

HANNAHVILLE INDIAN COMMUNITY  
TITLE V, CHAPTER 4  
LABOR RELATIONS CODE

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**HANNAHVILLE INDIAN COMMUNITY  
TITLE V, CHAPTER 4  
LABOR RELATIONS CODE**

**5.4.100 Short Title**

This code may be cited as the Hannahville Indian Community Labor Relations Code, or the Labor Relations Code.

**5.4.101 Authority; Purpose; Jurisdiction; Findings**

- (1) Authority. The Hannahville Indian Community (the “Tribe”), Tribal Council, the governing body of the Tribe, enacts this code governing employment and labor on its tribal lands pursuant to Article V of the Constitution and Bylaws of the Hannahville Indian Community and its inherent sovereign authority to govern activities on tribal lands, 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 tribal community, including members, employees, vendors, patrons and others who enter tribal lands.
- (2) Purpose. The purpose of the Hannahville Indian Community Labor Relations Code is to provide employees of employers doing business on tribal lands, which includes, but is not limited to, the Tribe as an employer solely in regard to its governmentally operated commercial enterprises, with the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between the employer, and their employees, and to protect the health, safety, political integrity and economic security of the Tribe.
- (3) Jurisdiction. The legislative and judicial jurisdiction of the Hannahville Indian Community shall extend to all lands as defined by section 5.4.102 subsections (13) and (14) including, without limitation, all persons, agencies, associations, committees, corporations, plans, organizations, or other legally cognizable entities that are present or do business on tribal lands.
- (4) Findings. The Hannahville Indian Community Tribal Council finds that:
  - (a) The public policy of the tribe is, and has been, that all employees working within tribal lands be treated fairly; that there be fair and appropriate employment practices; fair and comprehensive wages and benefits; and fair and impartial procedures for resolving employment and labor relations issues. In furtherance of this public policy, the tribe has adopted employments laws and policies governing tribal employment, and now has reviewed the employment practices and procedures of the Tribe to the end

that the Tribe now makes this Labor Relations Code applicable to all employers doing business within tribal lands, unless specifically exempted.

- (b) The Tribe, as an employer, provides excellent employment to over a thousand people on its tribal lands through its various governmental services, including, without limitation, the Hannahville Indian School and Nah Tah Wahsh Public School Academy, the Hannahville Department of Health and Human Services, the Waste Water Treatment Plant, the Island Resort and Casino gaming complex, the Sweet Grass Golf Course, the Island Oasis gasoline station and convenience store, the Hannahville Indian Community Tribal Police Department, and other departments, agencies, programs, and commercial entities. The Tribe, as a government, has provided and guaranteed, through tribal employment and labor relations codes and policies, and administrative appeal procedures, fair treatment to its employees without the intervention of a third party such as a labor organization.
- (c) The Tribe's labor relations policy is to deal directly with its employees regarding wages, benefits, hours and other terms and conditions of employment, and believes that it is in the best interests of employees and the Tribe, as an employer, to maintain that direct relationship. However, based on the recent reversal of 30 years' of precedent by a federal agency and a federal court, the Tribe acknowledges that labor organizations may seek the right to represent tribal employees pursuant to federal law, commonly known as the National Labor Relations Act (the "NLRA"), 29 U.S.C. §§ 151 *et seq.*
- (d) The NLRA was adopted in 1935 to encourage the practice of collective bargaining and to protect the exercise of self-organization by employees for the purpose of negotiation as to the terms and conditions of their employment with employers in the private sector. The NLRA expressly exempts federal, state and local governments from its definition of "employer," recognizing, among other things, that government employees provide essential services to their communities and that labor strikes could inflict unique and irreparable harm in those communities. Nonetheless, pursuant to their inherent authority, the vast majority of state governments and the federal government have adopted legislation to govern labor relations between the respective government as an employer and its employees. Generally, to protect the public interest, as well as the orderly operation and functioning of the government, such legislation limits the scope of collective bargaining, prohibits strikes by employees and creates a procedure for the resolution of labor disputes.
- (e) The NLRA and its extensive legislative history are silent in relation to its application to Indian tribal governments as employers. This is not surprising given the fact that the U.S. Congress had just addressed the status of Indian

tribes in the Indian Reorganization Act of 1934 (the “IRA”), 25 U.S.C. § 461 *et seq.*, which protects tribal self-governance and promotes tribal economic development through enterprises operated directly by Indian tribes. As a matter of federal policy, the IRA sought to achieve two distinct but inseparable objectives: tribal self-governance and tribal economic self-sufficiency. By promoting both, the IRA sought to “rehabilitate the Indian’s economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.” H.R. Rep. No. 73-804 (1934).

- (f) Since 1934, the United States government has consistently strengthened its policy of protecting tribal self-government and promoting tribal economic self-sufficiency through legislation, including, but not limited to: the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301 *et seq.*, providing that tribes in the exercise of their self-government shall observe due process and provide other rights to those coming within their jurisdiction that are analogous to those arising under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the U. S. Constitution; the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 450 *et seq.*, “the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities”; the Indian Financing Act of 1974, 25 U.S.C. § 1451 *et seq.*, “to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources”; the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 *et seq.*, “to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments”; the Indian Tribal Justice Act of 1993, 26 U.S.C. § 3601 *et seq.*, “the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government”; and the Tribal Self-Governance Act of 1994, 25 U.S.C. §§ 450a, 458aa *et seq.*, “transferring control to tribal governments...over funding and decision making for Federal programs, services, functions and activities strengthens the Federal policy of Indian self-determination.”
- (g) Given the inherent authority of the Tribe over employment and labor relations on tribal lands, and the longstanding federal policy protecting tribal self-government and promoting tribal self-sufficiency, the Tribe finds that the NLRA does not apply to the tribal government as an employer. Application of the NLRA to the tribal government as an employer would substantially impair the ability of the Tribe to exercise its sovereign authority, including the undermining of tribal employment laws and codes, subjecting the tribal government to the threat of strikes, and disrupting the tribal government’s ability to provide essential services to the community and all its employees.

- (h) The tribal government has various agencies, departments, programs and enterprises within its government, including the Island Resort and Casino gaming complex, which is an arm of tribal government and which operates under the control of, and oversight of, the Tribal Council. As required by the Indian Gaming Regulatory Act, the Tribe's gaming operation funds the tribal government, providing for the delivery of various governmental services, including, but not limited to: law enforcement, utilities, education, health, mental health, housing, the judicial system, environmental services, social services, youth services, rehabilitation services, human resources, legal services, and tribal planning. As an arm of the government, the tribal employees at the gaming enterprise are government employees.
- (i) Despite the Tribe's public policy and guarantees under tribal codes as set forth above, the Tribe has considered and has determined that it is appropriate to provide employees with a procedure under tribal law to determine whether or not they wish to be represented by a labor organization for the purposes of collective bargaining as defined in this Code.

#### **5.4.102 Definitions**

- (1) Bargain Collectively: The performance of the mutual obligation of the employer and the representative of employees in an appropriate bargaining unit to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
- (2) Employer: Any person, firm, agent, association, corporation, tribe, or other entity acting or operating in or upon tribal lands that directly or indirectly employs one or more employees to perform work.
- (3) Tribal Employer: As an employer, the Hannahville Indian Community (the "Tribe"), or any other federally recognized Indian tribe that employs persons on tribal lands.
- (4) Employee: Any person employed by an employer, including, but not limited to any person whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any person employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any person employed

by his parent or spouse, or any person having the status of an independent contractor, or any person employed as supervisor.

- (5) Tribal Employee: Any employee of a tribal employer except:
  - (a) Appointed or elected public officials of the Tribe, including but not limited to, Tribal Council members and their staff and appointees, Tribal Court Judges, Hannahville Indian Community Board of Gaming Commissioners, or any other board, commission or regulatory body of the Tribe, appointed by the Tribal Council or elected by the general membership.
  - (b) Supervisory, managerial, confidential, or professional employees, as hereafter defined.
- (6) Confidential Employee: Any employee who assists and acts in a confidential capacity to persons who formulate, determine and effectuate a tribal employer's policies with regard to confidential matters including, but not limited to, employee relations, labor relations, business plans or performance, tribal government, and other tribal interests, or who regularly substitutes for employees having such duties.
- (7) Managerial Employee; Manager: Any person who represents an employer's interest and who formulates and effectuates an employer's policies by expressing and making operative the employer's decisions.
- (8) Professional Employee: Any employee engaged in work that is:
  - (a) predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
  - (b) which includes the consistent exercise of discretion and judgment in its performance;
  - (c) is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
  - (d) requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, or which requires invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. Such employees characteristically include, but are not limited to physicians, physician assistants, registered nurses, attorneys, accountants, chefs, athletic trainers, funeral directors, and teachers.
  - (e) any employee, who has completed the courses of specialized intellectual instruction and study described in subsection (9)(d), and is performing

related work under the supervision of a professional person to qualify him or herself to become a professional employee as defined in this subsection.

