

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #03/07

PROHIBITING COMPULSORY MEMBERSHIP IN A
LABOR ORGANIZATION AS A CONDITION OF EMPLOYMENT
ON THE FOND DU LAC RESERVATION

Enacted pursuant to Resolution #1376/07 of the Fond du Lac
Reservation Business Committee on September 11, 2007.

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ARTICLE 1
AUTHORITY, PURPOSE & SCOPE

SECTION 101 **AUTHORITY**

This Ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Reservation Business Committee (RBC), as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, and Article VI of the Revised Constitution of the Minnesota Chippewa Tribe.

SECTION 102 **FINDINGS & PUBLIC POLICY PURPOSES**

The Reservation Business Committee finds that the requirement of compulsory membership in, or support of, a labor organization as a condition of employment on the lands of the Fond du Lac Band would conflict with, detract from and undermine the Band's right to self-government and sovereign control over its territorial integrity and internal employment relationships, and accordingly declares it to be the public policy of the Fond du Lac Band that compulsory membership in or support of any labor organization as a condition of employment on lands of the Fond du Lac Band shall be prohibited, consistent with the Band's right to self-government and as protected under Section 14(b) of the National Labor Relations Act, 29 U.S.C. § 158(a) (3).

SECTION 103 **RESERVATION OF RIGHTS**

The Reservation Business Committee reserves the right to amend or repeal all or any part of this Ordinance at any time

and there shall be no vested rights of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the power of the Reservation Business Committee to amend or repeal this Ordinance or any part herein at any time. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or a consent to jurisdiction by any forum not expressly authorized to exercise jurisdiction under this Ordinance. Any provision of this Ordinance which is adjudicated to be inconsistent or incompatible with applicable federal law shall be invalid and unenforceable to the extent of such inconsistency or incompatibility, provided, however, that all remaining provisions shall be given full force and effect.

CHAPTER 2
DEFINITIONS & INTERPRETATION

SECTION 201 DEFINITIONS

- (a) "Band" shall mean the Fond du Lac Band of Lake Superior Chippewa.
- (b) "Band lands" or "lands of the Fond du Lac Band" shall mean all lands owned in fee or trust by the Fond du Lac Band and subject to its jurisdictional control.
- (c) "Employee" shall mean any person who is retained by an employer for compensation.
- (d) "Employer" shall mean any person having ten (10) or more employees within the Fond du Lac Reservation, and includes the government and subdivisions of the Band.
- (e) "Fond du Lac Reservation" shall mean all lands within the exterior boundaries of the Reservation and all trust lands held by the United States for the Fond du Lac Band.

- (f) "Labor organization" shall mean any organization formed to negotiate with employers on behalf of employees collectively on employment-related matters such as compensation, hours, benefits, or conditions of employment.
- (g) "Reservation Business Committee" shall mean the governing body of the Fond du Lac Band.

SECTION 202 INTERPRETATION

The provisions of this Ordinance shall be interpreted in a manner which maximizes the extent to which the Reservation Business Committee controls the conditions of employment on the lands of the Fond du Lac Band, consistent with applicable federal law. If any provision of this Ordinance, any regulations promulgated hereunder, or any application hereof is held invalid by a court of competent jurisdiction, the valid provisions of this Ordinance and the valid regulations shall continue in full force and effect.

**CHAPTER 3
MEMBERSHIP IN OR FINANCIAL SUPPORT OF LABOR ORGANIZATIONS**

SECTION 301 MEMBERSHIP OR NON-MEMBERSHIP IN LABOR ORGANIZATION NOT A CONDITION FOR EMPLOYMENT

No person shall be required, as a condition of employment or continuation of employment by or on the lands of the Fond du Lac Band, to:

- (a) Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
- (b) Become or remain a member of a labor organization;
- (c) Pay dues, fees, assessments or other charges of any kind or amount to a labor organization;

- (d) 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, assessments or other charges regularly required of members of a labor organization; or
- (e) Be recommended, approved, referred or cleared through a labor organization.

SECTION 302 CONTRACT COMPLIANCE

All transaction documents, including without limitation, leases, subleases, contracts, subcontracts, permits, and collective bargaining agreements between employers and labor organizations (herein collectively "transaction documents"), which are entered into by or issued to any employer and which are to be performed on lands of the Fond du Lac Band shall contain a provision pursuant to which the employer and any other contracting party affirmatively agree to strictly abide by all requirements of this Ordinance. With respect to any transaction document which does not contain the foregoing provision, the terms and the requirements of this Ordinance shall constitute affirmative contractual obligations of the contracting parties. To the extent of any inconsistency or conflict between a transaction document and this Code, the provision of the transaction document in question shall be legally invalid and unenforceable and this Ordinance shall prevail and govern the subject of the inconsistency or conflict.

SECTION 303 PRESUMPTION OF AT WILL EMPLOYMENT

Subject to Section 301 of this Ordinance and in the absence of a job security provision in an employment contract, employment of an indefinite duration is presumed to be at will and either the employee or the employer may terminate it at any time for any reason or for no reason.

SECTION 304 REMEDIES AND SANCTIONS

- (a) Any person, employer, labor organization or other entity which violates Section 301 of this Ordinance may be subject to one or more of the following remedies or sanctions:

- (1) Remedial orders for equitable relief including, without limitation, orders requiring hiring, reinstatement, or other injunctive relief, whether temporary or permanent;
 - (2) Damages for loss of income to a prospective, former or reinstated employee;
 - (3) When a party's position is not substantially justified, an award of attorney's fees and costs to the prevailing party; and
 - (4) When a party's violation is intentional or malicious, punitive damages.
- (b) The Fond du Lac Band may seek and obtain in its own name any of the remedies or sanctions provided in this section for violation of this Ordinance except with respect to damages for loss of income to a prospective, former or reinstated employee.

ARTICLE 4
EFFECTIVE DATE; AMENDMENT OR RESCISSION

SECTION 401 **EFFECTIVE DATE**

The provisions of this Ordinance shall be effective on the date of adoption certified by the Reservation Business Committee.

SECTION 402 **AMENDMENT OR RESCISSION**

The provisions of this Ordinance may be amended or rescinded by Resolution of the Fond du Lac Reservation Business Committee.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #03/07 was duly presented and adopted by Resolution #1376/07 by a vote of

4 for, 0 against, 0 silent, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on September 11, 2007 on the Fond du Lac Reservation.

Karen R. Diver,
Chairwoman

Ferdinand Martineau, Jr.,
Secretary/Treasurer

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