WAGANAKISING ODAWAK STATUTE # 2008-013
MANAGEMENT AND LABOR RELATIONS

SECTION I. PURPOSE AND TITLE

The Little Traverse Bay Bands of Odawa Indians (the "Tribe") exercises powers of self-government over its Citizens and territory. The Tribe has inherent authority to govern labor relations within its jurisdiction, and this includes regulating the terms and conditions under which collective bargaining may or may not occur within its tribal government and commercial enterprises. The Tribe's inherent authority further includes the right to protect the health, welfare, and political integrity of the Tribe from being harmed or threatened by the activities within the Tribe's territory. The purpose of this Statute is to protect essential attributes of tribal self-government and the health and welfare of the Citizens of the Tribe if labor organizations seek to conduct operations within the jurisdiction of the Tribe.

SECTION II. DEFINITIONS

1. *"Commercial Enterprises"* means the Odawa Casino Resort and ancillary enterprises and activities and other tribally owned enterprises or businesses.

2. *"Employee, Individual Contributor, or Team Member"* means an individual employed Little Traverse Bay Bands of Odawa Indians including Tribal Government Administration, commercial entities including the Odawa Casino Resort and ancillary enterprises and activities beginning on the first day of work and after the employment process and issuance of a temporary gaming license. The first ninety (90) days and up to a maximum of one-hundred and eighty (180) days of employment shall be considered an "Introductory Period." Independent contractors are excluded.

3. *"Employer"* means all departments and agencies of the Tribal Government Administration and commercial entities of the Tribe, including the Odawa Casino Resort and ancillary enterprises and activities.

4. *"Gaming Regulatory Commission"* means the Little Traverse Bay Bands of Odawa Indians Gaming Regulatory Commission established pursuant to Waganakising Odawak Statute 2005-06, May 15, 2005.

5. *"Indian Gaming Regulatory Act"* means 25 U.S.C. §§ 2701-2721.

6. *"Labor organization, labor association, or labor union"* means any organization of employees organized for the purpose of bargaining over hours of employment, rates of pay, working conditions, grievances, or other terms or conditions of employment.

7. *"Lock Out"* means any action by the Tribe that prevents its employees from going to work for the purpose of coercing employees to accept terms or conditions sought by the Tribe in a negotiation with a labor organization representing the employees.

8. *"Malice"* means the intent, without just cause or reason, to commit a wrongful act that will result in harm to another.

9. *"Management"* means any individual employed by the Tribal Government Administration, commercial entities, including the Odawa Casino Resort and ancillary enterprises and activities who has the authority, acting in the interest of LTBB, to cause another employee to be hired, transferred, suspended, laid off, recalled, promoted, discharged, assigned, rewarded or disciplined, either by taking such action or by recommending it to a superior; or who has the authority and responsibility to direct other employees. The exercise of this authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment.

10. *"Odawa Casino Resort"* means the gaming enterprise, including related hotel and restaurant services, of the Tribe located in Petoskey, Michigan, wherein the Tribe operates Class II and Class III gaming to generate governmental revenue for the Tribe pursuant to the Indian Gaming Regulatory Act.

11. *"Reckless indifference"* means conscious or reckless disregard of the consequences of one's acts or omissions.

12. *"Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians"* means *"areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs 'third and fourth' of the Treaty of 1855, 11 Stat.621."* Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

13. *"Tribal Court"* means the Tribal Court of LTBB that has jurisdiction to hear charges of violations of rights afforded by this Statute including violations by third-parties.

14. *"Tribal Government Administration"* the operations and employees of the Tribal Government Administration that provides for inherent self-governing authority as a federally recognized Indian tribe through its governmental activities expressly recognized or supported by the United States Congress, including, but not limited to **(1)** the provision of health, housing, education, and other governmental services and programs to its Citizens; **(2)** the exercise and

operation of its administrative, regulatory, and police power authorities within its territorial jurisdiction.

15. *"Tribe"* or *"LTBB"* means the Little Traverse Bay Bands of Odawa Indians.

