

**TITLE 32. MASHANTUCKET PEQUOT LABOR RELATIONS LAW**

**CHAPTER 1.**

32 M.P.T.L. ch. 1 § 1

**§ 1. Title; Authority**

This Law may be cited as the "Mashantucket Pequot Labor Relations Law". This Law is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket Pequot Tribe, to regulate employment and labor relations within the Reservation. Further, the Tribe has the inherent authority to exclude persons from the Reservation and to place conditions on entry and continued presence on the Reservation, and to govern conduct within the Reservation.

32 M.P.T.L. ch. 1 § 2

**§ 2. Findings**

The Mashantucket Pequot Tribe, through the Mashantucket Pequot Tribal Council, finds that:

a. The public policy of the Tribe is that all employees working within Tribal territory 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 employment laws governing Tribal employment, and the Judicial and Administrative Support Committees of the Tribal Council recently reviewed the employment practices and procedures applicable to all employers on the Reservation and developed a phased approach to create the Mashantucket Employment Rights Office and related labor and employment laws. Based upon those recommendations, the Tribal Council adopted Title 31 of the Mashantucket Pequot Tribal Laws, establishing the Mashantucket Employment Rights Office, to fully regulate employment and labor relations on the Reservation and to provide administrative review and enforcement of Tribal employment and labor relations laws.

b. The Tribe, as an employer, provides excellent employment to thousands of people on its Reservation through the Mashantucket Pequot Gaming Enterprise, the Mashantucket Pequot Museum & Research Center, the Pequot Pharmaceutical Network, the Child Development Center, and other departments, divisions, entities or enterprises of the Tribe. The Tribe, as a government, has guaranteed, through Tribal employment and labor relations laws and policies, fair treatment to its employees.

c. Employees have the right under Tribal law to form, join, or assist Labor Organizations, to engage in collective bargaining and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as specifically provided in this Law and the right to refrain from any such activities. 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 ("NLRA") 29 U.S.C. §§ 151-169.

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 negotiating 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 harms 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 their respective governments as employers and their 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 ("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 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 Tribal Justice Act of 1993, 26 U.S.C. § 3601 ("the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government"); the Indian Financing Act of 1974, 25 U.S.C. § 1451 ("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 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"); and 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").

g. Given its inherent authority over employment and labor relations on the Reservation, the tribal regulation of employment on the Reservation, 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 undermining Tribal employment laws, subjecting the Tribal government to the threat of strikes, and disrupting the Tribal government's ability to provide essential services to the community.

h. The Tribe has various departments, subdivisions and agencies within its government, including the Mashantucket Pequot Gaming Enterprise, an arm of the Tribal government, which operates (under the Tribal Council's control and oversight) the Tribal gaming operation known as Foxwoods Resort Casino. As provided by the Indian Gaming Regulatory Act, the Tribe's gaming operation funds the tribal government including various governmental services such as police, fire, utilities, education, the judicial system, environmental, health, social services and parks and recreational facilities. As an arm of the government, the Tribal Employees at the Mashantucket Pequot Gaming Enterprise are government employees and have a recognized property right in their employment through various decisions of the Mashantucket Pequot Tribal Court. See *Johnson v. Mashantucket Pequot Gaming Enterprise*, I MPR 15 (1996).

i. The Tribe has considered and determined that it is appropriate to provide Tribal Employees with a procedure under Tribal law to determine whether they wish to be represented by a Labor Organization for the purposes of collective bargaining as defined in this Law.

32 M.P.T.L. ch. 1 § 3

### **§ 3. Purpose**

The purpose of the Mashantucket Pequot Labor Relations Law is to provide Tribal Employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between the Tribe as an employer and Tribal Employees, and to protect the health, safety, political integrity and economic security of the Tribe.

32 M.P.T.L. ch. 1 § 4

### **§ 4. Definitions**

a. "Appropriate bargaining unit" means a group of Tribal Employees designated as such by the MERO in accordance with the provisions of this Law and particularly ch.1 § 12(f) for the purpose of collective bargaining.

b. "Business Agent" means a person who, regardless of title, acts on behalf of a Labor Organization in its dealings with employees and/or employers. A Business Agent is generally employed by the Labor Organization and does not include a person who acts on behalf of a Labor Organization with respect to the person's co-workers or employer.

c. "Certification" means the designation by the MERO of a Labor Organization as the exclusive representative for all Tribal Employees in an appropriate bargaining unit.

d. "Collective bargaining" is defined in ch.1 § 9 of this Law.

e. "Confidential employees" means any person who assists and acts in a confidential capacity to persons who formulate 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 those who regularly substitute for employees having such duties.

f. "Exclusive bargaining representative" means a Labor Organization that, as a result of certification under this Law, has the right to represent Tribal Employees in an appropriate bargaining unit for the purpose of collective bargaining.