- (9) Supervisory Employee; Supervisor: Any person having authority, in the interest of an employer to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or has responsibility to direct them, adjust their disputes or grievances, or, in the exercise of independent judgment, has the authority to effectively recommend such action, providing that the authority is not of a merely routine or clerical nature.
- (10) Jurisdiction: The legislative and judicial jurisdiction of the Hannahville Indian Community shall extend to all lands as defined by subsections (13) and (14) of this section and, without limitation, to all persons, agencies, associations, committees, corporations, plans, organizations, including labor organizations, or other legally cognizable entities that are present or do business on tribal lands.
- (11) Labor Dispute: Any controversy or disagreement concerning the terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in proximate relation of employer and employee.
- (12) Labor Organization: Any association, committee, organization, agency or group of employees or plan, in which employees participate that is organized or exists, in whole or in part, for the purpose of dealing with or negotiating with an employer or employers concerning any matter related to employment, including, without limitation, hours of employment, wages, rates of pay, working conditions, health or other benefits, compensation in any form, or grievances.
- (13) Reservation: The lands acquired pursuant to the Act of June 30, 1913 (38 Stat. 102) together with subsequently acquired lands held in trust for the Hannahville Indian Community, its after-acquired lands for which it has applied for trust status, and, to the extent permissible by federal law, its fee lands whether or not it has applied for trust status, together known as its jurisdictional lands or tribal lands.
- (14) Tribal Lands: The lands acquired pursuant to the Act of June 30, 1913 (38 Stat. 102) together with subsequently acquired lands held in trust for the Hannahville Indian Community, its after-acquired lands for which it has applied for trust status, and, to the extent permissible by federal law, its fee lands whether or not it has applied for trust status, together known as its jurisdictional lands, reservation lands or tribal lands.

- (15) Tribe: The Hannahville Indian Community, including, without limitation, any agency, subdivision, health clinic, social services or mental health facility, enterprise, tribal corporation, federally chartered corporation, school, arm or department owned or operated by the Hannahville Indian Community; **except that**, any legal entity organized by the Tribe under the laws of any state with a principal place of business located off tribal land shall not come within this definition.
- (16) Certification: The designation by the Tribal Court Appointed Special Master (the (“Special Master”)), of a labor organization as the exclusive representative of all employees in an appropriate bargaining unit.
- (17) Appropriate Bargaining Unit: A group of employees recognized by the by the Special Master in accordance with this Code as constituting a bargaining unit.
- (18) Exclusive Representative: A labor organization that as a result of certification under this Code, has the right to represent employees in an appropriate bargaining unit for the purpose of collective bargaining.
- (19) Impasse: After good-faith bargaining, the failure of an employer and an exclusive representative to reach agreement in the course of negotiating a collective bargaining agreement.
- (20) Lockout: An act by an employer which prevents its employees from going to work for the purpose of pressuring employees and/or their bargaining representative to accept the employer’s bargaining proposals.
- (21) Strike: An employee’s refusal, in concerted action with other employees, to report to work or his willful absence or failure, in whole or in part, from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of employment.
- (22) Tribal Court: The Hannahville Indian Community Tribal Court as created and established through the inherent sovereignty of the Tribe and by Article V, section 1(6) of the Constitution and Bylaws of the Hannahville Indian Community and chapter 1.5, section 1.501 of the Hannahville Indian Community Legal Code.
- (23) Union Dues: Monthly or other periodic membership dues, fees, assessments or other charges of any kind, or amounts or their equivalents paid or payable, directly or indirectly, to a labor organization or its agents, including, without limitation, payments to any charity or other third party in lieu of such payments to a labor organization, or any amount equivalent to a pro-rata portion of such dues, fees, assessments or other charges regularly required of members of a labor organization.

**5.4.103 Licensing of Business Agents; Qualifications; Fees; Suspension, Revocation; Appeal**

No person shall act as a business agent of a labor organization on tribal lands unless that person meets all of the following conditions:

- (1) Qualifications; Limitations. A person seeking status as a licensed business agent of a labor organization shall submit to a background check. No person shall be licensed as a business agent if that person has been convicted of, or is currently facing charges pursuant to state, tribal or federal law that is, or would be:
  - (a) A felony.
  - (b) A misdemeanor involving moral turpitude, including, but not limited to, crimes of: sexual molestation, sexual exploitation, sexual contact, prostitution, offenses committed against children; theft, fraud, uttering and publishing.
- (2) Authority; Fees. A person seeking licensure shall submit a statement signed by the president and the secretary of the labor organization that establishes the person's authority to act as a business agent for the labor organization, and shall pay a nonrefundable fee of \$50.00 as an application fee.
- (3) Affirmative Duty to Report Convictions. At all times during a period of licensure, a business agent has an affirmative duty to report to the Special Master any new charges or convictions within the guidelines of subsection (1) of this section for which he has become liable.
- (4) Term; Suspension; Revocation; Appeal.
  - (a) Term; Renewal. Licenses shall run for the calendar year in which they are issued, expiring on December 31<sup>st</sup>, but may be renewed upon payment of a renewal fee of \$50.00, unless surrendered sooner, suspended or revoked. If surrendered, suspended or revoked, the applicant must re-comply with subsections (1) and (2) of this section. Background checks are required every 5 years unless required sooner under the provisions of this Code or other applicable law.
  - (b) Suspension; Revocation; Appeal. If at any time after issuance of the license a person receives reliable information that the licensee should be deprived of his or her license based on the factors stated above, he may apply to the Special Master and the Special Master may suspend or revoke the license. A person who is denied a license, or whose license has been suspended or revoked may request a hearing before the Special Master in which he or she

may challenge the basis for the action taken. However, the required qualifications for licensure may not be waived.

- (5) Violations; Penalties. It shall be a violation of this section for any person to:
- (a) Act as a business agent for a labor organization without having obtained a valid license.
  - (b) To act as a business agent of any labor organization without the authority of the labor organization to do so.
  - (c) To make any false statement in an application for a business agent's license.
  - (d) To fail to report new charges or convictions as provided in subsection (3) of this section.

If the Special Master, after investigation and hearing determines that any person is in violation of this subsection, he may impose penalties which may include, but not be limited to, an order of exclusion from tribal lands, or if the violation affects the Tribe's gaming operation, a referral to the tribal Gaming Commission for possible exclusion from the gaming facilities. **Provided, however,** that in appropriate circumstances, this subsection shall not pre-empt the application of other tribal law.

#### **5.4.104 Registration of Labor Organization; New Information; Violations**

- (1) Registration. Every labor organization operating on tribal lands shall file a report with the Office of Legal Counsel for the Tribe, on or before 60 days after enactment of this Code and thereafter on or before December 31<sup>st</sup> of each year. The report, which shall be filed by the president of the labor organization or a duly authorized officer of the labor organization, shall contain the following information:
- (a) Name and address of the labor organization.
  - (b) Names and addresses of the president, secretary, treasurer, and business agent of the labor organization.
  - (b) Names and addresses of the national and/or international organization, if any, with which the labor organization is affiliated.
  - (c) Copy of the collective bargaining agreement(s) between the labor organization and any employer on tribal lands.

- (d) Copy of the current Constitution and By-laws of the labor organization, as well as any amendments, such as, but not limited to, the basic written rules governing the labor organization.
  - (e) Copy of the labor organization's financial report.
- (2) Submission of New Information. Within 30 days after any changes to the information as required above, the president of the labor organization shall file a notice of those changes with the Office of Legal Counsel for the Tribe, and shall provide any additional information requested.
- (3) Violations; Penalties. It shall be a violation of this subsection for any labor organization or any person acting on behalf of any labor organization to fail to register or to make any false statements on any reports, or in regard to any of the information required by this section. If the Special Master, after investigation and hearing determines that any person is in violation of this subsection, he may impose penalties which may include, but not be limited to, an order of exclusion from tribal lands, or if the violation affects the Tribe's gaming operation, a referral to the tribal Gaming Commission for possible exclusion from the gaming facilities. **Provided, however,** that in appropriate circumstances, this subsection shall not pre-empt the application of other tribal law.

**5.4.105 Certification; Elections; Labor Organization Designation as Exclusive Representative; Appropriate Bargaining Unit**

- (1) Representation Certification Petition, Labor Organization. A person, a registered labor organization, or a licensed agent of a labor organization may file a certification petition with the Tribal Court Special Master stating that 30% or more of employees in an appropriate bargaining unit desire to be exclusively represented for the purposes of collective bargaining within the unit and request designation of said organization as the exclusive representative. The petition must either contain the signatures of 30% of employees in an appropriate bargaining unit, or be accompanied by the submission of authorization cards from at least 30% of said employees. The petition shall also clearly designate each job category or position that the labor organization states should be included in the bargaining unit.
- (2) Management, Employer Petition. An employer may file a petition with the Tribal Court Special Master requesting that an election be held concerning the certification of a union as the exclusive representative of an appropriate bargaining unit. It is not necessary that the employer allege an unfair labor practice or other wrongdoing on the part of the union in the petition.
- (3) Receipt of Petition by Special Master; Objections; Hearings.