SECTION III. FAIR RIGHT TO WORK

1. With respect to employment or the terms or conditions of employment within any Tribal Government or Tribal commercial enterprise including the Odawa Casino Resort and ancillary enterprises and activities:

a. The right to work must be protected and maintained free from undue restraints and coercion. The right of persons to work shall not be denied or abridged by any Employer or by any labor organization on account of membership or non-membership in any labor union, labor organization, or association.

b. No person shall be required to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment.

c. No person, as a condition of employment or continuation of employment, shall be required to pay any dues, fees, or other charges of any kind to any labor union or labor organization or to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessment or other charges regularly required of members of a labor organization.

d. No person shall be required, as a condition of employment or continuation of employment to be recommended, approved, referred, or cleared by or through a labor organization.

e. It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the Employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the Employer.

f. No person shall be required by any Employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

g. It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or Employer, or officer or agent thereof, by any threatened or actual

intimidation of an employee or prospective employee or his parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to his property, to compel or attempt to compel such employee or prospective employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit his rights as guaranteed by provisions of this Statute. It shall be unlawful to cause or attempt to cause such employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employee.

h. Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and an Employer which violates the rights of employees as guaranteed by the provisions of this Statute is hereby declared to be against public policy and is null and void and of no legal effect.

SECTION IV. LIMITED WAIVER OF SOVEREIGN IMMUNITY

1. The Tribe clearly and expressly waives its sovereign immunity to the Equitable Remedies as set forth in this Statute and clearly and expressly waives its sovereign immunity to Damages as set forth within this Statute for Employers and limits such waiver to remedies as set forth within this Statute.

2. The Tribe clearly and expressly waives its sovereign immunity to Equitable Remedies as set forth in this Statute for officials, individual employees and/or managers and the Tribe clearly and expressly waives its sovereign immunity for Damages for officials, individual employees and/or managers who act beyond the scope of their duties and authority in which the actions include either acting with malice or with reckless indifference to the rights afforded under this Statute as set forth within this Statute and limits such waiver to remedies as set forth within this Statute.

3. The Tribe asserts no sovereign immunity for third-parties; and limits the remedies as set forth by this Statute.

SECTION V. REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS BY THE EMPLOYER

1. Any charge of violation must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation.

2. In any action filed under this Statute, the Tribal Court may grant the remedies set forth for violations of the Employer:

a. *Equitable Remedies.* If the Tribal Court finds that employment rights violation occurred, its judgment must specify an appropriate remedy or remedies for that violation. The remedies may include, but are not limited to:

1) An order to cease and desist from the unlawful practices specified in the order;

2) An order to employ or reinstate the employee, with or without back pay or reasonable front pay if reinstatement is unfeasible;

b. *Damages.* If the Tribal Court finds a blatant employment rights violation, the Tribal Court may additionally award compensatory, punitive damages or fines as provided in this subparagraph.

1) A complainant may recover compensatory damages against an employer for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

2) A complainant may recover punitive damages against an employer if the complainant demonstrates that the employer engaged in an unlawful employment rights violation with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.

c. The total sum of compensatory, punitive damages and/or fines may not exceed $50,000, excluding the amount for actual loss of wages.

d. When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded when the employer demonstrates good faith efforts, in consultation with the person with the disability who has informed the employer that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

e. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.

f. The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

SECTION VI. REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS BY AN INDIVIDUAL EMPLOYEE OR MANAGER

1. Any charge of violation must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation.

2. In any action filed under this Statute, the Tribal Court may grant the remedies set forth for violations of an Individual Employee or Manager:

a. *Equitable Remedies.* If the Tribal Court finds that employment rights violation occurred, its judgment must specify an appropriate remedy or remedies for that violation. The remedies may include, but are not limited to:

1) An order to cease and desist from the unlawful practices specified in the order;

b. *Damages.* If the Tribal Court finds a blatant employment rights violation, the Tribal Court may award punitive damages or fines as provided in this subparagraph.

1) A complainant may recover punitive damages against an individual employee and/or manager if the complainant demonstrates that the individual employee and/or manager engaged in an unlawful employment rights violation with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.

c. The total sum of punitive damages and/or fines may not exceed $50,000, excluding the amount for actual loss of wages from each individual employee and/or manager.

d. When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded when the employer demonstrates good faith efforts, in consultation with the person with the disability who has informed the employer that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

e. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.

f. The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

SECTION VII. REMEDIES BEFORE THE TRIBAL COURT FOR VIOLATIONS BY THIRD PARTIES

1. Any charge of violation must be filed with the Tribal Court within one-hundred and eighty (180) days of the alleged violation.

2. In any action filed under this Statute, the Tribal Court may grant the remedies set forth for violations of a third party:

a. *Equitable Remedies.* If the Tribal Court finds that employment rights violation occurred, its judgment must specify an appropriate remedy or remedies for that violation. The remedies may include, but are not limited to:

1) An order to cease and desist from the unlawful practices specified in the order;

b. *Damages.* If the Tribal Court finds a blatant employment rights violation, the Tribal Court may award punitive damages or fines as provided in this subparagraph.

1) A complainant may recover punitive damages against an individual employee and/or manager if the complainant demonstrates that the individual employee and/or manager engaged in an unlawful employment rights violation with malice or with reckless indifference to the rights of an aggrieved individual protected by this Statute.

c. The total sum of punitive damages and/or fines may not exceed $50,000, excluding the amount for actual loss of wages from each individual third party.

d. When a discriminatory practice involves the provision of a reasonable accommodation, damages may not be awarded when the employer demonstrates good faith efforts, in consultation with the person with the disability who has informed the employer that accommodation is needed, to identify and make a reasonable accommodation that would provide that individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

e. The Tribal Court may award reasonable attorney fees and costs in its discretion to the prevailing party.

f. The Tribal Court may award the opposing party any penalties for frivolous claims or any other appropriate remedies as the Tribal Court deems.

SECTION VIII. STRIKES AND LOCKOUTS

1. Each employee offers a critical service to the operations of the Tribe and its Tribal Government Administration and commercial entities, including the Odawa Casino Resort, ancillary enterprises and activities. These critical services provide and generate revenue for support services for Tribal Citizens and the Tribe, and are critical to the public health, safety, and welfare of the Tribe.

2. An employee shall not strike and the Tribe shall not institute a lockout. The Tribe does not violate this Statute if there is a total or partial cessation of the Tribal Government Administration, the Odawa Casino Resort and other ancillary enterprises operations in response to a strike held in violation of this Statute.

3. This Statute does not limit, impair, or affect the right of a employees to the expression or communication of a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of employment or their betterment as long as the expression or communication does not interfere with the full, faithful, and proper performance of the duties of employment.

4. An employee shall be considered on strike, if the employee who, by concerted action with another and without the lawful approval of his or her supervisor, willfully absents himself or herself from their position, or abstains in whole or in part from the full, faithful and proper performance of his or her duties for the purpose of:

a) including, influencing or coercing a change in employment conditions, compensation, rights, privileges or obligations of employment; or

b) protesting or responding to an act alleged or determined to be an unfair labor practice committed by the employer,

5. If an employer alleges that there is a strike by one (1) or more employees in violation of this Statute, the employer may file such violation with the Tribal Court of the full or partial days an employee was engaged in the alleged strike.

6. If an employee alleges that there is a lockout by the employer in violation of this Statute, the employee may file such violation with the Tribal Court of the full or partial days of the alleged lockout.

7. The Tribal Court shall conduct a hearing within sixty (60) days of the alleged violation and shall issue its decision and order. If the Court finds that a violation has occurred the Court may fine each employee or the employer.

8. The Tribal Court shall transmit money received from fines imposed by this Statute to the General Fund of the Tribe.

SECTION IX. LICENSING AND REGISTRATION OF LABOR ORGANIZATIONS

1. No labor organization shall engage in organizing employees including solicitation of union membership in any manner, without a license, issued by the Little Traverse Bay Bands of Odawa Indians Gaming Regulatory Commission, which shall provide as follows:

a. the right of such labor organization to be present and conduct business within the Tribe's territorial jurisdiction is a privilege, subject to the consent and regulatory authority of the Tribe;

b. the consent of the Tribe to allow such labor organization to be present and conduct business within the territory jurisdiction of the Tribe is conditioned upon such labor organization's agreement to be subject to the laws of the Tribe and its regulatory authority, including this Statute;

c. in consideration of the Tribe's consent to such labor organization's conduct of business within the territorial jurisdiction of the Tribe, such labor organization agrees to

1) comply with all rules, regulations, and laws of the Tribe

2) submit to the jurisdiction of the Tribe, including its Tribal Court, and

3) pay an annual business license fee in the amount of fifty dollars, ($50.00.).

d. such labor organization agrees that a license issued by the Tribe for conducting business within the territorial jurisdiction of the Tribe may be revoked by the Tribe at any time, with or without hearing, for any failure to comply with the laws of the Tribe; and

e. such other requirement as the Gaming Regulatory Commission may require under its regulations.

2. Subject to the requirements of Statute, the Gaming Regulatory Commission is authorized to enact such regulations as it sees fit to investigate and license any labor organization seeking to conduct business within the territorial jurisdiction of the Tribe.

