

Ordinance 55-08

An Ordinance amending Title 18 of the Mille Lacs Band Statutes Annotated (Commercial Practices) to add Chapter 7 – Right to Work.

The District III Representative introduced the following Bill on the 17th day of December, 2007.

PREAMBLE

It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Title 18 of the Mille Lacs Band Statutes Annotated (Commercial Practices) to add Chapter 7 to be entitled “Right to Work.”

Chapter 7 – Right to Work

Section 1. Findings and Determinations.

The Band Assembly hereby finds and determines:

- (a) The Mille Lacs Band of Ojibwe has the inherent power to maintain a Band government which may enact laws to preserve the sovereignty of the Band and to promote and maintain individual rights and promote the general welfare of the people of the Band.
- (b) With the recent expansion of economic development, employment within the jurisdiction of the Band has grown substantially, and the Band has exercised its sovereignty in enacting laws to govern employment relationships.
- (c) The right to work on land within the jurisdiction of the Band is a fundamental right that should not be abridged.
- (d) No person should be forced to join or be penalized for not joining a union or other collective bargaining organization and should be able to make that choice freely and voluntarily.
- (e) The Mille Lacs Band of Ojibwe enacts this law governing employment and labor pursuant to the Band’s inherent sovereign authority to govern activities on lands within the jurisdiction of the Band, whether the activities are of Band members, non-members, Indians, or non-Indians, and whether based on consensual relationships with the Band or conduct which impacts and affects the health, safety, political and economic integrity of the Band and the community including Band members, employees, vendors, patrons and others.

Section 2. Definitions.

- (a) "Employer" means any person, firm, association, corporation, government or any subdivision thereof and other entity operating within the jurisdiction of the Band and directly or indirectly employing one or more persons to perform work, except for any such person, firm, association, or corporation which has a principal place of business located outside the jurisdiction of the Band and operates pursuant to an Agreement with the Band or Band entity to perform construction related activities.
- (b) "Labor organization" means any organization or agency or group of employees or employee committee or plan in which employees participate that is organized or exists for the purpose of dealing with an employer or employers concerning hours of employment, wages, rates of pay, working conditions or grievances of any kind relating to employment.
- (c) "Labor dispute" includes any controversy concerning terms 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 whether or not the disputants stand in the proximate relationship of employer and employee.
- (d) "Person" means any individual, labor organization, corporation, partnership, company, association or other legal entity, including the Mille Lacs Band of Ojibwe and any subdivision thereof and the Corporate Commission of the Mille Lacs Band of Ojibwe.
- (e) "Strike" means any temporary stoppage, reduction, disruption or slowdown of work by the concerted action of two or more employees as a result of a labor dispute.
- (f) "Union dues" means dues, fees, assessments or other charges of any kind or amount or their equivalents paid or payable, directly or indirectly, to a labor organization or its agents and includes payments to any charity or other third party in lieu of such payments to a labor organization.

Section 3. Right to Work.

- (a) No person shall be required, as a condition of employment, or continuation of employment, within the jurisdiction of the Band, to do any of the following:
 - (1) Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
 - (2) Become or remain a member of a labor organization; or
 - (3) Pay union dues as defined in this chapter.

- (b) Any agreement between any labor organization and any employer that violates subsection (a) or otherwise violates the rights of persons defined by this chapter is of no legal effect. This chapter does not bar any person from voluntarily obtaining or maintaining membership in any labor organization or from voluntarily paying union dues as defined in this chapter.

Section 4. Prohibition of Strikes.

- (a) No person shall engage in a strike and no person shall cause, instigate, encourage, or condone a strike.
- (b) For purposes of this section, if a person is absent from work, or abstains wholly or in part from the full performance of his or her normal duties, on the date or dates when a strike occurs, it shall create a rebuttable presumption to have engaged in such strike on such date or dates.

Section 5. Jurisdiction.

The Court of Central Jurisdiction shall have jurisdiction over all causes of action alleging violations of this chapter. Nothing provided in this chapter shall be deemed to be a waiver of the sovereign immunity of the Mille Lacs Band of Ojibwe from suit. Nothing provided in this chapter shall diminish the immunity protections of 2 MLBSA § 5 and 16 MLBSA § 109.

Section 6. Civil Remedies.

Any person injured as a result of any violation or threatened violation of the provisions of this chapter shall be entitled to petition the Court of Central Jurisdiction for injunctive relief from or against any person who violates or threatens any violation of this chapter, and may, in addition thereto, file a claim to recover actual damages resulting from the violation or threatened violation. Actual damages shall not include punitive damages or attorney fees. The remedy shall be independent of, and in addition to, any other penalties and remedies prescribed by applicable law.

Section 7. Complaint Process

- (a) Petition.

Any person injured as a result of any violation or threatened violation of the provisions of this chapter shall first petition the Court of Central Jurisdiction for a show cause hearing. The Petition shall include a statement of the facts constituting the violation or threatened violation of the provisions of this chapter and the specific relief requested. The Petition shall also be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(b) Notice of Hearing.

The Clerk of Court shall schedule a hearing within 30 days after receipt of the Petition. The Clerk shall submit a Notice of Hearing to the person against whom the action is being instituted. The Notice shall state that the person has a right to appear at this hearing on his or her own behalf or with an attorney. The person shall have a right to present defenses to the claim and to state the reasons why the Petition should be denied. The Petition shall clearly state a claim to the violation of this chapter and the damages sought. Finally, the notice shall clearly state that if the person fails to appear at the hearing the Court has the authority to enter a default judgment on behalf of the Petitioner and direct that the requested relief be immediately granted.

(c) Emergency Procedure

- (i) Where an application under this chapter alleges an immediate and present violation or threatened violation of section 4 of this chapter, the court may grant an ex-parte temporary order enjoining the violation or threatened violation.
- (ii) An ex-parte temporary order shall be effective for a fixed period not to exceed 14 days. A full hearing as provided by this chapter shall be set for not later than 7 days from the issuance of the temporary order. The respondent shall be served forthwith a copy of the ex-parte order along with a copy of the petition and affidavit and notice of the date set for the hearing.
- (iii) Service of Order. Any order issued under this chapter shall be personally served upon the respondent.


Section 8. Enforcement

- (a) The Court of Central Jurisdiction shall have the judicial authority to provide an equitable remedy in the execution its judgments and determinations to promote the general welfare, preserve and maintain justice, and to protect the rights of all persons under the jurisdiction of the Mille Lacs Band of Ojibwe.
- (b) The Court of Central Jurisdiction shall have the power to issue orders to prevent an injustice or injury, require action or conduct, and issue any other orders as are necessary in the furtherance of justice.

Ordinance 55-08

Introduced to the Band Assembly on this
Seventeenth day of December in the year
Two thousand seven.

Passed by the Band Assembly on this
Twentieth day of December in the year
Two thousand seven.



Herb Weyaus, Speaker of the Assembly

APPROVED

Date: January 14, 2008



Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND