

TITLE 27
LABOR ORGANIZATIONS AND COLLECTIVE BARGAINING

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TITLE 27

LABOR ORGANIZATIONS AND COLLECTIVE BARGAINING

Chapter 1. Purpose of Law; Definitions; Strike and Lockout Prohibitions; Union Licensing

27.01.01 Purpose

The purpose of this law is to (a) protect the inherent and treaty-protected sovereignty of the Port Gamble S'Klallam Tribe over the use and enjoyment of its lands, including economic activity therein, (b) promote harmonious and cooperative relationships between the Tribe and its employees and between any Tribal Entity and its employees by permitting such employees, if they freely choose, to organize and bargain collectively with regard to the terms and conditions of their employment, (c) protect the health, welfare, and integrity of the Tribe by prohibiting and preventing all strikes by employees against the Tribe or any Tribal Entity and to likewise prohibit lock outs by the Tribe or any Tribal Entity, (d) protect the health, welfare and integrity of the Tribe by licensing any labor organization doing business within Tribal Territory, (e) protect the freedom of employees working for the Tribe or any Tribal Entity to decide whether or not to join a union, (f) ensure that the activities of any labor organization doing business within Tribal Territory comply with the laws of the Tribe, and (g) regulate the activities of labor organizations within Tribal Territory to ensure proper respect for the sovereignty of the Tribe and the health and welfare of its people.

27.01.02 Definitions

Words in this Title shall have the meaning given to them in this section unless the context clearly indicates another meaning. If the meaning of a word is not clear, the Community Court shall construe the meaning of the word in harmony with the purpose of this Title.

- a) “Bargaining unit” means a unit of employees within a public employer identified as an appropriate unit for representation pursuant to regulations promulgated by the Commission;
- b) “Election Official” means the Election Official appointed by the Tribal Council for the purpose of carrying out the duties of overseeing elections and such other duties enumerated in this law or amendments hereto.
- c) “Exclusive bargaining representative” means a labor organization that is lawfully elected to be the exclusive bargaining representative of a bargaining unit within a public employer;

- d) “Gaming Commission” means the Gaming Commission of the Port Gamble S’Klallam Tribe.
- e) “Labor organization” or “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;
- f) “Laws of the Tribe” means any law of the Port Gamble S’Klallam Tribe or any regulation of any of its commissions;
- g) “Lock Out” means any action by a public employer that prevents employees from going to work for the purpose of coercing employees to accept terms or conditions sought by a public employer in a negotiation with an exclusive bargaining representative;
- h) “Management” means individuals holding supervisory and managerial positions within a public employer, who, because of their supervisory and managerial positions, do not qualify to be within a bargaining unit, and, when context so indicates, such individuals who have been delegated authority by a public employer to negotiate with an exclusive bargaining representative;
- i) “Person” means any individual, labor organization, corporation, partnership or other entity;
- j) “Public Employee” means non-supervisory regular full-time and part-time (working a minimum of four hours per week) employee of a public employer, defined under this Title, excluding all supervisory, managerial, confidential, temporary, seasonal, on call and casual employees;
- k) “Public Employer” means the Tribe or a Tribal Entity;
- l) “Strike” means an employee’s refusal, in concerted action with other employees, to report for duty or to be willfully absent, in whole or in part, from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of employment. Notwithstanding the provisions of any other law, an employee of a public employer who, by concerted action with others and without the lawful approval of his or her supervisor, willfully absents himself or herself from his or her position, or abstains in whole or in part from the full, faithful and proper performance of his or her duties for the purpose of inducing, influencing or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment shall be considered to be on strike. “Strike” shall also mean any form of picketing or boycotting of a Public Employer within Tribal Territory and any form of a secondary boycott against a Public Employer.
- m) “Tribe” means the Port Gamble S’Klallam Tribe;

- n) “Tribal Entity” means the any governmental entity or instrumentality established by the Tribe and operating in or upon Tribal Territory for the benefit of the Tribe and its members;
- o) “Tribal Territory” means all lands held in Trust for the Tribe and any other land now owned or hereafter acquired by the Tribe in restricted fee status and subject to the protections of the Treaty of Point No Point of 1855 and Section 177 of Title 25 of the United States Code;
- p) “Union” or “labor organization” 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

27.01.03 Strikes Against Public Employers Prohibited

Strikes, work stoppages, or slowdowns against public employers are contrary to the health, safety and welfare of the Tribe and its people, and are therefore prohibited. No public employee or labor organization shall cause, instigate, encourage, support or engage in a strike, work stoppage or slowdown with respect to a public employer. No labor organization shall cause, instigate, encourage or support an employee strike against a public employer.

27.01.04 Lock Outs Prohibited

A public employer shall not engage in any action constituting a lock out.

27.01.05 Licensing of Labor Organizations

(a) Findings and Purpose

Labor organizations doing business within Tribal Territory have the potential to affect the distribution of resources generated by the Tribe for its members. Given the unique influence that labor organizations may have upon the economic resources of the Tribe, they have significant potential to affect the health, welfare and political integrity of the Port Gamble S’Klallam tribal community. The purpose of this section is to set forth licensing requirements for labor organizations doing business within Tribal territory to ensure that persons acting on behalf of such labor organizations are devoid of corrupt influences and are of high moral character.

(b) Licensing requirements.

(i) No labor organization shall engage in organizing employees working for any public employer without a license issued by the Gaming Commission, which shall provide as follows:

(A) the conduct of business within Tribal Territory 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 conduct business within Tribal Territory is conditioned upon such labor organization's agreement to be subject to the laws of the Tribe and its regulatory authority, including this Law;

(C) in consideration of the Tribe's consent to such labor organization's conduct of business within Tribal Territory, such labor organization agrees to (A) comply with all laws of the Tribe, (B) submit to the jurisdiction of the Tribe, including its Gaming Commission and Community Court, and (C) pay an annual business license fee in the amount of \$500.00;

(D) such labor organization agrees that a license issued by the Tribe for conducting business within Tribal Territory may be revoked by the Gaming Commission at any time for any failure to comply with the laws of the Tribe; and

(E) such other requirements as the Gaming Commission may require by regulation.

(ii) Subject to the requirements of subsection (a), the Gaming Commission is hereby authorized to promulgate such regulations as it sees fit to investigate and license any labor organization, or any of its representatives or officers, seeking to conduct business within Tribal Territory.

(iii) Any person who intentionally makes a false statement to the Gaming Commission shall be deemed to be in violation of this Law and subject to license revocation.

(c) Strikes and License Revocation

The license of any labor organization, or that of any officer or representative of a labor organization, may be revoked by the Gaming Commission, upon notice and opportunity to be heard, if such labor organization, or any of its officers or representatives, engages in a strike.

**Chapter 2. Bargaining Unit Determinations; Union Election Procedures;
Decertification Election Procedures**

27.02.01. Appropriate Bargaining Units and Union Election Procedures.

(a) Purpose

The purpose of this section is to ensure that in any election for a labor organization at a public employer, there is respect for the rights of individuals employed in non-supervisory positions at the public employer to have the opportunity to determine, free of intimidation and coercion, whether or not they choose to authorize a labor organization to be their collective bargaining representative.

(b) Appropriate group for bargaining

(i) Generally

Employees must have a sufficient community of parallel interests to be an appropriate group for bargaining. "Parallel interests" shall be broadly construed. Employees with similar job duties, skills, and positions; who are part of a functionally integrated work environment; or who have common supervision shall be considered to have parallel interests.

(ii) Specific employees

Certain employees, given the specific nature of their work, such as security guards, serve in unique vocational roles and cannot be joined in an appropriate bargaining group with other employees.

(iii) Exclusions

Supervisory, managerial, executive personnel, and "confidential" employees cannot be part of any bargaining group. Nor can employees who work less than four hours per week, temporary, seasonal, or on-call employees be included in a bargaining unit. The terms in this paragraph to describe various employees (such as "supervisory," "managerial," or "confidential" employees), shall be construed consistently with the definitions applied to such terms under the National Labor Relations Act ("NLRA").

(iv) Labor organization notice of employee support to management; agreement or arbitration

(A) Should a labor organization claim that 30% or more of a unit of employees supports labor organization representation, it shall so inform management, in writing, and demonstrate that the following conditions are met:

1. That the group the labor organization seeks to represent is an appropriate one under the principles set forth in this subsection (b)(i)-(iii);
2. That there is reliable evidence of individual employee support for labor organization representation; and
3. That the number of employees expressing the desire to be represented by the labor organization within the proposed bargaining unit constitute 30% or more of the employees in that unit.

For the purpose of subsection (b)(iv)(A)(2) and subsection (c)(i), a printed document bearing the employee's original signature, containing a clear and conspicuous statement that, by signing, the employee expresses a desire to be represented by the union for the express purposes of collective bargaining, shall be deemed "reliable evidence."

(B) If, within 21 days after management's receipt of the labor organization's written claim under subsection (b)(iv)(A), the parties are unable to agree that the conditions set forth in subsections (b)(iv)(A)(1)-(3) are met, the dispute shall be resolved by an Arbitrator chosen by the Election Official, provided that the Arbitrator shall be a member of the National Academy of Arbitrators. The Arbitrator shall apply the standards that would govern the identification of appropriate bargaining units under the NLRA. The Arbitrator shall hold such hearing as the Arbitrator deems necessary to resolve the dispute and shall issue a decision in writing, setting forth the rationale for the decision. The Arbitrator's decision shall be final and binding on the parties.

(c) Preliminary conditions for scheduling an election by the Election Official

Upon agreement of management and a labor organization seeking an election or an Arbitrator decision establishing that the conditions of subsection (b)(iv)(A)(1)-(3) are met, the labor organization shall so notify the Election Official. Within five (5) days (excluding weekends and holidays) of receipt of said notice, the Election Official shall announce, in writing (by first class U.S. mail, electronic mail, or fax) to management and the labor organization that the following conditions are met:

- (i) That there is reliable evidence of individual employee support for labor organization representation; and
- (ii) That the number of employees expressing the desire to be represented by the labor organization within the bargaining unit at issue constitute 30% or more of the employees in that unit.

provided, however, that the Election Official's obligation to issue such confirmation shall be stayed unless and until the labor organization provides the Election Official with a

copy of a license (or provisional license) issued to the labor organization by the Gaming Commission which is in effect.

- (d) Scheduling the election; resolution of eligible employee disputes; notice of rules
- (i) Unless otherwise agreed to by management and the union, in the absence of an unresolved dispute over the composition of the bargaining unit, an election among eligible employees in the bargaining unit shall occur no later than the next regularly scheduled pay date, 2 months from the date that the Election Official issues confirmation under subsection (c).
 - (ii) Within 5 days of receipt of the Election Official's announcement under subsection (c), management shall prepare a list of all eligible employees in the subject bargaining unit in alphabetical order, along with each employee's address and title, and provide a copy (via first class U.S. mail, electronically or via fax) to the labor organization. "Eligible employees" shall include anyone hired and actually working as of the payroll period immediately preceding the labor organization's 30% minimum showing of interest submitted to the Election Committee. The labor organization shall immediately identify any disputes it may have with regard to the list (such as omissions, incorrect inclusions), and the parties shall try to resolve differences through agreement. Disagreements shall be resolved by expedited arbitration provided for in subsection (h), and the 2 month pre-election period shall not commence until after resolution of all bargaining unit disputes. The Arbitrator may extend the eligibility hire date to ensure that no employee is improperly enfranchised or disenfranchised.

Management shall provide the labor organization with timely updates of said list through to the date of the election to the extent there are any changes to the list.

- (iii) Notice of meeting and ground rules

Within 10 days (excluding weekends and holidays) after the scheduling of an election, management shall:

- (A) Post and distribute notices to those employees within the bargaining unit who are eligible to vote, setting forth information about the date, time, and place of the election, the purpose of the election, and the employees' rights to be educated on the benefits and deficits of labor organization representation. These election notices shall be facially neutral and not espouse a position for or against labor organization representation and shall be in substantially the following form:

"ANNOUNCEMENT OF UNION REPRESENTATION ELECTION

Under Tribal Law employees have the right to organize and join a union. The laws of the Tribe recognize that, if at least thirty percent of the eligible workers in an appropriate bargaining unit reliably express

interest in being represented by a Union, then everyone in the unit shall have the right to participate in a secret ballot election to vote on whether they want Union representation. The outcome of the election will be determined by a simple majority.

The [name of union] have met the thirty percent requirement in the [name of public employer] and [describe eligible employees] will be eligible to vote in a secret ballot election scheduled for _____. Employees who are eligible to vote will be receiving individual notices of their right to participate.

Whether to have union representation or not is a question which should be studied carefully by employees prior to voting. The [name public employer] and the [name of union] will abide by the following rules to make sure that employees have access to complete, accurate information prior to the election. Employees will be truthfully advised about:

- *What good faith collective bargaining means and what obligations it requires of the [name of public employer] and the Union.*
- *Typical, current labor agreement provisions and how such provisions may or may not affect the quality of the working lives of employees.*
- *The reasons employees generally vote for and against union representation based on constructive, fair analysis of factual information.*
- *Typical requirements of union membership.*

The Tribal Council has appointed an independent Election Official to conduct a fair election, and [name of public employer] and the union have arranged for an independent arbitration process to resolve any disputes or issues that arise.

There will be a meeting on _____ to discuss Ground Rules covering the pre-election process. At this meeting, rules on employees' rights will be described in greater detail.

Employees have the right to either support or reject union representation without being subjected to any kind of harassment, intimidation or unwelcome solicitation. Employees cannot be punished or rewarded based on whether they are for or against having a union."

(B) Hold a meeting with the bargaining unit employees to cover ground rules set forth in section (e). The meeting shall not include any

kind of campaigning or solicitation, but shall inform employees as to the process, and rules against coercion, discrimination and harassment as set forth in section (e).

- (iv) Seven (7) days before the election, management shall send notices to those employees eligible to vote, setting forth information about the date, time, and place of the election, and the purpose of the election. This reminder notice shall also be posted on any employee bulletin board. Said election notices shall be facially neutral and not espouse a position for or against labor organization representation and shall be in substantially the same form as the notice set forth in subsection (d)(iii)(A).

(e) Election rules regarding campaign, communications, and conduct

(i) Application of Unfair Labor Practice Provision

To preserve employee freedom of choice, management and the labor organization are prohibited from engaging in unfair labor practices, as defined in section 27.03.07 that would undermine the validity of the bargaining agent election.

(ii) Misconduct by employees

(A) Employee solicitation and discussions

The public employer may enforce its existing rules limiting solicitation and prohibit any unwelcome solicitation.

The public employer may restrict employees from discussing labor organization matters in public areas where the focus of employees is customer service. When a bargaining unit at the Point Casino is at issue, said "public areas" shall include gaming areas, reception areas, restaurants, bars, as well as aisles and corridors in proximity to such places, but shall not include restrooms, and parking areas, provided however that employees shall be entitled to discuss labor organization matters in restrooms, and parking areas during off duty time, such as breaks, meal times, and before and after work.

The public employer shall not restrict employees from discussing labor organization matters in non-public areas (such as employee lunch or break rooms) as well as parking lots, and rest rooms while on duty unless such discussions interfere with employees' work.

(B) Unwelcome conversations and harassment

An employee's request to one or more co-workers to desist from soliciting them or talking to them about the labor organization must be honored. Persistence by someone who ignores a clearly articulated request to stop

talking about the labor organization may be subject to any disciplinary rules of the public employer governing harassment.

(C) Intentionally misleading other employees

Employees who recklessly or consciously disseminate inaccurate, misleading, or false information may be subject to discipline by the public employer for such behavior under any policies of the public employer.

Subject to subsection (h), a pattern or recurrence of such behavior may constitute grounds for delaying a vote until remedial measures have been taken, or, if discovered after the balloting, such conduct may be grounds for setting aside the election results, depending upon an Arbitrator's findings regarding the impact of such conduct on a sufficient number of employees eligible to vote in the election.

(f) Elections

(i) Voting time and place.

The secret ballot election should be arranged by the Election Official so that eligible employees have ample time to participate. Due consideration shall be given to employees' varied work schedules. Polling shall occur in a convenient place for employees to vote.

(ii) No solicitation on election day.

There shall be no "campaigning" on election day, provided, however, that employees may be reminded to vote.

(iii) Role of Election Official

The Election Official shall manage the voting process and count the ballots.

(iv) Voter eligibility list

Management and the labor organization shall have an ongoing obligation throughout the 2 month pre-election interval to immediately raise and try to resolve, through agreement, questions about the eligibility of any voting employee prior to the election. On the day of the vote, if management or the labor organization believes an individual on the list is not eligible to vote, such individual's ballot shall be marked as "challenged" by the Election official unless, the Election official determines that the basis for the challenge was reasonably discernable prior to the time that the challenge is made.

Anyone who is not on the list who attempts to vote shall automatically have their ballot marked as "challenged" by the Election Official.

(v) Observers

Two non-supervisory employees who are part of the bargaining group that is the subject of the election shall act as Observers, on a volunteer and unpaid basis, to help the Election Official conduct the secret ballot voting process. Management and the labor organization shall each select one Observer per shift (the same Observer may be assigned to one, two, or all three shifts). Such individuals should be familiar with the employees eligible to vote to assure the proper distribution of ballots to only eligible participating employees. There shall be no solicitation or campaigning of any kind by Observers. For an election involving employees at the Point Casino, Observers shall have a current, official Casino identification card, allowing them to be present within the Casino.

(vi) Polling place and process

The Election official shall ensure that the voting process is orderly, with limited talking in the balloting area, that managerial and supervisory personnel of the public employer not be permitted to be in or near polling places, that no employee vote by absentee ballot, and that there is no loitering or mingling at the polling location before or after voting.

(vii) Ballots

(A) Form

Ballots shall be simple and plainly worded. Employees shall be told not to sign or mark ballots, but to check off their preferences relative to labor organization representation with a “√” or an “x” in the designated box next to their choice, in substantially the following form

Do you want to be represented by the [name of union] for purposes of collective bargaining?

Please mark your choice in the appropriate box.

YES NO

(B) Challenged Ballots

A challenged ballot shall be placed in a envelope and sealed, with the employee's name written on the outside of the envelope, and then placed in the ballot box by the Election Official.

(viii) Counting the Vote

After the final polling period ends, management and the labor organization shall confer with the Election Official to determine if there are any challenged ballots and whether any of the challenged ballots can be resolved. Any challenged ballot which remains challenged shall be saved and set aside without being counted. The Election Official shall then proceed with counting the votes. The Election Official shall open the ballot box and mingle the votes. The Election Official shall open each individual ballot, read it aloud, and then place it into stacks of "Yes" and "No" ballots.

After each ballot is opened and properly stacked, the Election Official shall count all properly marked ballots, keeping track of the tally. Election Observers shall be present throughout this process. Representatives of the parties may also be present.

If the number of the challenged ballots could affect the outcome of the vote, the eligibility of all challenged ballots shall be determined through the Dispute Resolution procedures under subsection (h).

(ix) Official tally

Upon the completion of the tally, the Election Official shall deliver to management and the labor organization an official tally, certified under oath, indicating the number of votes for each choice. Delivery may be made by hand, electronic mail, first class U.S. mail, or fax.

(x) Objections; dispute resolution

Management and the labor organization shall have seven (7) days following the completion of voting to file any objection or claim of violation of the provisions of this section. Such notices shall set forth, in detail, the factual basis for the objection or claim and shall be delivered in writing to the Election Official with copies to the other party.

Should the Election Official receive such a written objection or claim, the Election Official shall direct the parties to proceed to dispute resolution under subsection (h)(iii). Said directive shall be sent to the public employer and the labor organization by U.S. first class mail, electronic mail, or fax.

(g) Election results

(i) If the labor organization achieves a simple majority in the election, management and the labor organization shall proceed to engage in collective bargaining in accordance with this Title, *provided that* no election shall be considered valid unless it is by secret ballot vote of a majority of the employees in a bargaining unit in accordance with the provisions of this Chapter.

(ii) If the labor organization fails to achieve a simple majority in the election, the results shall be treated as a choice for no labor organization representation for the subject bargaining unit for a period of twelve months. During this twelve month period, the labor organization shall not engage in “solicitation” or “organizing” relative to the subject bargaining unit. The terms “solicitation” and “organizing” shall be construed consistently with the definitions of those terms under the NLRA. Any such solicitation or organizing may be subject to an action for injunctive relief by the public employer in the Community Court.

(h) Dispute resolution

(i) Generally

Any alleged violation or dispute involving any aspect of this section, including but not limited to the inclusion or exclusion of particular employees from the subject bargaining unit as well as violations of subsection (e) or subsection (f) may be set forth by a party in a written demand for arbitration, setting forth the facts alleged and the specific provision of this section at issue. If the parties are unable to resolve the dispute within 7 days of service of any such demand, they shall proceed to resolve their dispute before an Arbitrator, drawn from the National Academy of Arbitrators. If the parties are unable to agree upon an arbitrator, they shall so inform the Election Official, who shall then choose the arbitrator from the National Academy of Arbitrators.

(ii) Disputes arising under subsection (e) before scheduled vote; notice; good faith effort to resolve

(A) Should either management or the labor organization become aware of perceived or potential violation prior to the election, they shall notify the other, in writing (via electronic mail or fax and via U.S. first class mail), of the charge and the basis for the charge. Management and the labor organization shall then make a good faith effort to resolve the alleged violation. This good faith effort shall include providing one another with unprivileged information relevant to the charge that is requested by the other.

(B) If such good faith efforts do not result in resolution of the charge, the objecting party may provide a copy of the charge to the Arbitrator, simultaneously serving the other party, and ask the Arbitrator to immediately convene a conference call to discuss the charge and (a) in what manner it can promptly be resolved without

disturbing the election timetable (such as mediation, expedited proceedings; hearing via conference call; written submission; in-person meeting or other mutually agreeable format; with the Arbitrator's decision to be announced within 24 hours of the conclusion of hearing; and (b) whether the circumstances the charge merit postponing the election until such time as the charge is resolved by the Arbitrator or whether the election should proceed with the Arbitrator authorized to issue the appropriate remedy after the election has been conducted. The determination of the Arbitrator, as to how the charge will be addressed and whether it will delay the election, shall be made within 24 hours of the conference, and shall be final and binding.

The mutual requirement on management and the labor organization to assert known allegations in the most timely manner is intended to: (a) reduce any adverse impact of a violation at the soonest time; (b) minimize the chances of the conduct being repeated; and (c) determine whether the election should take place as scheduled. Failure to raise an allegation in a reasonably timely manner may be treated by the Election Official or an appointed arbitrator as a waiver.

(iii) Disputes arising after vote; good faith resolution of disputes

Should either management or the labor organization assert an objection or claim under subsection (f)(x), the parties shall confer and attempt, in good faith, to resolve the objection or claim. Should the parties fail to resolve an alleged violation, the charging party may invoke Arbitration in accordance with subsection (h)(ii)(B) to resolve the party's claim.

(iv) Power and discretion of arbitrator; written decisions; sanctions

(A) Subject to the subsection (h)(iv)(B), and unless otherwise provided herein, the Arbitrator shall be empowered to impose such remedial measures as the Arbitrator deems would resolve any dispute or fully ameliorate the impact of any conduct in violation of this section, ordering remedies typically available under persuasive public sector labor relations law or in the context of NLRA proceedings.

(B) Standards for "major" and "minor" violations

The distinction between a "major" and a "minor" violation shall be based upon the standards that would normally govern campaign activities and speech under the NLRA, but only to the extent that such standards are consistent with this Title and any other laws of the Tribe.

(C) Violation by management; sanctions

(1) If the Arbitrator finds a "major violation" of subsection (e) or subsection (f) by management, the Arbitrator's remedy may

include requiring the public employer to consent to recognize the labor organization as bargaining agent for the employees of the bargaining unit involved in the election, based on a majority percentage of cards that are signed by eligible employees (minimum of 50% of the employees eligible to vote plus 1). To the extent the labor organization has less than the required cards to justify recognition, the labor organization shall have twenty-one (21) days from the date of the Arbitrator's decision to attain sufficient additional cards to warrant recognition. Management shall remain strictly neutral with respect to any such card-signing campaign. The Election Official shall conduct a supplemental card check by confirming the eligibility of each employee who signs a card, and, if a majority of valid cards are obtained, certify the results.

- (2) If the Arbitrator finds a "minor violation" of subsection (e) or subsection (f) by management, the Arbitrator may reschedule the vote and/or order such other remedy as fairness and justice requires; provided however, that multiple "minor violations" may constitute grounds for the Arbitrator to find a "major violation."
- (3) The Arbitrator shall only require the card check remedy set forth above if such remedy is consistent with persuasive public sector labor relations law or in accordance with the U.S. Supreme Court's decision *N.L.R.B. v. Gissel Packing Co.*, 396 U.S. 804 (1969) and its progeny.

(D) Violation by labor organization; sanctions

- (1) If the Arbitrator finds a "major violation" of subsection (e) or subsection (f) by the labor organization, the labor organization shall abstain from all activities and actions of any kind to promote the organization of a labor organization, or otherwise seek representation of any employees at the public employer, for a period of twelve (12) months after the election. To the extent any improper "campaigning" of any kind occurs, this representational bar may be extended by an additional six (6) months per violation upon a finding of such additional improper conduct by the Arbitrator.
- (2) If the Arbitrator finds a "minor violation" of subsection (e) or subsection (f) by the labor organization, the Arbitrator may reschedule the vote and/or order such other remedy as fairness and justice requires; provided however, that multiple "minor violations" may constitute grounds for the Arbitrator to find a "major violation".

(3) The Arbitrator's discretion in establishing a remedy for labor organization misconduct shall be guided by persuasive public sector labor relations law or principles followed by the NLRB.

(E) The decision of the Arbitrator shall be in writing and issued as soon as possible following the close of a hearing, and, in any event, no more than 14 days following such hearing.

(F) Allegations shall be provable by a preponderance of the evidence, and the rules of evidence applicable to trials in the Community Court shall apply.

(G) The Arbitrator's decision shall be final and binding on the public employer and the labor organization.

27.02.02 Decertification of Exclusive Representative.

- (a) A member of a labor organization or the labor organization itself may initiate decertification of a labor organization as the exclusive representative of a bargaining unit if thirty percent (30%) of the public employees in the bargaining unit make a written request to the Election Official for a decertification election. Decertification elections and any disputes related thereto shall be governed by the procedures for elections under sections 27.02.01. A decertification election shall only be valid if forty percent (40%) of the eligible employees in the bargaining unit vote in the election.
- (b) When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the Election Official no earlier than 120 days and no later than 90 days before the expiration of the collective bargaining agreement.
- (c) When, within the time period prescribed in subsection (b) of this section, a competing labor organization files a petition containing signatures of at least thirty percent (30%) of the public employees in a unit that can be considered an appropriate bargaining unit under regulations promulgated by the Commission, a representation election, rather than a decertification election, shall be conducted in accordance with regulations promulgated by the Commission.
- (d) When an exclusive representative has been certified but no collective bargaining agreement is in effect, the Election Official shall not accept a request for a decertification election earlier than twelve months subsequent to a labor organization's certification as the exclusive representative.

**Chapter 3. Rights, Duties, Obligations of Management and Unions;
Bargaining Subjects; Unfair Labor Practices**

27.03.01. Duty to Bargain in Good Faith.

- (a) Except as otherwise provided by this Law, if a labor organization is lawfully elected to be the exclusive bargaining representative of a bargaining unit of public employees,
 - (i) the exclusive bargaining representative shall represent all the public employees within the unit without regard to membership in the organization, provided that any public employee may present his/her grievance to the public employer and have such grievance adjusted without the intervention of the bargaining agent if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of such grievance;
 - (ii) management and the exclusive bargaining representative shall bargain in good faith on wages, hours and other terms and conditions of employment, provided that (A) neither management nor the exclusive representative shall be required to agree to a proposal or to make a concession and (B) management decisions to hire, to layoff, to recall, or to reorganize duties shall not constitute "other terms and conditions of employment" under this subsection; and
 - (iii) management and the exclusive bargaining representative shall enter into written collective bargaining agreements.
- (b) Bargaining over matters that would conflict with the Laws of the Tribe is prohibited, and in the event of a conflict between the provisions of an agreement entered into by a public employer and the exclusive representative in collective bargaining and the Laws of the Tribe, the Laws of the Tribe shall prevail.

27.03.02. Rights of Public Employees.

Public employees have the right to organize for the purposes of collective bargaining and representation. This right shall be deemed analogous to the rights afforded public sector employees under public sector labor relations laws governing states, unless such laws conflict with the Laws of the Tribe.

27.03.03. Public employer-union agreements conditioning employment on union membership or contributions prohibited

No person shall be required, as a condition of employment within a public employer to: (i) resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization; (ii) become or remain a member of a labor organization; (iii) pay dues, fees, assessments or other charges of any kind or amount to a labor organization; (iv) 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 (v) be recommended, approved, referred or cleared through a labor organization.

Any such agreement shall be void and unenforceable.

27.03.04. [Reserved]

27.03.05. Policies of Public Employers Addressing Abuse of Alcohol and Drugs Not Subject to Collective Bargaining.

- (a) Declaration and Findings. The abuse of alcohol and both legal and illegal drugs within the public employers harms the health, safety and welfare of the Tribe and its members. The Tribe's regulation of the abuse of alcohol and both legal and illegal drugs within public employers is critical to the health, safety, and welfare of the Tribe and its members.
- (b) Prohibition of Collective Bargaining Affecting Alcohol and Drug Testing Policies. Public employers shall have the right to address the terms and conditions for testing public employees for alcohol and drug use, consistent with the laws of the Tribe, and such policies shall not be subject to bargaining with any labor organization.

27.03.06. Port Gamble S'Klallam Tribal Member Employment Preferences Not Subject to Collective Bargaining.

Any policies of a public employer or laws of the Tribe, giving preferences to members of the Tribe or other Native Americans (Indian Preference) with respect to hiring, promotion, or retention of employment within a public employer shall not be subject to collective bargaining.

27.03.07. Unfair Labor Practices.

- (a) A public employer is prohibited from:
 - (i) Interfering with, restraining, or coercing public employees in the exercise of their rights guaranteed under section 27.03.02.

- (ii) Encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, tenure, or other conditions of employment.
 - (iii) Refusing to bargain collectively, failing to bargain collectively in good faith or refusing to sign a final agreement agreed with an exclusive bargaining representative.
 - (iv) Discharging or discriminating against a public employee because he or she has exercised rights guaranteed under section 10 or signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceeding provided by this Law or by regulation of the Commission.
 - (v) Dominating, interfering with, or assisting in the formation, existence, or administration of, any labor organization or contributing financial support to such an organization.
 - (vi) Refusing to discuss grievances in good faith pursuant to the terms of the collective bargaining agreement with either the exclusive bargaining representative or the employee involved.
- (b) A labor organization, its officers, representatives, agents, or members are prohibited from:
- (i) Interfering with, restraining, or coercing public employees in the exercise of the rights provided by section 27.03.02.
 - (ii) Causing or attempting to cause a public employer to discriminate against a public employee because of the employee's membership or non-membership in a labor organization or attempting to cause a public employer to violate the rights of public employees provided by section 27.03.02.
 - (iii) Refusing to bargain collectively or failing to bargain collectively in good faith with management or refusal to sign a final agreement with management
 - (iv) Discriminating against a public employee because he or she has exercised rights guaranteed under section 27.03.02 or signed or filed an affidavit, petition, or complaint or given any information or testimony in any proceeding provided for in this Law or by regulation of the Commission.
 - (v) Participating in a strike against a public employer or instigating or supporting, in any positive manner, a strike. Any violation of this paragraph shall subject the violator to the civil penalties provided by this Law.
- (c) Notwithstanding the provisions of subsections (a) and (b), persons shall have the right to voice their views consistent with the protections afforded by the Tribe's

laws, and the expression of any arguments or opinions shall not constitute, or be evidence of, an unfair labor practice or of any other violation of this Law, provided that such expression contains no promise of benefits or threat of reprisal or force.

27.03.08. Resolution of Charges of Unfair Labor Practices; Breach of Duty of Fair Representation.

(a) Charges Involving Management or an Exclusive Representative

(i) Charges, Notice, Good Faith Effort to Reach Early Resolution

(A) Prior to the commencement of any unfair labor practice charge by management or an exclusive bargaining representative, the complaining party shall notify the other party, in writing of the alleged factual basis for the charge and the requested remedy. The recipient party shall respond in writing within 10 days of receipt of such written allegations. Management and the exclusive bargaining representative shall then make a good faith effort to resolve the alleged violation. This good faith effort shall include each party providing the other with voluntary information, provided that information that a party claims is confidential need not be disclosed so long as the party claiming confidentiality states that it is withholding certain information under a claim of confidentiality subject to disclosure only pursuant to subsection (d).

(B) If such good faith efforts do not result in resolution of the charge, the objecting party may proceed to arbitration .

(ii) Arbitration

(A) If a claim is not resolved under subsection (a)(i), charges of violations of unfair labor practices, including the duty to bargain in good faith, provided by this Title shall be brought before an arbitrator, mutually agreed to and paid for by the exclusive bargaining representative and the public employer, within 15 days of the receipt by either party of a written demand for arbitration or such later time as the arbitrator may promptly schedule a hearing. If the parties are unable to agree upon an arbitrator, they shall use the American Arbitration Association (AAA) labor arbitrator selection procedure, provided that any arbitrator selected through the AAA labor arbitrator selection procedure shall be a member of the National Academy of Arbitrators.

(B) The selected arbitrator shall apply the law of the Tribe to resolve the charge, but in the absence of such law, the arbitrator shall apply persuasive authority governing public sector labor relations.

(C) The arbitrator's decision shall be in writing and mailed to the parties, return receipt requested within 30 days of the completion of arbitration. Except as provided by subsection (a)(iii), the arbitrator's decision shall be final and binding upon the parties.

(D) Unless otherwise agreed to in writing by the public employer and the exclusive bargaining representative, if the arbitrator's decision is in favor of the public employer on every issue, the exclusive bargaining representative shall pay the fee of the arbitrator (and the arbitrator's decision shall so provide) and if the arbitrator's decision is in favor of the exclusive bargaining representative on every issue, the public employer shall pay the fee of the arbitrator (and the arbitrator's decision shall so provide). Otherwise, the arbitrator shall allocate the cost of the arbitrator's services between the parties in accordance with the issues on which they have prevailed or not prevailed, and they shall pay their respective share of the arbitrator's fee in accordance with the arbitrator's decision.

(iii) Judicial Review

(A) A party who claims that the arbitrator's decision is in violation of, or conflicts with, the laws of the Tribe or is procured by corruption, fraud or other undue or illegal means, may, within 10 days of receipt of the arbitrator's decision, bring a petition for review of the arbitrator's decision to the Community Court for resolution by that member or the Court who is licensed to practice law.

(B) In any such review, the Court shall be limited to review for errors of law and the issuance of an order affirming the arbitrator's decision or correcting it for legal error as is necessary to render it in compliance with the law of the Tribe.

(C) Should the Court find that a party's petition for review is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the petition.

(D) The decision of the Community Court shall be final and there shall be no right of appeal to the Court of Appeals.

(iv) Time limits

No unfair labor practice charge shall proceed to arbitration or judicial review under subsections (a)(ii) or (a)(iii) unless a demand is made under subsection (a)(ii)(A) no later than 180 days after the alleged action constituting the alleged unfair labor practice.

(b) Charges of Discrimination by Public Employees.

A public employee who believes he or she has been subjected to unlawful discrimination in violation of section 27.03.07(a)(iv) or section 27.03.07(b)(iv) shall have the right to adjudicate such a claim as an unfair labor practice before an arbitrator in accordance with the procedures and time limitations set forth in subsections (a)(ii)-(iv). Upon a finding by the arbitrator that a public employee has been subjected to such unlawful discrimination, the arbitrator may award such remedies as will make the employee whole, including an award of attorney fees; provided, however, that the arbitrator shall have no power to reinstate a public employee who is terminated for cause or to award damages.

The arbitrator's decision may be subject to judicial review in accordance with subsection (a)(iii).

(c) Claims for Breach of Duty of Fair Representation

A public employee within a bargaining unit, who claims that an exclusive bargaining representative has breached its duty of fair representation shall have the right to adjudicate such a claim as an unfair labor practice before an arbitrator in accordance with the procedures and time limitations set forth in section subsection (a)(i)-(iv).

Upon a finding by the arbitrator that a public employee has been subjected to such a breach, the arbitrator may award such remedies as will make the employee whole, including an award of attorney fees; provided, however, that the arbitrator shall have no power to reinstate a public employee who is terminated for cause or to award damages.

The arbitrator's decision may be subject to judicial review in accordance with section (a)(iii).

(d) Privileged Information. In submitting to the procedures under this section, no public employer shall be required to disclose information that it deems confidential without a protective order issued by the Community Court or a confidentiality agreement entered into by the parties.

Chapter 4. Bargaining Impasse Resolution Procedures; Duration of Collective Bargaining Agreements

27.04.01. Resolution of Bargaining Impasse.

- (a) Agreement to Resolve Negotiation Impasse. As the first step in the performance of their duty to bargain, management and the exclusive bargaining representative shall endeavor to agree upon impasse procedures. Such procedures shall define the conditions under which an impasse exists. Any such agreement with respect to the resolution of impasse issues shall not conflict with the provisions of this section.
- (b) Subjects Not Within Procedures for Resolving Bargaining Impasse. Non-mandatory subjects of bargaining shall not be subject to the impasse procedures of this section. Unless mutually agreed to by the parties, the impasse procedures of this section shall not be invoked during the pendency of any charge regarding the required scope of good faith bargaining under section 27.03.01.
- (c) Mediation. Following the commencement of negotiations if management and the exclusive bargaining representative reach an impasse, and they do not otherwise agree to proceed directly to arbitration, they shall jointly retain a mediator to assist them in resolving the impasse issues. In the absence of an agreement on the mediator, either party may request the Election Official to appoint a mediator, and the Election Official's appointment of such mediator shall be binding on the parties. It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree. Any mediator so appointed by the Election Official shall be experienced in labor mediation, and shall be drawn from lists of such mediators maintained by the American Arbitration Association. Any information disclosed by either party to the mediator in the performance of his/her duties is privileged and shall be maintained in confidence by the mediator.
- (d) Arbitration. If the parties fail to resolve their disputes within 30 days after the completion of mediation, they may mutually agree in writing to proceed to binding arbitration. Absent agreement, either party may request that the impasse issues proceed to resolution by binding arbitration, and such request shall be served upon the other party, in writing, return receipt requested.
 - (i) Within 10 days of the parties' written agreement or the receipt by one party of a request for binding arbitration, the parties shall jointly select an arbitrator, who shall not be the same individual who served as the mediator. If the parties fail to agree on an arbitrator within the 10 day period, the selection shall be made using the procedures under the voluntary labor arbitration rules of the American Arbitration Association. Any arbitrator shall be drawn from lists of such arbitrators maintained by the American Arbitration Association, and shall be a member of the National Academy of Arbitrators.

- (ii) The submission of the impasse items to the arbitrator shall be limited to those issues upon which the parties have not reached agreement. Within 10 days of the appointment of the arbitrator, management and the exclusive bargaining representative shall each submit to the arbitrator their respective recommendations for settling the dispute on each unresolved issue, and the draft collective bargaining agreement to the extent that agreement has been reached.
- (iii) The arbitrator shall conduct a hearing at a location agreed to by the parties or, failing agreement, at a location chosen by the arbitrator that is convenient to the parties. The arbitrator may administer oaths, may issue subpoenas (under the same terms that subpoenas may issue from the Community Court), and may petition the Community Court to enforce any subpoena compelling the attendance of witnesses and the production of records, subject to such protection order any party may obtain from the Community Court to protect against the disclosure of confidential or privileged information. The arbitrator shall issue a decision on each issue remaining at impasse not later than 30 days from the day of appointment.
- (iv) In issuing said findings and recommendations, the arbitrator shall redact any factual material deemed confidential pursuant to an agreement of the parties or pursuant to a protective order issued on behalf of a party.
- (v) The parties may continue to negotiate all offers until an agreement is reached or a decision is rendered by the arbitrator.
- (vi) The Arbitrator shall consider, in addition to any other relevant factors, the following factors insofar as they are readily discernable and not subject to privilege from disclosure:
 - (A) Any past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
 - (B) Comparison of wages, hours and conditions of employment of the involved public employees with those of other employees doing comparable work in public sector facilities of comparable size geographic location, and economic volume , giving consideration to factors peculiar to the area and the classifications involved.
- (v) The Arbitrator shall select the most reasonable offer of the parties' respective final offers on the remaining impasse items and provide a written summary of the selected provisions and agreed-upon provisions to each party, return receipt requested.
- (vi) Said selections of the Arbitrator shall be binding upon the parties, provided, however, that provisions related to the public employer's obligation to pay wages, salaries, bonuses, insurance premiums, pension or retirement contributions shall not be binding upon the parties.

- (e) **Privileged Information.** In submitting to the procedures for impasse resolution under this section, no public employer shall be required to disclose information that it deems confidential without a protective order issued by the Community Court or a confidentiality agreement entered into by the parties.
- (f) **Costs of Impasse Resolution Proceedings.** Unless otherwise agreed to in writing, the public employer and the exclusive bargaining representative shall share equally all fees and costs of mediation and arbitration provided for by this section.
- (g) **Status of Terms and Conditions of Employment Pending Impasse Resolution.** At all times when an impasse remains unresolved, the status quo regarding wages and working conditions shall remain in effect even if a prior collective bargaining agreement governing the bargaining unit has expired. In such event, the status quo or the terms of any prior collective bargaining agreement shall continue in force and effect, until a new agreement shall be executed; provided, however, that for the purposes of this paragraph, the status quo, or continuing terms, shall not include increases to wages, increases in employer contributions to insurance, or increases in employer contributions to pensions.
- (h) **Community Court Review.**
 - (i) A party who claims that a binding decision of the Arbitrator is in violation of, or conflicts with, the laws of the Tribe or is procured by corruption, fraud or other undue or illegal means, may, within 10 days of receipt of the panel's decision, bring a petition for review to the Community Court.
 - (ii) In any such review, the Community Court shall be limited to review for errors of law and the issuance of an order affirming the panel's decision or correcting it for legal error as is necessary to render it in compliance with the laws of the Tribe.
 - (iii) Should the Court find that a party's petition for review is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the petition.
- (i) **Limited Review by Tribal Council of Economic Terms Recommended by the Arbitrator Upon Rejection by Public Employer.** If a public employer rejects an arbitrator's decision issued under section 27.04.01(d) regarding the public employer's obligation to pay wages, salaries, bonuses, insurance, pension or retirement contributions, it shall so inform (i) the exclusive bargaining representative and (ii) the Tribal Council in writing, within five (5) days of receipt of the arbitrator's decision. Thereafter, the Tribal Council shall schedule a closed session meeting of the Tribal Council at which the public employer shall appear and show cause for why it has rejected the arbitrator's decision regarding its obligation to pay wages, salaries, bonuses, insurance, pension or retirement contributions.

In advance of the Tribal Council meeting, the public employer shall submit to the Tribal Council the decision of the arbitrator, together with a written statement setting forth the reasons for its rejection of the decision, and it shall, at the same time, mail a copy of said written statement to the exclusive bargaining representative. In advance of the Tribal Council meeting, the exclusive bargaining representative shall be given the opportunity to submit a written statement setting forth the reasons why the Arbitrator's decision is appropriate and, upon submission of such a written statement to the Tribal Council, the exclusive bargaining representative shall mail a copy to the public employer.

At the scheduled meeting of the Tribal Council, both the public employer and the exclusive bargaining representative shall have the opportunity to be heard.

The Tribal Council shall decide only whether (a) the public employer's final offer regarding any impasse over wages, salaries, bonuses, insurance, pension or retirement shall become part of the parties' collective bargaining agreement or (b) the arbitrator's decision on any such impasse issue shall become part of the parties' collective bargaining agreement.

27.04.02. Duration of Collective Bargaining Agreements for Public Employees.

Collective bargaining agreements entered into by a public employer and an exclusive bargaining representative shall have terms of three years or less.

Chapter 5. Rules of Construction; Enforcement; Waiver of Sovereign Immunity

27.05.01. Conflicts Between the Laws of the Tribe and Gaming Commission Regulations.

In the event of a conflict between any law of the Tribe and the regulations of the Gaming Commission promulgated pursuant to Chapter 1, section 01.05(b)(ii), the laws of the Tribe shall control.

27.05.02. Conflicts Between Collective Bargaining Agreements and Personnel Policies.

In the event of a conflict between the personnel policies or procedures of a public employer and the provisions of a collective bargaining agreement entered into by a public employer and a labor organization, the collective bargaining agreement shall control.

27.05.03. Conflicts Between Collective Bargaining Agreements and Individual Contracts.

In the event of a conflict between the provisions of a collective bargaining agreement entered into by a public employer and a labor organization and the provisions of an individual contract of an employee within a bargaining unit, the terms of the collective bargaining agreement shall control.