3. Every labor organization engaged in organizing any including the solicitation of union membership in any manner, shall file a report with the Office of General Counsel for the Tribe within Twenty-one (21) days of initiating any such organizing effort. The report, which shall be filed by the president of the labor organization, shall contain the following information:

a. The name and address of the labor organization;

b. The names and addresses of the president, secretary, treasurer, and business agent of the labor organization;

c. The name and address of the national and/or international organization, if any, with which the labor organization is affiliated;

d. A copy of the current constitution, by-laws, or other written rules governing the organization;

e. All information regarding qualifications for or restrictions on membership; levying of assessments; participation in insurance or other benefit plans; authorization for disbursement of labor organization funds; audit of labor organization financial transactions; the calling of regular and special meetings; the selection of officers and stewards and any representatives to other bodies composed of labor organizations' representatives; a specific statement of the manner in which each current officer was elected, appointed, or otherwise selected; discipline or removal of officers or agents for breaches of their trust and a specific statement regarding any past disciplinary action of removal of officers or agents for breach of their trust; impositions of fines, suspensions and expulsions of members including the grounds for such action and any provisions made for notice, hearing, judgment on the evidence, and appeal procedures, along with a detailed statement regarding any imposition of fines, suspensions and expulsions of members in the past calendar year; and

f. A copy of the Labor Organization's Annual Report, as reported on the United States Department of Labor's Form LM-2.

4. The president of any such labor organization described in subsection (a) shall file with the Office of General Counsel for the Tribe a notice of any changes to the information required above within 10 days after the changes are made and provide any additional information requested by the Tribe's Office of General Counsel.

5. Should a labor organization establish representation of any employees for any Employer, it shall provide the foregoing information on an annual basis, no later than the first Monday in January, which is not otherwise designated a tribal holiday.

6. It shall be a violation of this section for any labor organization, any person or employee 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 section.

SECTION X. TRIBAL EMPLOYMENT PREFERENCES

1. In the exercise of its inherent self-governing authority over its Citizens and territory, the Tribe ensures that Citizens of the Tribe and other federally recognized tribes be given priorities for employment and retention of employment over non-Citizens of the Tribe. The provision of such employment preferences for Tribal Citizens promotes the public health and welfare of the Tribe by allowing the benefits of economic development within the territorial jurisdiction of the Tribe to be realized by Citizens of the Tribe. Employees shall have all rights provided by *Indian Preference in Tribal Employment Statute,* WOS 2002-04, and any successor law and the *Indian Preference in Tribal Employment Statute* shall supersede any rights provided by such Statute.

2. Prohibition of Collective Bargaining Affecting Tribal Employment Preferences.
Any and all policies, laws, or regulations of the Tribe or any Employer providing employment preferences to Tribal Citizens and Citizens of other federally recognized Tribes, including preferences given for hiring, training, and retention in the context of reductions in force shall not be subject to bargaining with any labor organization.

SECTION XI. ENFORCEMENT

1. Any employee or third-party who violates, or seeks to violate, the provisions of this Statute shall be subject to a civil action brought before the Tribal Court and may be subjected to such remedies as set forth in this Statute.

2. Any Employer shall have the right to suspend or terminate the employment of any employee found to be in violation of this Statute.

3. An employee or labor organization shall have the right to seek injunctive relief against the Tribe to enforce the prohibition against lockouts.

SECTION XII. EXHAUSTION OF REMEDIES

1. Any claim must be pursued through the administrative process with diligence and in good faith.

2. Any claim not finalized by the administrative process, shall be considered abandonment of a claim and failure to exhaust administrative relief and may not thereafter seek redress from the courts.

SECTION XIII. JUDICIAL REVIEW

Little Traverse Bay Bands of Odawa Indians Tribal Court shall have exclusive jurisdictions of for violations brought under this Statute.

SECTION XIV. SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

SECTION XV. EFFECTIVE DATE

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval which ever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on October 05, 2008 at which a quorum was present, by a vote of 8 in favor, 1 opposed, 0 abstentions, and 0 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Harrington, Jr.		X		
Melvin L. Kiogima	X			
Dexter McNamara	X			
Marvin Mulholland	X			
Shirley Oldman	X			
Alice Yellowbank	X			
Gerald V. Chingwa	X			
Regina Gasco Bentley	X			
Beatrice A. Law	X			

Date: 10/6/08

Beatrice Law, Legislative Leader

Date: 10-6-08

Regina Gasco Bentley, Secretary

Received by the Executive Office on 10-7-08 by

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: 10-31-08

Frank Ettawageshik, Tribal Chairperson