

Scott Walker, Indian Casinos, and Unions

Will the Wisconsin governor greenlight a controversial casino deal that's a golden opportunity for unions?

By George Landrith

Summary: For years, a Wisconsin Indian tribe has tried to open a new casino hundreds of miles from its reservation. The controversy over the casino has encouraged the tribe to cut deals with labor bosses in which the unions trade their political support for the tribe's agreement to help coerce casino workers into joining unions. Now Gov. Walker must decide whether to approve the proposed casino.

Indian casinos make fertile ground for controversy. They mix identity politics involving a long-oppressed group; heavy government regulation, which leads to wheeling and dealing, favoritism and corruption; and the involvement of the gambling industry, labor unions, and other elements often considered shady.

In Wisconsin, Republican Gov. Scott Walker must now choose whether to approve a new casino in Kenosha that would be owned by the Menominee tribe of Wisconsin and managed by Hard Rock International, a company owned by the Seminole Tribe of Florida.

Adding to the controversy is the fact that Walker, a possible presidential candidate in 2016, is up for re-election this year. Walker, who pushed through labor reforms in his state, famously survived a recall effort led by unions (which are currently pushing government "investigations" of people who advertised in support of Walker's reforms). Union officials relish the prospect of making an example of Walker by defeating him in November.

Meanwhile, union officials are greatly interested in the proliferation of Indian casinos,



The proposed casino in Kenosha would be managed by Hard Rock International.

which they see as targets. They typically pressure the Indians to use unionized labor in building the facilities and to agree that, once the casinos open, their Indian owners will help the unions organize their workers.

Indian casinos

The origin of the Indian casino industry can be traced back to a dispute over property taxes. In 1972, Russell and Helen Bryan, a couple living on a mobile home on Indian lands in Minnesota, received a property tax bill from Itasca County. They were both members of component bands of the Minnesota Chippewa Tribe, Russell Bryan as an enrolled member of the White Earth Band of Ojibwe and Helen as an enrolled member of the Leech Lake Band of Ojibwe. With the help of a local Legal Services organization, they challenged the tax bill, which was for \$147.95.

The basis for the challenge was the provision in the U.S. Constitution that



“Congress [i.e., not the states] shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” Under an 1832 court case, Indian tribes are considered dependent sovereign nations that deal directly with the federal government except when Congressional legislation determines otherwise.

Ultimately, the U.S. Supreme Court decided the case in *Bryan v. Itasca County* (1976). In a unanimous decision by Justice William Brennan, the court ruled that

March 2014

Walker, Indian Casinos, Unions
Page 1

Labor Notes
Page 6

state and local governments did not have the power to tax the property of Indians living on tribal land, absent a specific Congressional grant of authority to do so. In fact, the Court held, state and local governments generally lack the power to regulate behavior on Indian reservations.

After the ruling, the Seminole Tribe of Florida built a high-stakes bingo hall, open six days a week, on a reservation near Fort Lauderdale, contrary to a Florida law limiting bingo halls to two-day-a-week operation and \$100 jackpots. Arrests were made, and the tribe sued and won. Eventually, Indian tribes around the country, many of them impoverished, began to pursue various forms of gambling, including casinos—though this led to a disparity among the tribes, with the success of such operations dependent largely on reservations' proximity to major highways and population centers.

Indian casinos are regulated by the federal government under the Indian Gaming Regulatory Act of 1988, which returned some authority to the states by requiring that casinos be built and operated under state-Indian compacts (which have sometimes been used by states to impose special taxes on the casinos). The Act created a three-member National Indian Gaming Commission to oversee the industry. Of some 566 federally recognized tribes, more than 240 have become involved in so-called Class III gaming, a class that includes large casinos and gambling with high jackpots. Indian casino gambling rev-

enue was estimated at \$27 billion in 2011.

Thus, many poor Indian tribes joined the gambling industry—a field in which they had no special expertise—and found themselves suddenly dependent on experts, such as lobbyists, for help in navigating the paths of power in Washington and statehouses across America. Not surprisingly, scandals erupted, including one involving lobbyist and former College Republicans chairman Jack Abramoff, who was found guilty of various offenses related to taking unfair advantage of the Indians.

