foxwoods casino. At that point, our Tribal Council had to make a decision – pursue this issue in the courts which would have led to years of distracting and hurtful litigation – or try to work with the UAW to convince the union that it could organize and protect collective employee rights under our tribal labor laws. Our government decided to reach out to the UAW, explain that this was an issue of tribal sovereignty, and encourage the use of tribal law to reach a solution that respected both tribal sovereignty and workers’ rights to organize. Over a period of time, we reached an agreement with the UAW to pursue collective bargaining under tribal law and entered a collective bargaining agreement with the UAW.

I think both the Tribe and the UAW believe this agreement has worked well for both sides. In fact, today three additional unions represent our government employees at Mashantucket. They include the International Union of Operating Engineers, the International Association of Firefighters and the United Food and Commercial Workers. All of these unions have collective bargaining agreements with our Tribe.

The *San Manuel* decision was not only a complete reversal of the NLRB’s recognition of tribes as sovereigns, it is also an affront to Indian Country. It suggests that Indian tribes are incapable of developing laws and institutions to protect the rights of employees who work on our reservations. Our experience proves nothing could be further from the truth. The Mashantucket Pequot Labor Relations Law protects the right of employees to organize, to vote to select union representation in a secret ballot election, and to bargain collectively with their employer. Elections are conducted and the law is enforced by the Mashantucket Employment Rights Office (MERO) – a separate government agency, currently headed up by Ms. Ursula Haerter, a labor lawyer with over 25 years of experience, including 8 years as a field examiner and attorney at the National Labor Relations Board. MERO has also promulgated guidance, recommended amendments to the statute, and conducted regular meetings with all stakeholders, including representatives of various unions and tribal employers. Similar to other public sector labor relations laws, our labor law requires the parties to negotiate in good faith, and when negotiations fail to result in a contract, the dispute may be submitted to binding interest arbitration. The law provides for dispute resolution by a tripartite panel selected by the parties, headed by a designated neutral, and numerous charges filed by unions and individual employees have been resolved as a result of this process. All these developments have been praised by unions, labor lawyers, and even former NLRB officials alike.

Our Tribe made the sovereign decision to permit collective bargaining with unions when designated by a majority of employees under our laws. It should be the right of any sovereign government to make decisions that are best for their people. H.R. 511 simply allows tribal governments to make those decisions. Section 2 of the NLRA expressly excludes the United States government and State and local governments from the Act’s jurisdiction. And that makes sense. Sovereign bodies have unique employment concerns, and the sovereign is best suited to address those concerns. We seek to be treated just like every other sovereign under the NLRA – nothing more – nothing less. That is why this legislation enjoys wide support in Indian Country. Resolutions have been passed in support of this legislation by the National Congress of American Indians and the National Indian Gaming Association.

Mr. Chairman, Indian Tribes have been recognized by the U.S. Constitution, the U.S. Congress and the Courts as being sovereign nations. The Tribal Labor Sovereignty Act simply re-affirms our sovereign rights. I urge the Committee to pass this legislation and move quickly to get it enacted into law.



Appendix to Testimony of Rodney Butler

Chairman, Mashantucket Pequot Tribal Nation

Before the House Subcommittee on Health, Employment, Labor and Pensions

On H.R. 511, The Tribal Labor Sovereignty Act of 2015

June 16, 2015

The following factual background information is intended to provide the Committee a better understanding of the Mashantucket Pequot Tribal Nation's existing legal and governmental infrastructure, which is undermined by the current misapplication of the NLRA to tribal governments.

**I. Overview of the Mashantucket Pequot Tribal Nation's Government and Legal System**

The Mashantucket (Western) Pequot Tribe, known today as the Mashantucket Pequot Tribal Nation, has existed on the North American continent as a self-governing sovereign for a millennium. The Nation continues to reside in the northeastern United States, and its Reservation ("Mashantucket") has approximately 1,600 acres of trust land within the exterior boundaries of the State of Connecticut. This land is held in trust by the United States for the benefit of the Tribe. *See* Mashantucket Indian Land Claims Settlement Act, 25 U.S.C. §§ 1751 et seq.

In the 1970s, the members of the Nation adopted a modern Constitution ("MPTN Const.")<sup>2</sup> that formally delineates the principles guiding the Nation's governance. This Constitution, along with laws enacted by the Mashantucket Pequot Tribal Council,<sup>3</sup> have created a comprehensive tribal government and legal infrastructure that includes a Tribal Council, an Elders Council, a complex judicial system, and numerous committees, departments, agencies, boards and programs that provide services directly to the tribal community.

The Nation's Constitution vests governing authority in an elected Tribal Council that is responsible for making and enforcing tribal laws and overseeing the expenditure of all tribal funds. MPTN Const. Art. VI. The Constitution also establishes an Elders Council that is vested with exclusive authority over questions of tribal membership and banishment or exclusion from tribal lands. MPTN Const. Art. XII. Pursuant to its constitutional authority, the Tribal Council has created numerous committees and departments that are charged with administering key governmental functions and delivering services directly to members of the Nation. Together, these administrative bodies comprise a comprehensive governmental infrastructure that provides invaluable governmental, legal, health, educational, cultural, economic, and social services to the Nation, its members and non-members and exercises jurisdiction over matters on tribal lands.

The Nation, through its Tribal Council and other governmental institutions, regularly engages in government-to-government dealings with the State of Connecticut, local Connecticut towns, the United States government and its agencies, and it is active internationally through its involvement with United Nations activities.

---

<sup>2</sup> The Mashantucket Pequot Constitution is available on the Mashantucket Pequot Tribal Law website at <http://www.mptnlaw.org>.

<sup>3</sup> The Mashantucket Pequot Tribal Laws are published in bound volumes by West Publishing, available on Westlaw and accessible online at <http://www.mptnlaw.org>.

Apart from its legislative and executive functions, the Nation's government maintains a comprehensive, fully functioning and independent judicial system that is empowered to address legal disputes that arise in Mashantucket or that involve the Nation or its members. See 1 M.P.T.L. The Nation's judicial system includes a trial court that hears all types of civil and criminal matters, including contractual disputes arising between the Nation and non-tribal businesses. Proceedings in the Nation's trial court are governed by published Rules of Procedure and Evidence that are modeled after the federal rules as well as the procedural rules of other Indian tribes, and the court's judges serve in accordance with the Canons of Judicial Ethics. See Mashantucket Pequot Rules of Court.<sup>4</sup> The highest level tribal court is the Court of Appeals that utilizes procedural rules and standards of review substantially similar to those found in federal appellate courts. See 1 M.P.T.L. Ch. 1 § 3. The trial and appellate level decisions are published by West Publishing and are available on Westlaw.

The Nation's courts apply the comprehensive body of law set out in the Mashantucket Pequot Tribal Laws. The MPTL include, inter alia, criminal laws, gaming laws, a tort claims act, comprehensive child welfare and domestic relations codes, a tax code, probate laws, a civil rights law, a commercial code and, most importantly for present purposes, an employment code, a labor relations law, and a law establishing the Mashantucket Employment Rights Office ("MERO"), the Nation's employment rights office. See M.P.T.L. Titles 2-6, 8, & 31-32.

In sum, the Nation operates and funds a large, functioning government that is both an expression of and a key to the Nation's sovereignty.<sup>5</sup> This government has a proven record of successfully addressing the legal and other needs and concerns of the Nation, its members, employees, vendors and other third parties who interact with the Nation, including, organized labor.

## II. MERO and the Mashantucket Pequot Labor Relations Law (MPLRL)

The Mashantucket Pequot Tribal Laws provide an extensive network of labor and employment laws that regulate employer-employee relations within Mashantucket and offer significant protections to all of the Nation's employees. A key component of this network is the Mashantucket Employment Rights Law, which the Tribal Council enacted to "promote responsible Tribal governance and self sufficiency ... by creating a centralized Mashantucket Employment Rights Office [{"MERO"}] to coordinate and regulate equitable employment" within Mashantucket. 31 M.P.T.L. Ch. 1 § 2(b)(1). The Nation created MERO to serve as a centralized office to "oversee, coordinate and enforce tribal employment laws and assist employees and employers in understanding the requirements of those laws." 31 M.P.T.L. Ch. 1 § 2(a)(4).