- (a) Review of Petition. Upon receipt of the petition, the Special Master shall review the petition for compliance with this Code and other tribal law, consider any issues raised or objections filed concerning the petition or the appropriateness of the bargaining unit and conduct a secret ballot election.
- (b) Hearings. The Special Master shall have authority to convene a hearing for the purpose of addressing any and all issues related to the petition. At the hearing the parties shall have the opportunity to present evidence on any and all issues relating to the petition, to submit briefs, and engage in oral argument. An appeal may be filed from the decision of the Special Master to the Tribal Court and its decision shall be final. The Tribal Court shall not overturn the decision of the Special Master unless the Tribal Court determines that the decision is without basis in law or fact.
- (c) Secret Ballot Election. If a determination has been made that all issues have been resolved in regard to the petition, the Special Master shall arrange for a secret ballot election. The ballot shall contain the name of any labor organization submitting a petition in compliance with subsection (2)(a) of this section, and shall contain clear language providing the employees who signed the petition or the authorization cards with a choice to either select the labor organization as the exclusive representative for the employees in the appropriate bargaining unit or to choose not to be represented by any labor organization. Upon request by the Special Master, the secret ballot election may be overseen physically by the Hannahville Indian Community Gaming Commission or the Hannahville Indian Community Tribal Police Department, or both, to assure the integrity of the registration process, the count, and the safety of all parties.
- (d) Election Result; Appeal. If a majority (50% plus one) of all eligible employees vote in favor of certification of a labor organization, the Special Master shall certify the labor organization as the exclusive bargaining representative for the appropriate bargaining unit. If there is not a majority vote, the labor organization shall not be so certified. If either the employer or the labor organization has a good faith reason to believe that the election was not conducted in a fair and reasonable manner, the Special Master may, in his or her discretion, conduct an evidentiary hearing to determine the matter. An appeal may be filed from the decision of the Special Master to the Tribal Court and its decision shall be final. The Tribal Court shall not overturn the decision of the Special Master unless the Tribal Court determines that the decision is without basis in law or fact.
- (e) Time Limitation. No election shall be directed or held in respect to any bargaining unit for which an election has been held in the 12 month period preceding the proposed certification election.

(f) Appropriateness of Bargaining Unit. In determining the appropriateness of a bargaining unit, the Special Master shall consider, but not be limited to, the following:

[1] Whether or not the bargaining unit is based on occupational groups or groups of employees who share clear and identifiable communities of interest in terms and conditions of employment and related personnel matters and policies.

[2] The effects of over-fragmentation.

[3] Principles of efficient administration of the tribal government; and

[4] Any history of collective bargaining for tribal employees.

**Provided, that** the Special Master shall not decide that any unit is appropriate if:

(g) Professional and Non-Professional Employees. A labor organization shall not be certified as the representative of employees in a bargaining unit if such unit includes professional and non-professional employees unless a majority of the professional employees vote for inclusion in a separate vote.

(h) Guards or Other Security or Surveillance Personnel. A labor organization shall not be certified as the representative of employees in a bargaining unit of guards, security or surveillance personnel if such organization admits to membership, or is affiliated directly or indirectly with an organization that admits to membership employees other than guards, security or surveillance personnel.

#### **5.4.106 Decertification of Exclusive Representative**

(1) Decertification Petition. A person, an employer, the Tribe, or a labor organization may initiate decertification of a labor organization as the exclusive representative of employees in a bargaining unit if 30% or more of employees in an appropriate bargaining unit no longer desire to be exclusively represented for the purposes of collective bargaining within the unit by filing a petition with the Special Master. The Special Master shall proceed as provided in respect to a certification petition and shall conduct a decertification election in the same manner as a certification election is conducted. A union will be decertified if a majority. (50% plus one) of the employees in the appropriate bargaining unit vote in favor of decertification of the labor organization.

(a) Existing Collective Bargaining Agreement; Decertification. Where there is an existing collective bargaining agreement in effect, a request for decertification shall be made to the Special Master no earlier than 90 days and no later than 45 days before the expiration of the collective bargaining

agreement, or at any time after the agreement has expired. **Provided, however,** that if the term of a collective bargaining agreement is more than 3 years, a request for decertification may be brought at any time after the expiration of the third year.

