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Indian Tribes Seek Labor Law Exemption

- By ERICA WERNER, Associated Press Writer
Monday, November 6, 2006

(11-06) 12:24 PST WASHINGTON (AP) --

A casino-rich Southern California Indian tribe tried to convince a federal appeals court Monday that tribes are sovereign governments and therefore should be exempt from federal labor laws.

The National Labor Relations Board countered that tribal gambling, which has exploded into a \$22 billion-a-year industry, is increasingly operating like any other business and should be treated as such.

Members of a three-judge panel of the U.S. Circuit Court of Appeals for the District of Columbia Circuit had tough questions for both sides. At stake are protections and bargaining rights for some 250,000 workers at the nation's 400-plus tribal casinos.

Jerome Levine, attorney for the San Manuel Band of Mission Indians, said the labor board overstepped its authority and overturned precedent and policy with its 2004 ruling asserting jurisdiction over tribal businesses.

The ruling stemmed from an organizing dispute at the San Manuel casino, 60 miles east of Los Angeles, where a union filed a complaint with the labor board arguing that another union was getting preferential access.

"The issue really goes to the fundamental of where tribal sovereignty starts and stops," Levine said. "This is a government that's exercising governmental powers within its territorial jurisdiction."

David Fleischer, attorney for the labor board, contended tribes aren't acting like governments when they engage in private-sector practices like distributing profits to tribal members.

"Paying revenues to its members is like a Nevada casino paying part of its revenues to stockholders. There's nothing governmental about it," he said.

Judge Stephen F. Williams questioned Levine about that.

"Is there anything in an Indian casino that's markedly different than a private casino?" he asked. "Is there a peculiarly Indian purpose other than making money?"

Levine argued there is, because Congress intended Indian gambling to fund tribal government functions.

The National Labor Relations Act did not specifically exempt Indian tribes, and Congress could have done so if that was the intent, noted Judge Janice Rogers Brown.

Judge Merrick B. Garland questioned whether the board did have a role in tribal businesses, observing that tribal-state gambling agreements, called "compacts," must be approved by the Interior Secretary and can include labor rules.

"If compacts can take into account labor, the board is pre-empting the compact and the secretary of Interior," Garland said.

A few tribal casinos in California are unionized, including San Manuel, but most workers at Indian casinos are nonunion. Unions say they've had trouble making inroads without the protections of the National Labor Relations Act that bars unfair labor practices and gives workers rights to organize and bargain.

California is unique because tribes agreed to a Tribal Labor Relations Ordinance that's far more extensive than rules in other states. But even California's rules are considered weak by union activists because they don't permit picketing on tribal land and allow strikes only after a bargaining impasse. Most private sector employees can strike at will.