g. "Impasse" means failure of a Tribal Employer and an exclusive bargaining representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

h. "Labor Organization" means any lawful organization whose primary purpose is the representation of employees in collective bargaining.

i. "Lockout" means an act by a Tribal Employer which prevents its employees from going to work for the purpose of pressuring Tribal employees and/or their exclusive bargaining representative to accept the Tribal Employer's bargaining proposals.

j. "Managerial employees" or "manager" means any person who represents a Tribal Employer's interest and who formulates and effectuates a Tribal Employer's policies by expressing and making operative the decisions of the Tribal Employer.

k. "MERO" means the Mashantucket Employment Rights Office established pursuant to Title 31 of the Mashantucket Pequot Tribal Laws.

l. "MERO Board" means an ad hoc decision-making body formed in accordance with this Law.

m. "Person" means a natural person.

n. "Reservation" means the Mashantucket (Western) Pequot Reservation, as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe or any other area subject to the Tribe's jurisdiction.

o. "Special Master" means a qualified impartial person with substantial experience as a neutral decision maker in the resolution of labor disputes and who has experience in, or has attended training in, Tribal law. The Special Master shall be designated in each matter by the Tribal Court selecting from a panel of Special Masters appointed by the Tribal Council. Panel members shall be selected from among arbitrators in the Northeastern region of the United States who are members of the National Academy of Arbitrators, and who have been designated as neutral by the MERO following notice and opportunity to comment. A bona fide objection to the neutrality of a proposed member shall preclude his or her selection for the panel.

p. "Strike" means a Tribal Employee's refusal, in concerted action with other Tribal employees, to report for duty or his willful absence 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 Tribal employment.

q. "Supervisory employees" or "supervisor" means any person having authority, in the interest of a Tribal Employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly 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.

r. "Tribal Court" means that Mashantucket Pequot Tribal Court as created and established by Title 1 of the Mashantucket Pequot Tribal Laws.

s. "Tribal Employee" means any employee of a Tribal Employer except:

1. Appointed or elected officials of the Tribe, including but not limited to Tribal Councilors and their staff, Tribal Court Judges, the Mashantucket Pequot Tribal Gaming Commissioners, the Workers Compensation Commissioner, or officials of any other commission or regulatory body of the Tribe, or
2. Supervisory employees, Managerial employees, or Confidential employees (as those terms are defined herein).

t. "Tribal Employer" or "Tribe" means the Mashantucket (Western) Pequot Tribe, also known as the Mashantucket Pequot Tribal Nation, including any subdivision, agency, arm, department, entity or business thereof, but shall not include any entity created by the Tribe under the laws of any state and which is located principally outside of the Reservation of the Tribe.

u. "Tribal Member" means a duly enrolled member of the Mashantucket (Western) Pequot Tribe.

32 M.P.T.L. ch. 1 § 5

#### **§ 5. Rights and Duties of Tribal Employers, Tribal Employees, and Labor Organizations**

a. Tribal Employees shall have the right of free choice to refrain from or engage in self-organization, from forming, joining, or assisting labor organizations, from bargaining collectively through representatives of their own choosing, 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.

b. When a Labor Organization has been designated by the MERO through the processes provided hereunder as the representative of the majority of Tribal Employees in an appropriate bargaining unit, that Labor Organization shall be recognized by the Tribal Employer as the exclusive bargaining representative for the Tribal Employees of such unit.

c. When a Labor Organization has been designated in accordance with the provisions of this Law as the exclusive bargaining representative of Tribal

Employees in an appropriate bargaining unit, it shall have the right to act for and to negotiate agreements covering all Tribal Employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to labor organization membership; and such Labor Organization shall have the duty of fair representation to the employees in that unit.

d. A Tribal Employee represented by a Labor Organization may at any time present a grievance directly to a Tribal Employer and the Tribal Employer may address said grievance directly with the Tribal Employee without intervention of a Labor Organization; provided that the resolution of such grievance may not violate the terms of a collective bargaining agreement then in effect and the exclusive bargaining representative has been given the opportunity to be present at the adjustment of said grievance.

e. The Tribal Employer and such Labor Organization as has been designated as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit, through appropriate officials or their representatives, shall have the duty to bargain collectively, as defined in Section 9 of this Law.

32 M.P.T.L. ch. 1 § 6

#### **§ 6. Prohibited Practices**

a. A Tribal Employer shall not:

1. Interfere with, restrain or coerce Tribal Employees in the exercise of their rights set forth in this Law;
2. Dominate or interfere with the formation, existence or administration of any Labor Organization;
3. Discriminate in regard to hire or tenure of employment or any term or condition of employment because of the Tribal Employee's exercise of rights under this Law, including because a Tribal Employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony or filed a claim or charges under this Law;
4. Refuse to bargain collectively in good faith with a Labor Organization that has been designated in accordance with this Law as the exclusive representative of the Tribal Employees in an appropriate bargaining unit;
5. Refuse to comply with a collective bargaining agreement that has been entered into by the Tribal Employer and the exclusive bargaining representative.

b. A Labor Organization shall not:

1. Interfere with, restrain or coerce any Tribal Employee in the exercise of any right set forth in this Law;

2. Restrain or coerce a Tribal Employer in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances;
3. Discriminate against a Tribal Employee with regard to labor organization membership, or because of race, color, religion, creed, age, sex, national origin, membership in the Tribe or a Native American Tribe, or on any other basis protected under Tribal law;
4. Force or require a Tribal Employer to recognize or bargain with a particular Labor Organization as the representative of Tribal Employees if another Labor Organization has been certified as the exclusive bargaining representative of such Tribal Employees under the provisions of this Law;
5. Refuse to bargain collectively in good faith with a Tribal Employer, if it has been designated as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit under the provisions of this Law;
6. Refuse or fail to comply with a collective bargaining or other agreement with a Tribal Employer;
7. Attempt to influence the outcome of a Tribal government election in any manner, provided, however, that this subsection does not apply to a Tribal Employee who is a Tribal Member acting in his or her individual capacity;
8. Picket homes or private businesses of elected Tribal officials or employees of the Tribe;
9. Breach its duty of fair representation as provided in ch. 1 § 5(c) of this Law.

32 M.P.T.L. ch. 1 § 7

**§ 7. Dispute Resolution for Prohibited Practices Questions.**

a. Filing a Claim; Adjudication of Claim. When a question arises as to whether a practice prohibited by this Law has been committed, a claim may be filed with the MERO for a determination of whether the prohibited practice alleged has been or is being committed.

b. Decisions and Orders. If, after all evidence is considered and arguments heard, the Special Master or the MERO Board, as the case may be, 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 a decision and order requiring it to cease and desist from such prohibited practice, and shall take such further affirmative action as will effectuate the policies of this Law including, but not limited to:

- (1) reinstatement of an employee discriminated against in violation of this Law, with or without back pay; and

(2) ordering relief that will make a person whole; provided that nothing herein shall authorize awarding damages for emotional distress or pain and suffering and no violation of law shall be found based on any prohibited practice occurring more than one hundred eighty (180) days prior to the filing of the claim with the MERO.

c. Dismissal. If, after all evidence is considered and arguments heard, the Special Master or the MERO Board, as the case may be, determines that a prohibited practice has not been or is not being committed, it shall state its findings of fact and conclusions of law and shall issue a decision and order dismissing the claim.

d. Sanctions for Frivolous Conduct. If it is ultimately determined that a claimant or respondent has engaged in frivolous conduct, including advancing a claim or defense that had no reasonable basis in fact or law, the Special Master or the MERO Board, as the case may be, may order the party engaging in such conduct to pay the costs and reasonable attorneys' fees of the other party or parties.

e. Appeals. Any final determination, decision, order or dismissal pursuant to this § 7 may be appealed to Tribal Court.

32 M.P.T.L. ch. 1 § 8

#### **§ 8. Free Speech Provision**

The expressing of any views, argument, or opinion by a Tribal Employer or a Labor Organization, or the dissemination thereof, whether in verbal, written, printed, graphic, or visual form, shall not constitute or be evidence of a prohibited practice under any of the provisions of this Law, if such expression contains no threat of reprisal or promise of benefit.

32 M.P.T.L. ch. 1 § 9

#### **§ 9. Collective Bargaining**

a. Duty to Bargain Collectively. To bargain collectively is the performance of the mutual obligation of a Tribal Employer and the designated exclusive bargaining representative of Tribal Employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, except for those matters excluded from collective bargaining as provided in this Law, or the negotiation of an agreement or any question arising there under, 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 or to agree to a proposal that would contradict or violate Tribal law. Nothing in Tribal law shall be construed to preclude a Tribal Employer and the designated exclusive bargaining representative of Tribal Employees from negotiating under Tribal law a procedure for binding resolution of contractual disputes, including disputes related to the discipline or discharge of Tribal Employees; provided that any such procedure shall provide protection for the due process rights of Tribal Employees equal to or greater than the protections provided under Title 8 M.P.T.L.; and provided further, that any bargaining unit employee who has a right to review



under the Board of Review process pursuant to Title 8, shall have the right to elect whether to proceed under the Board of Review or, alternatively, elect to proceed under the procedure established for resolution of contractual disputes pursuant to a collective bargaining agreement.

b. Exceptions Concerning Tribal Gaming Regulatory Authority. Nothing contained in this Law shall in any way diminish the authority and power of the Mashantucket Pequot Tribal Gaming Commission or any other agency, commission or regulatory body established by the Tribe to regulate the conduct of gaming on the Reservation and safeguard the integrity of the gaming including the prevention of illegal activity or influences affecting the gaming on the Reservation. Further, nothing contained in this Law or this section shall require a Tribal Employer to bargain concerning gaming regulatory issues including but not limited to:

1. The enforcement of all rules, whether in laws, rules, ordinances or procedures, with respect to the gaming operation and facility, and the power to conduct investigations and hearings with respect thereto;
2. Ensuring the physical safety of gaming operation patrons and employees, and any other person while in the gaming facility;
3. The physical safeguarding of assets transported to, within, and from the gaming facility;
4. The prevention of illegal activity from occurring within the gaming facility or with regard to the gaming operation, including, but not limited to the maintenance of employee procedures and surveillance systems;
5. The recording of any and all occurrences within the gaming facility that deviate from normal operating policies and procedures, which includes maintenance of a closed circuit surveillance system;
6. The establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud or the like, consistent with industry practice;
7. The conduct of audits of the gaming operation;
8. The specifications, standards and procedures for each game;
9. The maintenance of a cashier's cage; or
10. Minimum employee and supervisor staffing requirements related to such regulation of gaming.

Provided, however, that the above list is not intended to remove from bargaining subjects that are otherwise appropriate for bargaining and which are not related to the conduct of gaming on the Reservation and safeguarding the integrity of the gaming, including the prevention of illegal activity or influences affecting the gaming on the Reservation. Provided further that whenever practicable, a Tribal Employer shall bargain with a duly certified Labor Organization regarding the implementation and effects of directives of the Mashantucket Pequot Tribal Gaming Commission.

c. Union Security Clauses. If a Labor Organization has been certified as the exclusive bargaining representative under Tribal law then a Tribal Employer may lawfully enter into a union security agreement where said agreement does not violate the Indian Civil Rights Act, 25 U.S.C. § 1302 or the Tribal Civil Rights Code, 20 M.P.T.L. ch. 1 § 1<sup>1</sup> and no election has been conducted under Tribal law in which a majority of the employees eligible to vote in such election have voted to rescind the authority of such Labor Organization to make such an agreement. Other than under these conditions, nothing contained in this Law shall require a Tribal Employer to bargain concerning any union security clause, such as union shop, agency shop, or dues check-off provisions. The obligation of a Tribal Employer to bargain collectively pursuant to this law shall not be construed as authorizing the Tribal Employer and a Labor Organization to bargain and enter into an agreement that would be or is in conflict with the provisions of any other Law of the Tribe, including but not limited to the Tribal Right to Work Law, codified in Title 28 M.P.T.L.

d. Tribal and Native American Preference. Pursuant to the Mashantucket Pequot Tribal and Native American Preference Law, 33 M.P.T.L., Tribal Employers are required to give certain preferences in employment to Tribal Members, their spouses and adopted children and Native Americans. Nothing contained in this Law shall be construed to require or permit a Tribal Employer to bargain concerning the requirements imposed upon employers pursuant to Tribal law regarding Tribal and Native American preference, or shall in any way affect a Tribal Employer's obligation to follow Tribal law, policies or custom and traditions regarding Tribal and Native American preference in employment. In the event of a conflict between the Tribal law regarding Tribal and Native American preference and this Law, the Tribal law on Tribal and Native American preference shall govern.

e. Modification or Termination of Collective Bargaining Agreement. If there is in effect a collective-bargaining agreement covering Tribal Employees, the duty to bargain collectively shall also mean that no party to such agreement shall terminate or modify such contract, unless the party desiring such termination or modification:

1. Serves a written notice upon the other party to the agreement of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such agreement contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;
2. Offers to meet and confer with the other party for the purpose of negotiating a new agreement or an agreement containing the proposed modifications; and
3. Complies with Section 11 of this Law prohibiting Strikes and Lock Outs.

32 M.P.T.L. ch. 1 § 10

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<sup>1</sup> In determining whether an agreement violates these laws, the Tribal Court should be guided by the federal court decisions interpreting similar limitations found in the U.S. Constitution applicable to public sector employees.

## **§ 10. Negotiations Timetable; Dispute and Impasse Resolution**

a. Negotiations Timetable. If either a Tribal Employer or a Labor Organization which has been designated as the exclusive bargaining representative for an appropriate bargaining unit under this Law desires negotiations with respect to an original or successor collective bargaining agreement, such party shall serve written notice of such desire upon the other party. For successor collective bargaining agreements, such notice must be served upon the other party no earlier than one hundred twenty (120) days prior to the expiration of the existing collective bargaining agreement and no later than sixty (60) days prior thereto. Negotiations shall commence within 30 days of such service, unless the parties mutually agree to a different date.

b. Mediation. Upon the joint request of the parties, at any time after negotiations have begun, the Chair of the Tribe's Peacemakers shall designate a Mediation Panel, pursuant to Title 31 M.P.T.L., to assist the parties in continuing the negotiations and reaching an agreement, or the parties may agree to the designation of a single mediator selected by agreement of the parties.

c. Impasse. If the parties to negotiations do not reach an agreement within one hundred fifty (150) days after negotiations have begun, then either party may file a petition with the MERO.

- (i) Upon appointment, the Special Master or the MERO Board shall immediately adopt procedures for reaching a decision resolving all issues within sixty (60) days of the filing of the petition and shall convene a hearing to allow the parties to provide evidence and argument to the Special Master or the MERO Board. The parties shall have the right to submit written briefs. The record is officially closed at the later of the close of the hearing, or the Special Master's or the MERO Board's receipt of briefs.
- (ii) Each party shall submit to the Special Master or the MERO Board, and to each other, a proposal setting forth its position on how each of the unresolved issues shall be resolved.
- (iii) The Special Master's or the MERO Board's authority is limited to selecting one party or the other's complete proposal with respect to each issue and shall render a decision or award addressing each of the unresolved issues based on the complete proposal selected for that issue. The Special Master or the MERO Board shall issue an award within sixty (60) days of the filing of the petition, unless the time period is extended by mutual agreement of the parties.

32 M.P.T.L. ch. 1 § 11

## **§ 11. Strikes and Lockouts prohibited**

Strikes of any kind and lockouts are strictly prohibited. A Labor Organization shall not cause, instigate, encourage or support a Tribal Employee strike. A Tribal Employer shall not cause, instigate or engage in a lockout of its employees.

**§ 12. Elections; Labor Organization Designation as Exclusive Representative; Appropriateness of Bargaining Unit; Representational Rights**

a. Petition for Election. A Labor Organization may file a petition with the MERO Director stating that thirty (30) percent or more of the Tribal Employees in an appropriate bargaining unit, provided for under this Law, desire to be exclusively represented for the purposes of collective bargaining within the unit by the petitioning organization and request the designation of said organization as their exclusive representative. A petition filed hereunder must contain either the signatures of thirty (30) percent of the Tribal Employees in the bargaining unit proposed, or be accompanied by the submission of authorization cards from at least thirty (30) per cent of the Tribal Employees in the bargaining unit. The petition must also describe the bargaining unit, including a designation of each job category or position which the Labor Organization states should be included in the bargaining unit.

b. Processing of Petition for Election. The MERO Director shall review the petition and showing of interest and certify compliance with this Law; provided that upon written request of a petitioner, the petition or authorization cards containing employee signatures may be presented directly to the MERO Board Presiding Officer or Special Master for review and certification of compliance with this Law. The Special Master or the MERO Board shall, review and decide any issues or objections raised concerning the petition or the appropriateness of the bargaining unit, and conduct a secret ballot election as provided herein.

c. Secret Ballot Election. When all pre-election issues, if any, relating to the petition have been resolved, the Special Master or the MERO Board shall conduct a secret ballot election if it determines that a valid petition has been filed. The ballot for the election shall contain the name of any Labor Organization submitting a petition in compliance with subsection (a) of this section, and contain clear language providing the Tribal Employees with a choice to either select the Labor Organization that filed the petition as the exclusive representative for the Tribal Employees within the bargaining unit or to choose not to be represented by any Labor Organization.

d. Election Results and Objections. If a majority (fifty percent plus one) of the votes cast are in favor of representation by the Labor Organization, the Special Master or MERO Board shall certify the Labor Organization as the exclusive bargaining representative for the appropriate bargaining unit. If a Labor Organization does not receive a majority vote for certification, then the Labor Organization shall not be certified as the exclusive representative of the bargaining unit. If either the Tribal Employer or the Labor Organization has a good faith reason to believe that the election was not conducted in a fair and impartial manner or that fraud or prohibited practices affected the outcome of the election, the Tribal Employer or Labor Organization may file such objections with the Special Master or the MERO Board within ten (10) days after the election. The Special Master or the MERO Board shall conduct such investigation as it deems appropriate to resolve such objections. Whether to hold an evidentiary hearing on such objections shall be within the discretion of the Special Master or the MERO Board.

e. Time Limitation. No election shall be directed or held in any bargaining unit within which an election has been conducted in the twelve (12)-month period immediately preceding the proposed representation election.

f. Determination of Appropriateness of Bargaining Unit. In determining the appropriateness of a bargaining unit, the Special Master or MERO Board shall take into consideration but shall not be limited to considering the following factors:

1. That an appropriate bargaining unit is based on occupational groups or groups of employees who share clear and identifiable communities of interest in employment terms and conditions and related personnel matters;
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.

g. Guards or Other Security Personnel. A Labor Organization shall not be certified as the representative of employees in a bargaining unit of guards or other security personnel if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards or other security personnel.

h. Appeals. Any pre-election or post-election decisions of the Special Master or the MERO Board may be appealed to the Tribal Court upon issuance of the final case decision or certification. An earlier appeal may be taken only if authorized by the Special Master or MERO Board. The date of mailing of the final case decision or certification, or the Special Master or MERO Board authorization for an immediate appeal, as applicable, shall begin the appeal period.

i. Deauthorization. A petition signed by thirty (30) percent or more of the employees in a bargaining unit covered by a collective bargaining agreement containing a union security clause, alleging they desire that the authorization to enter such an agreement be rescinded, may be filed with the MERO Director. The Special Master or the MERO Board shall hold a secret ballot election of the employees in such unit and certify the results thereof to the affected Labor Organization and Tribal Employer. If a majority (fifty percent plus one) of the employees in the bargaining unit vote to rescind such authorization, then the provision for a union security clause shall be null and void and of no further force or effect. If the secret ballot election does not result in a majority of employees voting to rescind, then the provision in the collective bargaining agreement shall remain in full force and effect.

**§ 13. Decertification of exclusive representative**

a. A Tribal Employee or the Labor Organization itself may initiate decertification of a Labor Organization as the exclusive representative if thirty (30) percent of the Tribal Employees in the bargaining unit make a written request to the MERO for a decertification election. If such a request is filed, the MERO shall process the decertification petition in the same manner as a certification petition is processed pursuant to this Law. The Special Master or the MERO Board shall conduct a secret ballot election if it determines that a valid petition has been filed. The ballot for the election shall contain the name of the Labor Organization, and contain clear language providing the Tribal Employees with a choice to either select the Labor Organization as the exclusive representative for the Tribal Employees within the bargaining unit or to choose not to be represented by any Labor Organization. A Labor Organization will be decertified as the exclusive representative of an appropriate bargaining unit if the Labor Organization does not receive a majority (fifty percent plus one) of the votes cast.

b. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the MERO no earlier than ninety (90) days and no later than forty-five (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 three years, a request for decertification may be made at any time after the expiration of the third year.

**§ 14. Registration of Labor Organization**

a. Requirement to Register. Every Labor Organization operating within the territorial jurisdiction of the Tribe shall file a report with the Office of Legal Counsel for the Tribe, on or before sixty (60) days after enactment of this Title and thereafter on or before December 31 of each year. The report, which shall be filed by the president of the Labor Organization or another duly authorized officer of the labor Organization, shall contain the following information:

1. The name and address of the Labor Organization;
2. The names and addresses of the president, secretary, treasurer, and business agent(s) of the Labor Organization;
3. The name and address of the national and/or international organization, if any, with which the Labor Organization is affiliated;
4. A copy of the collective bargaining agreement(s) between the Labor Organization and any employer within the territorial jurisdiction of the Tribe;
5. A copy of the current Constitution and By-laws of the Labor Organization, as well as any amendments, i.e., the basic written rules governing the organization; and

6. A copy of the Labor Organization's Annual Report.

b. Submission of New Information. The president of the Labor Organization shall file with the Office of Legal Counsel for the Tribe a notice of any changes to the information required above within thirty (30) days after the changes are made and provide any additional information requested by the Office of Legal Counsel.

c. Violations. 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 required to be filed pursuant to this Law.

32 M.P.T.L. ch. 1 § 15

**§ 15. Licensing of Business Agents.**

a. No person shall act as a Business Agent of a Labor Organization within the territorial jurisdiction of the Tribe unless that person has received a license from the MERO.

1. Any person who seeks such a license shall pay a license fee of \$25, submit a statement signed by the president and the secretary of the Labor Organization which establishes the person's authority to act as a Business Agent for the organization, and agree to undergo a background investigation.
2. No person shall be issued a license to act as a Business Agent within the territorial jurisdiction of the Tribe if that person has been convicted of a felony, has been convicted of a misdemeanor involving moral turpitude, is currently facing charges on a felony or on a misdemeanor involving moral turpitude or, based on the background investigation, is deemed by the MERO to be of questionable moral character.
3. If at any time after issuance of the license the MERO receives reliable information that the licensee should be deprived of his or her license based on the factors stated above, then the MERO may suspend or revoke the license. The license shall be valid for two calendar years, inclusive of the calendar year of issuance if the applicant applied pursuant to subsection (a)(1) above, unless sooner surrendered, suspended, or revoked.
4. All licenses shall expire at midnight on December 31 of the expiration year but may be renewed by the MERO on a form prescribed by the MERO for that purpose and upon payment of a renewal fee of \$25. However, if any license has been surrendered, suspended or revoked during its term, then the applicant must meet the requirements set forth in subsection (a)(1) above.
5. Any person denied a license or whose license is suspended shall have the right to appeal such a determination to the Tribal Court.

b. It shall be a violation of this Section for any person to:

1. Act as a business agent on the Reservation for a Labor Organization without having obtained a valid license;
2. Act as a business agent of any Labor Organization without the authority of the Labor Organization to do so;
3. Make any false statement on any reports required to be filed pursuant to this Law;
4. Make any false statement in an application for a Business Agent's license.

c. If the MERO Director, after investigation, determines that any person or Labor Organization is in violation of ch. 1 § 14 or 15 of this Law, the Director may impose penalties up to Two Hundred Fifty Dollars (\$250) per violation per day. However, no such penalty may be imposed with respect to any violation set forth in sub-sections (b)(1) and (b)(2) of § 15 or with respect to a failure to register pursuant to § 14 without first giving the violator notice of the violation and an opportunity to cure it. The MERO Director may also refer the matter to the Mashantucket Pequot Council of Elders to determine if an order of exclusion or banishment is appropriate, or, if the violation affects the Tribe's gaming operation, to the Mashantucket Pequot Tribal Gaming Commission for possible exclusion from the gaming facilities as may be allowed under Title 3, ch. 1, of the Mashantucket Pequot Tribal Laws. Any person or Labor Organization adversely affected by the imposition of penalties by the MERO Director shall have the right to appeal such imposition of penalties to the Tribal Court.

32 M.P.T.L. ch. 1 § 16

**§ 16. Case Processing**

a. The following provisions are applicable to all cases filed pursuant to ch. 1 §§ 7, 10, 12 or 13 of this Law:

1. The person filing the claim or petition must give all other parties notice of the filing the same day the claim or petition is filed.
2. Absent a party to a case submitting a written request to the MERO Director for a MERO Board within five (5) days of the claim or petition being filed with the MERO, the case shall be transferred to the Tribal Court for appointment to a Special Master.
3. A MERO Board or Special Master may convene an evidentiary hearing for the purpose of addressing any and all issues relating to a claim or petition. Parties shall have the opportunity to present evidence at a hearing and submit briefs.
4. The MERO shall adopt procedures for the administrative processing of cases. Notwithstanding any provisions in this Law to the contrary and regardless of the appointment of a Special Master or MERO Board, the MERO Director may, with the same force and effect of a Special Master or MERO Board, rule or act upon:



- A. any matters prior to referral of the case to a Special Master or MERO Board;
- B. parties' mutual stipulations, agreements or resolutions of claims or petitions;
- C. requests for extensions of time;
- D. requests or motions to hold cases in abeyance pending settlement negotiations, a decision on a request for financial assistance or other reasonable basis; or
- E. requests of a Special Master or MERO Board to perform functions otherwise required to be performed by the Special Master or MERO Board;

provided, a MERO Director determination, decision or order pursuant to ch. 1 § 16(a) (4) may be appealed to a Special Master or MERO Board, as applicable, or in the absence of an appointed Special Master or MERO Board, to the Tribal Court.

b. If a party to a petition or claim filed with the MERO timely elects a MERO Board:

1. Within five (5) days, each party to the case shall select one MERO Board member;
2. Within an additional five (5) days, the parties or party-appointed MERO Board members shall confer and select a presiding officer for the MERO Board;
3. Absent timely selection of a presiding officer, or by agreement of the parties, the MERO shall request from the American Arbitration Association a random panel of seven (7) arbitrators who are members of the National Academy of Arbitrators and the parties or the MERO Board members appointed by the parties shall select a presiding officer from said list within five (5) days of receipt of the list.
4. Decisions on the merits or procedural matters that may materially affect the merits shall be in writing and decided by a majority of the MERO Board. Any decision of a presiding officer with respect to procedural matters that would not materially affect the merits may be appealed to the full MERO Board for a majority decision. A tie among MERO Board members shall be resolved by the decision of the presiding officer of the MERO Board.
5. The costs of the MERO Board or Special Master and any fees associated with the proceedings shall be shared equally by the parties.
6. Absent a grant of an extension of time, a party's failure to submit all required information for a timely MERO Board member selection shall be considered a default. The MERO will serve a notice of default and afford the defaulting party not less than twenty-four (24) hours to cure it. If the default is not timely cured, the defaulting party waives the right to participate in the selection of the presiding officer, provided the selected presiding officer must be a member of the National Academy of Arbitrators. A notice of default

survives withdrawal and re-filing. For purposes of this subsection, service is complete upon transmission by electronic mail or, in the absence of e-mail, telephonic message.