**5.4.107 Employees, Employers, Labor Organizations; Rights and Duties**

- (1) Employees; Freedom of Choice. Employees, including tribal employees, as defined in this Code, shall have freedom of choice to refrain from engaging in self-organization, from forming, joining, or assisting labor organizations, from bargaining collectively through representatives of their own choosing, and from engaging in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to engage in any or all such activities except as prohibited by this Code and the Hannahville Indian Community Right to Work Code, Title V, Chapter 3, § 5.3.100 *et seq.*
- (2) Employer; Labor Organization; Freedom of Speech. The expression of any opinion, view, fact, or the presentation of any argument for or against a labor union by an employer or a labor organization, or the dissemination of information, whether in oral, written, graphic, electronic or visual form, shall not constitute an unfair labor practice under any provisions of this Code or other tribal law, provided that such expression contains no promise of benefit or threat of reprisal.
- (3) Labor Organization; Recognition by Employer. An employer subject to this Code shall recognize a labor organization that has been designated by the Special Master as the exclusive representative of the majority of employees in an appropriate bargaining unit as the exclusive bargaining agent for the employees of that unit.
- (4) Labor Organization; Exclusive Bargaining Representative; Duty to Negotiate. A labor organization that has been designated by the Special Master as the exclusive bargaining representative of employees in an appropriate bargaining unit shall have the right and duty to act for, fairly represent, and negotiate agreements covering all employees in the unit without discrimination and without regard to their labor organization membership.
- (5) Employee; Right to Directly Present Grievance to Employer. An employee represented by a labor organization may at any time present a grievance directly to an employer, and the employer may address the grievance directly with the employee without the intervention of a labor organization, provided that the resolution of the grievance may not violate the provisions of a collective bargaining agreement then in effect. The employee shall notify the appropriate labor organization of the grievance and its resolution.

#### 5.4.108 **Collective Bargaining; Exceptions**

- (1) Duty to Bargain Collectively. It is the duty of employers and designated and duly certified exclusive representatives of employees (the “parties”), that are subject to this Code to meet at reasonable times and confer in good faith with respect to wages, hours, benefits, and other terms and conditions of employment, except for those matters that are excluded from collective bargaining under tribal law, and to execute a contract incorporating any agreement reached, if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession or agree to a proposal that would contradict or violate tribal law.
- (2) Modification or Termination of Collective Bargaining Agreement. If there is in effect a collective bargaining agreement covering employees, the duty to bargain collectively shall also mean that no party to such agreement shall terminate or modify the agreement, unless the party desiring such modification or termination does the following:
  - (a) No later than sixty days before the expiration of an existing agreement, serves a written notice upon the other party to the agreement specifying the proposed modification or termination; or, if there is no expiration date, serves such written notice no later than 60 days prior to the time it is proposed that such modification or termination is to take effect.
  - (b) Complies with the provisions of this Code prohibiting strike, lockout, work slow-downs, or other prohibited practices.
- (3) Exceptions; Hannahville Indian Community Tribal Gaming Commission or Other Tribal Gaming Regulatory Authority; Application of TERO; Union Security Clauses; the Tribe, Other Tribal Governments.
  - (a) Tribal Gaming Regulatory Authority. Nothing contained in this Code shall in any way diminish the authority of the Tribe, the Hannahville Indian Community Tribal Gaming Commission, or any other agency, commission or regulatory body established by the Tribe, to regulate the conduct of gaming on tribal lands and safeguard the integrity of gaming, including the prevention of illegal activities or influences affecting gaming establishments owned by the Tribe. Further, nothing in tribal law or this Code shall require a tribal employer to bargain collectively concerning regulatory issues, including, but not limited to:
    - [1] The enforcement of all rules, whether in laws, rules, ordinances, policies or procedures, with respect to the Tribe’s gaming facilities’ operations, or the power to conduct investigations and hearings in respect thereto.

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- [2] Ensuring the physical safety of gaming operation patrons and employees, and any other person while in the Tribe's gaming facilities.
  - [3] Physically safeguarding assets transported to, within, and from the Tribe's gaming facilities.
  - [4] Preventing illegal activity from occurring within the tribe's gaming facilities or gaming operations, including, but not limited to, the maintenance of employee procedures and surveillance systems.
  - [5] Recording of any and all occurrences that deviate from normal operating policies and procedures, including the maintenance of a closed circuit surveillance system within the Tribe's gaming facilities.
  - [6] Consistent with industry practice and in accordance with tribal law, the establishment of employee practices and procedures designed to permit detection of any irregularities, such as, but not limited to, cheating, theft, fraud, alcohol or drug use while on the premises, or other similar activities.
  - [7] The conduct of audits of the Tribe's gaming facilities.
  - [8] The specifications, rules, standards and procedures for each game.
  - [9] The number or types of games offered.
  - [10] The maintenance of the cashier's cage.
  - [11] The minimum employee and supervisor staffing requirements related to the Tribe's gaming facilities.
- (b) Tribal Employment Rights Ordinance (TERO). Pursuant to existing tribal law, Title V, chapter 1, The Hannahville Indian Community Tribal Employment Rights Ordinance (the "TERO"), and consistent with federal law, employers on tribal lands are required to give preference in employment opportunities to tribal members and other Indians. Such opportunities include, but are not limited to, hiring, training, transfers, promotions, and retention. Nothing contained in this Code or other tribal law shall be construed to require or permit an employer to bargain concerning the requirements imposed upon employers who are subject to the TERO or other tribal law. The TERO shall preempt any provision or construction of any provision of this Code or other tribal law in regard to Indian or tribal preference.
- (c) Union Security Clauses. Nothing in this Code or other tribal law shall require an employer to bargain concerning any union security clause, such

as union shop, agency shop, maintenance of union membership, and union dues check-off provisions. The obligation of an employer to bargain collectively pursuant to this Code shall not be construed as authorizing the employer and a labor organization to bargain and enter an agreement that would be, or is in conflict with the provisions of this Code, or any other tribal law or ordinance, including, but not limited to the Hannahville Indian Community Right to Work Code, Title V, chapter 3.