27.05.04. Enforcement.

- (a) **Strikes: Civil Actions, Penalties, Decertification and Exclusion.** Any public employee or labor organization, and any employee or agent of any labor organization, that violates, or seeks to violate, the prohibition against strikes set forth in section 27.01.03 shall be subject to a complaint by the affected public employer for declaratory and injunctive relief before the Community Court. Upon a finding of any such violation by a labor organization or any person acting on behalf of a labor organization, the Community Court may impose a civil fine against the labor organization, not to exceed \$5,000 for each violation. Upon a finding of any such violation by a public employee, the Community Court may impose a civil fine against the employee not to exceed \$1,000 for each violation, and the employer of such public employee shall have the right to suspend or terminate the employment of such public employee. Any labor organization found by the Community Court to be in violation of the prohibition against strikes shall be deemed decertified from representing any public employees and shall further be deemed not legally entitled to be present within Tribal Territory and subject to exclusion on a temporary or permanent basis.
- (b) **Lock Outs: Civil Actions.** A public employee or labor organization shall have the right to seek declaratory and injunctive relief before the Community Court against public employers to enforce the prohibition against lock outs set forth in section 27.01.04. Upon a finding by the Community Court that a public employer has violated section 27.01.04, the Community Court may award such employee or labor organization attorney fees and costs.

- (c) Licenses: Civil Actions, Penalties, Exclusions. Any labor organization that (1) engages in activities that require a license under this Law without such a license or (2) violates the terms of a license issued by the Gaming Commission in accordance with this Law or the Commission's regulations shall be subject to a complaint before the Community Court by the Tribe, through its General Counsel, for declaratory and injunctive relief. Any labor organization found by the Community Court to have violated the licensing requirements of this Law, the terms of a license, or the regulations of the Gaming Commission governing such licensure shall be subject to a civil penalty, not to exceed \$5,000. Any labor organization found by the Community Court to be in violation the licensing requirements of this Law, the terms of a license issued by the Gaming Commission, or the regulations of the Gaming Commission governing such licensure shall be deemed not legally entitled to be present within Tribal Territory and subject to exclusion on a temporary or permanent basis.
- (d) Community Court Declaratory Authority.
- (i) Unresolved disputes between management and an exclusive bargaining representative over the duty to bargain in good faith, involving a controversy over whether a subject conflicts with the laws of the Tribe, may be brought by either party to the Community Court for resolution by declaratory judgment.
- (ii) Unresolved disputes regarding an alleged conflict between a provision of a collective bargaining agreement and the laws of Tribe may brought by a party with standing (including the affected public employer or labor organization, an affected public employee) to the Community Court for resolution by declaratory judgment.
- (iii) Should the Community Court find that a party's request for declaratory judgment under subsection d(i) or d(ii) of this section is frivolous or imposed solely for delay, it may impose sanctions upon such party, which may include paying for the attorney fees and costs incurred by the other party as a result of the appeal.

27.05.05. Claims for Breach of Collective Bargaining Agreements.

Claims for breach of a collective bargaining agreement entered into by a public employer and an exclusive bargaining representative under this Law may be brought before the Community Court.

27.05.06. Limited Waiver of Sovereign Immunity.

With respect to this Law, the Tribe hereby waives the sovereign immunity of public employers solely for actions and remedies under sections 27.02.01(h), 27.03.08(b), 27.03.08(c) (to the extent that a remedy flows against a public employer), 27.04.01(d), 27.04.01(h), 27.04.012(i), 27.05.04(b), 27.05.04(d), 27.05.05.

Chapter 6. Protection of the Integrity of Port Gamble S’Klallam Labor Organizations and Collective Bargaining Law

27.06.01 Findings

- (a) The Port Gamble S’Klallam Tribe has enacted and implemented this Labor Organizations and Collective Bargaining Law pursuant to its inherent sovereign authority.
- (b) In providing for procedures, rights, and remedies for employers, employees, and labor organizations under this Law, including those afforded through actions in the Community Court, the Tribal Council has carefully considered (and continues to consider) the values and interests of the Tribe in order to establish fair processes, rights, and remedies for the parties and interests at stake. This has included careful consideration of, amongst other things, (A) the time, costs, and inconvenience of parties and witnesses involved in proceedings to resolve controversies or to establish rights and remedies under this Law; (B) the need to protect the governmental operations of the Tribe from undue burdens from litigation, while according fair treatment to employees within those operations; and (C) methods to resolve disputes through early settlement, including mediation.
- (c) The integrity of this Law is threatened if parties bypass the procedures, rights, and remedies established herein and seek, instead, to invoke procedures or remedies outside of this Law for controversies that this Law is designed to address and resolve in accordance with the unique public policies of the Tribe. Investigations or proceedings directed at employers, apart from those provided for by this Law, which seek to address controversies or rights covered by this Law, require the expenditure of time and resources to the detriment of those involved and, in many instances, to the governmental operations of the Tribe. Such investigations or proceedings also threaten duplicative witness testimony and production of documents already available, or undertaken, pursuant to the provisions of this Law.

27.06.02 Purpose.

The purpose of this Chapter is to protect the integrity of the procedures, rights, and remedies established by this Law as described in the foregoing findings.

27.06.03 Prohibition of Employer Testimony and Documents Disclosure in External Proceedings When Employees Fail to Exhaust Tribal Remedies.

- (a) Disclosures only with approval of Tribal Council. Except with the express, written approval of the Tribal Council, public employers are prohibited from giving testimony or witness statements of any kind or producing documents or other information of any kind in response to requests or subpoenas issued by outside authorities, other than those authorities expressly granted powers under this Law, engaged in investigations or proceedings on behalf of current or former

public employees or any labor organization, when such employees or labor organizations have failed to exhaust their remedies under this Law.

- (b) Examples of failure to exhaust remedies. For the purposes of subsection (a), public employees or labor organizations shall be deemed to have “failed to exhaust their remedies under this Law” if they have failed to exhaust the procedures, rights, remedies, and appeals (including opportunities to challenge jurisdiction) available under this Law or the procedures of the Community Court, and have, instead, invoked investigations or proceedings outside of those authorized by this Law to (i) address controversies or rights covered by this Law, such as unfair labor practices governed by sections 27.03.07 and 27.03.08 or (ii) challenge the assertion of jurisdiction under this Law.

27.06.04 Actions for Injunctive Relief to Prevent Disclosures.

The Community Court shall have authority to grant preliminary and permanent injunctions to prevent employer disclosures in violation of subsection (a) and the sovereign immunity of public employers from such actions is hereby waived.

[Legislative history: Approved by Tribal Council Resolution 11-A-015, March 8, 2011.]