c. If a case is referred to the Tribal Court for assignment to a Special Master, the Tribal Court may adopt special procedures for cases to be heard by a Special Master; otherwise the Mashantucket Rules of Civil Procedure shall apply and the case shall proceed before the Special Master and be considered in the same manner as any other civil matter.

d. Notwithstanding any provisions of this Law to the contrary, when a person is a party to a case, the following shall apply:

1. Prohibited Practice Cases: At its discretion, upon notice to the parties, the MERO may investigate the claims within a reasonable period of time not to exceed sixty (60) days and issue a written decision, which shall include findings of fact and conclusions of law. If the MERO Director finds a violation of law, the decision shall include a remedial order, if appropriate. Within ten (10) days of the mailing of the written decision, any party to the case may request a hearing before a Special Master or MERO Board, at which the MERO Director decision shall be admissible. Absent a timely request for a Special Master or MERO Board hearing, the MERO Director decision shall be final and binding on the parties.
2. All Cases:
  - A. If the person submits to the MERO a written request for a Special Master at any time prior to appointment of a MERO Board residing officer, the case shall be referred to the Tribal Court for appointment to a Special Master; provided, nothing herein precludes investigation pursuant to ch. 1 § 16(d)(1).
  - B. The person may submit a written request for financial assistance for a MERO Board proceeding at any time during the pendency of the case before the MERO. Case processing may be held in abeyance for a reasonable period of time to permit the submission and evaluation of supporting documentation. Financial assistance determinations are within the MERO Director's sole discretion.

32 M.P.T.L. ch. 1 § 17

#### **§ 17. Tribal Court Proceedings**

a. Time for Filing Appeal. Any appeal to the Tribal Court allowed under this Law must be filed with the Tribal Court within twenty (20) days after the mailing of the determination, decision, order or penalty assessment being appealed; provided, ch.1, §12(h) shall apply to cases under ch. 1, §12 or §13. If an appeal is not filed within that time period, the determination, decision, order or penalty assessment shall be final.

b. Appeals from Special Master or MERO Board Proceedings. A determination, decision or order of a Special Master or a MERO Board shall be adopted by the Tribal Court and become a final decision of the Tribal Court, unless the Tribal Court determines, under a clear and convincing evidence standard of review, that the determination, decision or order of the Special Master or

the MERO Board, as the case may be, resulted from fraud or bias or is in direct conflict with Tribal law.

c. Appeals from MERO Director Decision or Penalty Assessment. A decision pursuant to ch. 1 § 16(a) or (b) or penalty assessed by the MERO Director shall be adopted by the Tribal Court and become a final determination of the Tribal Court, unless the Tribal Court determines that the decision or assessment constituted an abuse of discretion.

d. Enforcement of MERO Order. An action may be brought in Tribal Court to enforce a final decision and order of the MERO Director, a MERO Board or a Special Master no later than one (1) year after the last act required by the order. The MERO shall file with the Tribal Court a copy of the MERO Director or MERO Board decision and order within thirty (30) days after the enforcement action is filed with the court. The Tribal Court shall enforce the decision and order of the MERO unless the decision or order is in direct conflict with Tribal law.

e. Tribal Court Tribal Court Final Determination. The decision of the Tribal Court shall be final and there shall be no appeal to the Mashantucket Pequot Court of Appeals.

32 M.P.T.L. ch. 1 § 18

#### **§ 18. Waiver of Sovereign Immunity**

The Tribe hereby waives its sovereign immunity from suit for claims brought under this Law against a Tribal Employer before the Tribal Court or MERO, including a Special Master or MERO Board . Nothing contained herein shall be construed as a waiver of the Tribe's sovereign immunity from suit in the state or federal courts or in any state or federal agency or any other forum or context.

#### **Historical & Statutory Notes**

##### **Derivation.**

Effective August 16, 2007, EXTCR08160701 enacted the Mashantucket Pequot Labor Law.

##### **Amendments.**

Effective October 28, 2008, EXTCR102808-01 of 02, amends EXTCR081607-01.

Effective July 23, 2009, TCR072309-04 of 09, approved various technical amendments throughout.

Effective June 24, 2010, TCR062410-01 of 04, amended Section 12(e) of the Mashantucket Pequot Labor Relations Law by deleting "the Tribal Employees in the proposed bargaining unit vote" and replacing it with "votes cast are".

Effective January 10, 2019, TCR011019-01 of 02, made various amendments to address structural and procedural issues and to add a statute of limitations for prohibited practice cases.

TCR022719-01 of 05 amended TCR011019-01 of 02, to provide that the effective date of the amendments to ch. 1 § 7 (b) of Title 32., adding a statute of limitations for prohibited practice cases, shall be the 181st calendar day after the date of enactment of TCR011019-01 of 02.