In 2004, the FBI and the National Indian Gaming Commission created the Indian Gaming Working Group, bringing experts on Indian affairs together with experts on organized crime, money laundering, bribery of public officials, and other fields related to the gambling industry.

The Kenosha project

The Menominee are an Indian nation whose territory once included Wisconsin and the Upper Peninsula of present-day Michigan. Federal recognition of the Menominee Tribe of Wisconsin was terminated in the 1950s but restored by an act of Congress in 1973. The tribe has about 8,700 members and a reservation in Wisconsin of approximately 356,000 square miles.

The Menominee opened their first Las Vegas-style hotel/casino in 1987. That complex employs some 500 people, of whom almost 80% are Indians or their spouses. By 1998, they were pushing for the creation of a casino off the reservation in Kenosha. Operating a casino off the reservation requires that land be placed in a federal trust.

A November 1998 referendum on the casino was bitterly contested. In Kenosha, a city with a population at the time of about 85,000 people, roughly 27,000 voters turned out, and they approved the proposal with 57% of the vote.

One opponent, Martin Edwin Anderson, wrote in a *Washington Times* op-ed 14 years ago of his concerns that gambling would bring organized crime back to Kenosha:

In the 1930s, Kenosha's "west side" where thousands of immigrants from southern Italy, particularly Calabria, settled to work at Nash Motors was home to a Mafia war. (Even today, Kenosha's power brokers tend to be the sons and grandsons of Calabrezze immigrants.)

In the early 1960s, gangland efforts to muscle in on the business of a local pinball operator ended up with the entrepreneur's body found in a shallow grave outside the city, his mouth filled with pinballs. The outrage caused then-Attorney General Robert F. Kennedy to call the city "a training ground for the Mafia."

In a recent television investigative series run by the CBS-affiliate in Milwaukee, WDJT, it was revealed that several local clergymen and at least one public official claimed that they were threatened for their anti-gambling views. In addition, state Attorney General James Doyle warned that the casino may open the door to organized crime, and that Wisconsin law-enforcement is not prepared to deal with the problem.

... A review of crime statistics done by the *Milwaukee Journal Sentinel* last year [1999] showed that property crime increased in six of 12 Wisconsin counties with casinos during their first six years of operation, even as crime in the state declined as a whole.

Taking away workers' rights

During the period of dealmaking—more than a decade and a half—leading to the proposed casino in Kenosha, the Menominee negotiated many agreements on the side, in order to gain the political and financial support necessary for the project. In acquiring the option to buy the land for the Kenosha casino, the tribe signed a Project Labor Agreement (PLA) requiring that all of the construction jobs be performed with unionized labor.

"Tribal governments suffer the same foibles plaguing other layers of government. A tribally mandated Project Labor Agreement is governmental red ink to protect union bosses," said Aloysius Ho-

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gan, senior fellow in labor policy at the Competitive Enterprise Institute. “PLA mandates routinely prohibit employment of skilled workers who are incentivized/promoted on merit, thus excluding about 9 out of 10 of U.S. construction workers. PLAs impose outdated work rules and force workers to pay into unions. Hence PLAs jack up prices by about 18%.”

Additionally, in 2007 the tribe signed a memorandum of understanding with the local unions that will allow them access to the casino to organize workers and give them a list of all workers with their personal information. The agreement also waives the workers’ right to have a secret ballot election on whether to unionize. The union will be recognized with as few as 30% of signed authorization cards in a process known as “card check” (and, as union organizers and their opponents know well, many workers sign such cards in order to get union organizers off their backs, assuming a secret-ballot election will occur later). This kind of management-union agreement is being litigated in the U.S. Supreme Court.

The PLA was celebrated by the unions involved—UNITE HERE, the hotel/restaurant union that includes more casino workers than any other group, along with the United Food and Commercial Workers and the American Federation of State, County and Municipal Employees. The three unions put out a press release declaring that the Menominee “have signed an agreement with our three unions recognizing the right of the employees to form a union. No other Indian tribe in the Midwest has agreed to such a provision. Federal law does not require them to do that!”

Others weren’t so happy with the deal. “In an effort to garner support for their off-reservation Kenosha casino, the Menominee Tribe bowed to union desires by agreeing to accept ‘card check,’ the easiest method for allowing unionization,” said Brian J. Nemoir, executive director of “Enough Already! WI,” a coalition opposed to the expansion of off-reservation gambling. “In an era where Gov. Walker and the legislature are working overtime to make our state economically competitive, union

card-check allowing a more expensive workforce is a big step backwards.”

Wisconsin Assembly Speaker Robin Vos (R-Rochester), who has said he supports the casino project, said that “card checks” should not be required. “I don’t support the requirement that they would be able to go around without a secret election and kind of strong arm people into joining the union,” Vos said. “So my hope is that as Gov. Scott Walker works toward consensus, that whole concept is thrown out.”

Wisconsin currently has 24 gambling establishments, all owned by recognized Indian tribes. None of them are unionized currently, and the evidence suggests they have kept the unions out because neither the tribes that own the casinos nor the workers in those casinos want them. Opponents of casino unionization believe unions cannot win a secret ballot election, and because of that fact, the unions opted to coerce the Menominee into allowing unionization through card check, if and when the Kenosha casino ever opens.

James Sherk of the Heritage Foundation has studied labor and employment policy for years and has outlined the problems with the card check process:

With card-check, unions know who has signed on. They send organizers to the homes of the remaining workers to press them to join. The organizers give the worker a one-sided pitch, deliberately avoiding anything that might make the worker less likely to join. They press the worker to commit without reflecting or hearing the other side.

If a worker still decides not to sign, the organizers return to his home again and again until he changes his mind. Many workers admit they only signed to get the union off their backs. Workers at the New Otani hotel in Los Angeles had to get a court injunction to stop groups of eight to 10 union organizers from harassing them on their porches late at night.

In some cases, unions go so far as to directly threaten workers who do not publicly sign up. Union officials in Las Vegas told MGM Grand

employees that, once the union was recognized, it would have them fired if they hadn’t signed. United Steelworkers instructed its organizers to tell migrant workers they would report them to immigration officials if they didn’t sign.

When you can’t win by secret ballot, force a public vote where intimidation will achieve the result you want. That is exactly what the labor unions are doing in Wisconsin to gain a foothold in the casino industry.

As noted in the January issue of *Labor Watch*, the U.S. Supreme Court recently considered, briefly, a case that could affect the ability of unions to use Project Labor Agreements under which companies help push their workers into unions. (The Court first accepted the case for review, then decided not to rule on it, which left the lower court’s decision standing. But given the differing decisions made by lower courts in different parts of the country, the Supreme Court will eventually be obliged to resolve the issue.)

The case the Supreme Court almost decided, *Unite Here Local 355 v. Mulhall*, involved a casino in the Miami area. UNITE HERE had been organizing protests against the casino, hurting its business, so the Mardi Gras Gaming company cut a deal with the union. The union would end its protests and donate \$100,000 to a campaign for a local referendum that would allow slot machines at the casino. In return, the casino management agreed to let the union into the workplace to try to organize; management also released their employees’ private contact information to make it easier for the union to contact employees at home, and agreed to stay neutral on the unionization itself. Finally, the casino management agreed to recognize the union with the simple collection of signed union authorization cards from the employees, depriving the employees of a secret-ballot election.

Opponents of this practice say it is clearly illegal, since companies are forbidden by law to promote the creation of unions (because such collusion raises the specter of a “company union,” a union that does

the bidding of management, as well as the possibility that workers will be deprived of their right to reject unionization).

With the ultimate resolution of the Project Labor Agreement/card check issue on hold, the Kenosha casino represents an effort by unions to expand to other casinos—and presumably other workplaces of various types—the practices at issue in the *Mulhall* case.

Especially vulnerable to this type of unionization effort would be any business that, like a casino, depends on government regulation (or government “support” such as tax forbearance) that is largely arbitrary and that is often based on a company’s reputation and its level of support from the public or from well-organized interest groups. In other words, if your business depends on your relationship with politicians and bureaucrats, you may be perfectly willing to betray your workers to the unions if that will keep the unions and their allies in your corner or off your back.

Walker’s choice

Walker has the final say. As the *Milwaukee Journal-Sentinel* noted, “The Menominee tribe’s contentious bid to build an \$800 million off-reservation casino in Kenosha amounts to an election campaign aimed at just one voter: Gov. Scott Walker.” In October, the paper reported that, “For the past two months, opponents and proponents of the casino have bombarded the airwaves with commercials urging Walker to vote one way or the other. Spinmeisters on both sides have been busy trying to win public support to persuade the governor to vote with them.”

This is a high stakes game for Gov. Walker, whose controversial labor reforms may have rescued Wisconsin from a death spiral produced by public-employee collective bargaining agreements that had wildly generous health and pension benefits which were beginning to crush state and local governments’ finances.

The battle over those reforms was hard-fought. At one point, all the Democrats in the state Senate fled Wisconsin in order to block a vote on the reforms. Unions also protested, not just with peaceful

demonstrations and political organizing, but with violence and intimidation. Many instances of intimidation and violence by union members were documented. (By the way, demonstrations in support of the governor were peaceful, with no documented incidents of violence.) Unions organized a massive effort to remove Walker from office, but he actually won the recall election by a slightly larger margin that he had won the first time around.

[For accounts of Walker’s battle with the unions, see the May 2011 and July 2012 issues of *Labor Watch*.]

After a protracted political and legal fight, the reform law was upheld. This led to the current battle over unionizing casinos, which is designed to back Walker into a corner. The Obama administration had reversed various regulations from the Bush administration that prevents establishing Indian casinos far from the actual tribal reservations. In 2011, the Bureau of Indian Affairs within the Department of the Interior approved placing the parcel of land in Kenosha, where the casino would be built, in a trust under the control of the Menominee tribe, so that it would qualify as an Indian casino despite being outside the reservation.

This left, as the last hurdle, the approval of Gov. Walker. Because of the Project Labor Agreement, which requires the use of unionized labor and eliminates open shop (non-union) competition, the construction of the Kenosha casino resort complex is expected to cost at least \$800 million. Of course, the project would be a boon to the depressed construction unions in the region.

Additionally, the casino resort is expected to create about 3,300 full-time jobs in the Kenosha area, which suffers from high unemployment. Not surprisingly, unions want to frame the debate not as Gov. Walker versus expansion of gambling, or as Gov. Walker versus a project that’s not in the best interests of taxpayers, but as Gov. Walker versus those 3,300 jobs.

In fact, the economic impact of the casino is a complicated thing to measure. In 2012, the Wisconsin Policy Research Institute (WPRI) commissioned a detailed study

of the impact of opening new casinos in Wisconsin. The report’s author, Dr. Daniel Alesch, concluded that the casino market in Wisconsin is currently saturated. He argued that any additional casinos would just shift revenue and employment from one area of Wisconsin to another.

Adding new casinos to an already saturated market has consequences. The new casinos proposed for Wisconsin would be on “newly acquired land,” that is, land acquired by tribes for the sole purpose of opening a casino in a prime market location. They would compete for gamblers and gambling dollars with other casinos in Wisconsin and near Wisconsin’s borders, with business going to the most accessible and the casinos with the most amenities.

In a saturated market, any new revenue to the sponsoring tribe is likely to come from another Wisconsin tribe and from another Wisconsin community. In that case, there would be no net gain to the people of the state. There will simply be a transfer of jobs and money from one community to another and from one tribe to another. The community with a new casino built in a favorable location will compete effectively until another casino is built in a better location with more amenities. Casinos in less favorable locations will suffer and so will the communities in which they are located.

The existing casinos already handle over \$15 billion per year, a figure that has stabilized after several years of increases. The Kenosha casino is one of four proposed new Indian casinos in Wisconsin. Governor Walker has made one of his criteria for approval that there not be any increase in the number of casinos. Therefore, if a new casino is to open, another casino in the state must close.

According to Alesch, this is not just a zero-sum game. Many complex intergovernmental agreements (IGAs) between the tribes and the state and local governments are already in place at the other casinos. These IGAs include payments to the governments based upon casino profits, and

the governments need those payments to cover the costs of infrastructure improvements made earlier by the governments in support of the casinos.

Should gamblers at the existing casinos decide to play at the new casino instead, the casinos that lose gamblers will be less profitable. That means governments will receive lower payments and be less able to pay off bonds that financed infrastructure improvements that were made for the existing casinos. In fact, it is possible that, under some of the IGAs already in place, *the state would have to pay money to the tribes to make up for lost revenue.*

The bottom line: states and localities may end up with less revenue after paying penalties, have higher costs associated with the infrastructure needed to support the new casino resort, receive less support for infrastructure improvements already made to support casinos, and see no real increase in jobs that simply shift from one region of Wisconsin to another. On the other hand, union coffers would be filled with dues from union construction workers, and unions would gain new dues-paying members from casino workers once the new casino opens. More money and more members will in turn help unions strengthen their ability to pressure government officials from Gov. Walker on down to do their bidding in future controversies.

The Governor's rules

Governor Walker had set three criteria for approval of any new casino.

► First, as noted, the new casino cannot lead to a net increase in the amount of gambling in the State of Wisconsin. The Menominee tribe had already announced it would close a small casino it currently operates on its rural reservation. But was Walker referring to the absolute number of casinos, which would allow swapping the old casino for the new one, or did he mean the number of tables and machines (slots and video) available? If he meant the latter, his no-net-increase rule would be an obstacle to the new casino.

► Second, a new casino must have the support of the local community. The

Menominee tribe has cultivated and received the support of the local government of the Kenosha area and other regional politicians.

► Finally, a new casino must have the support of all eleven of the recognized Indian tribes within Wisconsin. This remains a problem because at least three of the tribes currently oppose the construction of the new casino, fearing it would take business from their own casinos in southeastern Wisconsin. However, there is a question whether the existing intergovernmental agreements (IGAs) already grant consent, because they include provisions requiring compensation by the government and other tribes if a new casino causes a reduced business at the other casinos. In other words, if the casinos suffer harm, they will be bailed out.

In late summer, Walker announced he would make a decision by the end of September. As the controversy heated up, it quickly became apparent that there was no clear agreement whether his criteria have been met. Walker put the decision off until the end of October. As that deadline approached, he declared that setting an artificial deadline was premature. He noted that the process had wound its way through the bureaucracies for more than 15 years, an indication of the issue's complexity and the importance not to act in haste.

Several organizations opposed to this effort by big labor union bosses held a press conference in the state capital to publicize their concerns. The groups included the Institute for Liberty, Let Freedom Ring, American Commitment, and the Market Institute. Spokesmen for the groups encouraged Governor Walker not to approve the casino in Kenosha that includes the side agreements for backdoor unionization.

The American Commitment noted—

The proposed casino has been controversial for the last 20 years. It was originally denied by the Bureau of Indian Affairs under President Bush, but now after the Obama administration reversed the Bush BIA decision to reward his Big Labor buddies, only

Gov. Walker can stop what will be the first union run casino in the state of Wisconsin.

Notably the casino is over 200 miles away from the tribe's reservation and according to the free-market Wisconsin Policy Research Institute this proposed project won't bring new jobs to the state. However, Big Labor has admitted that they plan to implement card check at the site. Yes, that's right, the same unions that sought to recall Governor Walker are asking him to approve the first fully unionized casino—one that would eliminate the secret ballot and require every Casino worker to join the union.