MERO is headed by a Director, who is charged with overseeing MERO's day-to-day administration and operations, adopting rules, regulations and procedures for the operation of MERO, and to accept and review claims and complaints that are filed with or referred to MERO. 31 M.P.T.L. Ch. 2 § 2. The Director also oversees MERO's website and the promulgation of procedural manuals, forms and instructions that are

---

<sup>4</sup> The Rules of Court and Practice can also be found on the Nation's Tribal Law website. <http://www.mptnlaw.org>.

<sup>5</sup> The Gaming Enterprise is an arm of the Nation's government established to conduct the day-to-day operations of the Nation's gaming facilities at the various properties of Foxwoods Resort Casino ("Foxwoods"). 4 M.P.T.L. Ch. 1 § 1. The revenue generated from the Gaming Enterprise is the major funding source of the Tribal Government. In fact, revenue generated by the Gaming Enterprise historically has funded 98 to 99 percent of the tribal governmental services budget – including all of the Nation's commissions, services and programs. Any stoppage or significant diminishment of the cash flow from the Gaming Enterprise would therefore have a severe detrimental impact on the Nation's ability to operate a tribal government and function as a sovereign entity. Thus, as outlined herein, like other public sector labor laws, the Nation's law prohibits strikes and provides for binding arbitration to resolve impasse. This provision is critical to the continuing operation of the tribal government.



designed to assist parties in exercising the rights guaranteed by the MPLRL.<sup>6</sup> The current MERO Director is Ms. Ursula Haerter, a Connecticut licensed attorney who has over 25 years of experience in labor relations and law practice, including more than eight years as a Field Examiner and Field Attorney for the National Labor Relations Board.

MERO plays a primary role in implementing and enforcing the Nation's Labor Relations Law, which was enacted to guarantee the Nation's employees "the right to organize and bargain collectively with their employers." 32 M.P.T.L. Ch. 1 § 3. The MPLRL allows labor organizations to be designated as the exclusive collective bargaining representatives of employees and establishes procedures for petitions, hearings, secret ballot elections, verifying election results and evaluating the appropriateness of proposed bargaining units. 32 M.P.T.L. Ch. 1 §§ 9, 12. It likewise sets out procedures for the registration of labor organizations and the licensing of business agents. 32 M.P.T.L. Ch. 1 §§ 14-15.<sup>7</sup> The MPLRL also allows either party to collective bargaining negotiations to petition MERO for binding Impasse Resolution by a three member MERO Board, selected by the parties, in the event that the parties are at impasse 150 days after they commenced bargaining. 32 M.P.T.L. Ch. 1 § 10.

In sum, the MPLRL is modeled after other public sector labor laws, is similar to the NLRA in many aspects, and essentially furthers the policies and principles that are fundamental to federal labor policy as enforced by the Board. It provides employees of Tribal Employers with protections that are in many instances identical to or, in some respects, more effective than those provided to employees of private employers under the NLRA. At the same time, the Nation's labor law protects important tribal and federal objectives in preserving and enhancing the Nation's self-governance through the use and recognition of its institutions and the preservation of its sovereignty.

As discussed in more detail below, the record indicates that MERO is an effective, independent and fair institution that efficiently resolves employee-employer matters. Indeed, labor unions have come to understand MERO's effectiveness by using the tribal system. MERO has conducted at least six elections under the MPLRL. Four unions have been certified under tribal law as the exclusive bargaining representatives of appropriate units of employees,<sup>8</sup> and the Nation has entered into collective bargaining agreements with those unions: the UAW, the UFCW and the Operating Engineers related to employees at the Gaming Enterprise and with the IAFF related to the Nation's fire department. MERO Boards have conducted Impasse Resolution hearings and received and overseen several Prohibited Practice Charges. In short, MERO works; in fact, the record to date shows that it has been more effective for tribal employees seeking a first contract than the NLRA has been for private sector employees.<sup>9</sup>

---

<sup>6</sup> All applicable statutory provisions and regulatory guidance issued by MERO are compiled on the agency's website, accessible at <http://www.mptnlaw.com/MERO/MERO.htm>.

