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July 16, 2010

## GENERAL MEMORANDUM 10-093

### NLRB Declines Jurisdiction Over Tribal Hospital

On July 8, 2010, the National Labor Relations Board's General Counsel affirmed a regional Board decision declining to assert jurisdiction over a complaint against the Cherokee Indian Hospital.

The Board cited its 2004 decision in *Yukon Kuskokwim Health Corp.*, 341 NLRB No. 139 (2004), holding that it would not exercise jurisdiction over a tribally-operated hospital filling a unique governmental function – the provision of health care services. In that case, the Board concluded that while its general jurisdiction was broad under the National Labor Relations Act, federal Indian policy required the Board to decline jurisdiction. The Board based its determination on the fact that the hospital's services were not commercial in nature, that 95 percent of the patients were Alaska Natives, that funding for services were federally appropriated, and that the hospital had only a small impact on interstate commerce and did not compete with other hospitals subject to the Board's jurisdiction. Accordingly, the Board dismissed a complaint by the Teamsters Union which had been trying to unionize hospital employees.

The Board reached the same conclusion in *Cherokee Indian Hospital*. The Board based its determination on the fact that the Hospital is an arm of the Eastern Band of Cherokee Indians and that "fulfills a traditionally tribal or governmental function that is unique to its status as a Native American tribe." The Board also noted that 96 percent of the Hospital's patients were tribal members and more than 50 percent of its employees were tribal members.

The Board's decision continues an uneasy line of reasoning stemming from the Board's 2004 decision in *San Manuel Indian Bingo*, 341 NLRB No. 138, asserting jurisdiction over a tribally-operated casino on Indian lands on the basis that "the activities at issue are commercial in nature – not governmental." Thus, the Board's *Cherokee Indian Hospital* decision, while a victory for the Tribe, continues the questionable commercial versus governmental distinction regarding Board jurisdiction and tribal activities.

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