- (d) The Tribe; Other Tribal Governments. As governmental employers, and except as otherwise provided in this Code, neither the Tribe, as defined in this Code, nor any other federally recognized tribal government, shall be required to bargain collectively in respect to employees who are engaged in work that is traditionally regarded as governmental in nature.

#### **5.4.109 Prohibited Practices; Employer; Labor Organization**

- (1) Employers; Prohibitions. Employers who are subject to this Code are prohibited from:
  - (a) Interference with Employee Rights. Interfering with, restraining or coercing employees in the exercise of their rights under this Code or any other provision of tribal law, including the Hannahville Indian Community Right to Work Code, Title V, Chapter 3.
  - (b) Interference with Labor Organization. Dominating, interfering with the formation, existence or administration of any labor organization registered in accordance with the provisions of this Code.
  - (c) Discrimination. Discriminating in regard to hire, promotion or tenure of employment or any term or condition of employment because of an employee's exercise of rights under this Code, including because an employee has given information or testimony, signed or has filed an affidavit, petition, grievance, claim or complaint pursuant to the laws of the Hannahville Indian Community. **Provided that**, the application of The Hannahville Indian Community Tribal Employment Rights Ordinance (the "TERO") shall not be impaired by the requirements of this provision or any other provision of tribal law.
  - (d) Good Faith Bargaining; Refusal. Refusing to bargain collectively in good faith with a labor organization that has been designated under this Code as the exclusive representative of employees in an appropriate bargaining unit.
  - (e) Noncompliance; Valid Collective Bargaining Agreement. Refusing to comply with the terms of a valid collective bargaining agreement that has been entered into between an employer and the exclusive representative pursuant to this Code.

- (f) Lockout. Causing, instigating, or engaging in a lockout of its employees.
- (2) Labor Organizations; Prohibitions. Labor organizations and their agents that are subject to this Code are prohibited from:
  - (a) Interference with Employee Rights. Interfering with, restraining or coercing employees in the exercise of their rights under this Code or any other provision of tribal law, including, but not limited to, the Hannahville Indian Community Right to Work Code, Title V, Chapter 3.
  - (b) Restraint, Coercion in Selection of Exclusive Representative. Restraining or coercing an employee in his selection of an exclusive representative for purposes of collectively bargaining, or the adjustment of grievances.
  - (c) Discrimination. Discriminating against any employee with regard to labor organization membership, or because of race, color, religion, creed, age, sex, national origin, or membership in the Tribe or in a tribe.
  - (d) Competing Labor Organizations. Interfering with, dominating, coercing an employer to recognize a particular labor organization as the representative of employees if another labor organization has been certified as the exclusive representative of employees in an appropriate bargaining unit under the provisions of this Code.
  - (e) Refusal; Good Faith Bargaining. Refusing to bargain collectively in good faith with an employer, if it has been designated as the exclusive representative of employees in an appropriate bargaining unit under the provisions of this Code.
  - (f) Noncompliance; Valid Collective Bargaining Agreement. Refusing to comply with the terms of a valid collective bargaining agreement that has been entered into between an employer and the exclusive representative pursuant to this Code.
  - (g) Influence; Tribal Elections. Attempting to influence the outcome of any tribal election in any manner; **provided however**, that this subsection does not apply to a tribal member employee acting in his or her individual capacity.
  - (h) Picketing. All picketing shall occur off tribal lands in accordance with the laws and regulations of the local governmental authority.
  - (i) Fair Representation; Breach. Breaching the duty of fair representation as provided in § 5.4.107(4) of this Code.

- (j) Strike. Causing, encouraging, instigating, or engaging in a strike or work slow-down of any kind.