<sup>7</sup> The United Food and Commercial Workers, United Auto Workers, International Association of Firefighters, and the Operating Engineers have registered with the Nation pursuant to 32 M.P.T.L. Ch. 1 § 14, and their representatives are licensed through MERO.

<sup>8</sup> A fifth union, an independent security guards union, was certified after a MERO election as the exclusive bargaining representative of a unit of the Nation's police officers. The union subsequently disclaimed interest.

<sup>9</sup> In 2008, the National Labor Relations Board certified the UAW as the representative of gaming employees at various Atlantic City, New Jersey casinos operated by Bally's, Trump and the Tropicana. It took approximately two-and-a-half years to reach first contracts at each, as opposed to the approximate fourteen months it took the UAW and Foxwoods to agree to a first contract under tribal law.

### III. Additional Employment Laws Enacted by the Nation

The Nation's full regime of labor and employment laws has long provided substantial employee rights and protections in addition to those secured through MERO and the MPLRL. For example, the Nation's Employee Review Code provides administrative due process and the option of judicial review to the Nation's employees who wish to challenge the termination of their employment or any suspension from employment. 8 M.P.T.L. Ch. 1. This law recognizes the governmental nature of employment throughout the nation, including at the Gaming Enterprise, by insuring due process protections when an employee's property right in his or her employment is being affected. The Nation's laws also include a Workers' Compensation Code that defines rights, liabilities and remedies for work related injuries, sets out the insurance requirements for persons engaged in business on the Reservation, and establishes a Workers' Compensation Commission that handles claims arising under this law. See 13 M.P.T.L.

Additional employee protections are provided by the Nation's Tribal ERISA ("TERISA") law, which adopts the federal ERISA law as tribal law, provides rights and protections to tribal employees covered by employer-sponsored health, retirement and other benefit plans, and provides employees or other beneficiaries of covered plans with a cause of action against the Nation in Tribal Court to challenge denial of benefits. See 15 M.P.T.L.

The Nation's laws also include the Mashantucket Pequot Civil Rights Code, which guarantees certain protections, including prohibiting the Nation or any of its arms or agencies, including the Gaming Enterprise, from denying "any person within its jurisdiction the equal protection of its laws or depriv[ing] any person of liberty or property without due process of law." 20 M.P.T.L. Ch. 1 § 1(a)(8). Under this law, a tribal employee can pursue a claim for discrimination in the workplace. *See, e.g., Barnes v. Mashantucket Pequot Tribal Nation*, 4 Mash. Rep. 477, 483-485 (2007) (addressing a Gaming Enterprise employee's racial discrimination claim, which was brought in the Mashantucket Pequot Tribal Court under Title 20 of the MPTL).

The Nation has also enacted a Tribal and Native American Preference Law that applies to all employers in Mashantucket, including the Gaming Enterprise. See 33 M.P.T.L. The Preference Law includes provisions for enforcement through MERO. 33 M.P.T.L. Ch. 1 §§ 3(a) & 9. Existing tribal law requires Tribal employers and non-tribal employers performing work on the Mashantucket Reservation, to give preference in employment opportunities regarding hiring, transfer, promotion and training to, inter alia, members of the Nation and other members of federally and state recognized Indian tribes who meet the minimum necessary requirements. 33 M.P.T.L. Ch. 1 §§ 2 & 5. Tribal law also expressly mandates that collective bargaining agreements covering employees within Mashantucket be in compliance with the preference law. 32 M.P.T.L. Ch. 1 § 9(c) & 33 M.P.T.L. Ch. 1 § 5(i).

In short, the Nation's laws and institutions provide employees of Tribal Employers with a wide array of protections and benefits comparable to those available to private employees under federal and state law while at the same time preserving the Nation's sovereign right and ability to govern its internal affairs.