#### **5.4.110 Dispute Resolution, Prohibited Practices; Claim; Complaint**

- (1) Court Appointed Special Master; Tribal Court. A complaint may be filed with the Tribal Court, which shall appoint an impartial Special Master (the “Special Master”), with substantial experience in labor relations, labor law, federal Indian law, and the laws of this tribe, to assume the responsibilities and duties of determining and hearing the claim. The Special Master shall be an attorney at law and shall be in good standing before the bar of the state in which he or she is licensed. The complaint shall state with specificity the alleged prohibited practices that have been, or are being committed.
  - (a) Special Procedures. The Tribal Court may adopt special procedures for these claims. If no special procedures are adopted by the Tribal Court, the case shall proceed in the same manner as any other civil matter.
  - (b) Decision; Cease and Desist Orders. If, after all the evidence is considered and arguments have been heard, the Special Master determines that a prohibited practice has been or is being committed, it shall state its findings of fact and conclusions of law, and shall issue and serve on the party committing the prohibited practice an order requiring it or him/her to cease and desist from such prohibited practice. Such other affirmative action may be ordered as will effectuate the policies of this Code and other tribal law, including, but not limited to the following:
    - [1] Withdrawal of certification of a labor organization established or assisted by any action defined in this Code as a prohibited practice.
    - [2] Reinstatement of an employee discriminated against in violation of the Code or other tribal law, with or without back pay.
    - [3] Ordering other relief calculated to make a person whole; **except that**, there is no authorization for the award of damages or other compensation for emotional distress, pain, or suffering.
    - [4] Attorney’s fees and reasonable expenses may be awarded to the prevailing party where the opposing party’s position was not substantially justified and no special circumstances make the award unjust.
  - (c) Dismissal. If, after consideration of all the evidence and arguments have been heard, the Special Master determines that a prohibited practice is not being, or has not been committed, it shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint. If it

finds that the claim was frivolous and had no basis in law or in fact, the Special Master may order the claimant to pay the costs and reasonable attorney's fees of the other party.

- (d) Final Decision; Appeal. The decision of the Special Master shall become a final decision of the Tribal Court unless an appeal is filed with the Tribal Court and the Tribal Court determines that the decision is without basis in law or fact.
- (e) Sovereign Immunity; Limited Waiver. The Hannahville Indian Community expressly waives its sovereign immunity from suit to allow claims alleging violations of this Code against the Tribe. **Provided, however,** that this waiver shall not be construed as a waiver of the sovereign immunity of the Tribe in state or federal court, or in any other forum. **Provided further,** that this waiver shall not be construed nor shall such grant be deemed a consent by the Community to the levy of any judgment, lien, or attachment upon the trust or other property of the Community other than upon income or chattels specifically pledged or assigned.

**5.4.111 Timetable, Collective Bargaining Negotiations; Dispute and Impasse Resolution.**

- (1) Negotiations Timetable. Either an employer or a labor organization that has been designated as the exclusive bargaining representative for an appropriate bargaining unit under this Code that desires to open negotiations with respect to an original or successor collective bargaining agreement shall serve written notice upon the other party evidencing that intent. For successor collective bargaining agreements, the notice shall be served upon the other party no earlier than 120 days prior to the expiration of the existing collective bargaining agreement and no later than 60 days prior to the expiration. Negotiations shall begin within 30 days of effective service, unless the parties mutually agree to a different date.
- (2) Mediation. Upon the joint request of both parties at any time after negotiations have begun, the Special Master may appoint a mediation panel to assist the parties in continuing the negotiations and reaching an agreement, or the parties may mutually agree to the designation of a single mediator, selected by them.
- (3) Impasse; Complaint; Special Master; Arbitration; Proposal; Resolution. If the negotiating parties cannot reach an agreement within 150 days after negotiations have begun, either party may file a complaint with the Tribal Court and the Special Master shall hear all issues upon which the parties cannot agree to resolve the impasse. Upon motion by either of the parties, the Special Master may appoint an arbitrator using the procedures of the voluntary arbitration rules of the American Arbitration Association. The procedure before the Special Master or arbitrator is:

- (a) Proposal. Both parties shall submit to the Special Master or arbitrator, and to each other, a proposal setting forth their respective positions in regard to how each of the unresolved issues should be resolved.
- (b) Hearing; Evidence; Briefs. A hearing shall be convened to allow the parties to provide evidence, submit written briefs, and oral argument. The arbitration record shall be officially closed at the later of the close of the hearing or the receipt of briefs by the Special Master or arbitrator.
- (c) Limitation of Authority of Special Master, Arbitrator; Award. The authority of the Special Master or arbitrator is limited to selecting one party or the other's complete proposal and an award shall be issued within 45 days of the close of the record.
- (d) Costs. The costs of the Special Master or arbitrator and any fees associated with the proceeding shall be shared equally by the parties.
- (e) Arbitration; Sovereignty Preserved. The arbitration provisions of this section shall not be construed to expand the limited express waiver of tribal sovereignty given in § 5.4.110(1)(e) of this Code.

**5.4.112 Severability.**

If any provision of this Code, or its application to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not effect the remaining provisions or applications of this Code, and the same shall continue in full force and effect.