Worker protections are vital to a free society. Unions arose to protect workers from abusive employers. Yet history has shown that workers also need protection from abusive and corrupt unions. Laws such as the National Labor Relations Act attempt to serve that purpose.

The history of unions often reveals their infiltration by organized crime, and Kenosha, with its own history of organized crime activity, is very close to the Chicago area where corruption is endemic. (It's about 60 miles from Kenosha to Chicago.)

Once unionization of a workforce is achieved, the union has access to a stream of money that can be taken from workers' paychecks. Providing a path that leads to the forced unionization of employees through "card check" or by any other method should not be tolerated in a free society.

George Landrith is president of the Frontiers of Freedom Institute in Fairfax, Virginia.

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LaborNotes

We reported in December on **United Auto Workers'** targeting the **Volkswagen** plant in **Chattanooga**. Union officials said that unionizing the plant would give the UAW a crucial foothold in the South and be, as **Politico** noted, "a prelude" to unionizing **BMW** and **Mercedes-Benz** plants (**German** companies which, like VW, have union members on their boards). Union-friendly VW management actually pushed for a unionization vote, which was held February 12-14. The result: a disaster for the union, 712 to 626 against unionization. **BloombergBusinessWeek** commented: "If the UAW couldn't win this one, what can they win?"

The **Center for Worker Freedom** (CWF), affiliated with the pro-taxpayer **Americans for Tax Reform**, noted various ways in which VW workers were reportedly pressured to join the union: "United Auto Worker members are roaming at will through the halls of Volkswagen's Chattanooga plant this afternoon. The union troops are reportedly walking up and down the aisles wearing black shirts with the UAW logo emblazoned across them in a clear effort to intimidate the employees. The union has reportedly been given safety glasses by the company so that they can fully access the production lines."

The UAW's regional director, according to CWF, received office space in the factory "to spread union propaganda, while workers desiring an equal opportunity to voice the opposing view have been denied permission by Volkswagen management. Sources also tell CWF that union officials are promising workers that they will receive bonuses and will be protected from layoffs if the union wins the election." And the plant's VP for human resources is the brother of the general secretary of Volkswagen's Works Council (a labor-management hybrid organization, common in **Europe**, that VW wants to have at the Chattanooga plant).

CWF's efforts to warn workers about the UAW included 13 billboards around Chattanooga. Prior to the vote, UAW President **Bob King** claimed anti-UAW efforts were financed by people "who don't want workers to have health care." After the vote, **MSNBC's Timothy Noah** blamed the union's loss on racism: "Apparently there are not a lot of black employees in this particular plant, and so that kind of waving the **Confederate** flag was an effective strategy." An MSNBC anchor agreed with Noah, noting, as evidence of racism, anti-UAW billboards that highlighted the union's alliance with **President Obama** by calling the UAW the "United Obama Workers."

The **National Labor Relations Board**, controlled 3 to 2 by **Democrats**, has released new rules designed to promote "ambush elections" on unionization. (It's a revised version of a measure that NLRB Democrats attempted illegally to issue in 2011, when the board lacked a quorum.) Under the change, an election would be held 10-21 days after a petition is filed, compared to last year's median 35 days (and, in contested cases, 59 days). Companies would be required to give unions employees' contact information. The change would delay employers' legal challenges, including whether some workers are eligible to vote, until after an election is over. **The Wall Street Journal** noted: "While a union may silently stalk a company for months to prepare for a unionizing effort, under the new rule the employer would have only days and at most three weeks before the vote."

In **Brooklyn, New York**, union official **Hector Lopez** was sentenced to four years for mail and wire fraud and tax evasion, and ordered to pay \$800,000 restitution to the union and \$372,000 to the government. According to **Union Corruption Update**, Lopez, as president of **Metal Polishers Local 8A-28A** of the **International Union of Painters and Allied Trades**, allegedly siphoned off money from a benefit fund to buy a home and a Cadillac Escalade, and demanded kickbacks from a benefit fund administrator.

According to the **Daily Caller** (Feb. 6), the **American Federation of Government Employees Local 12** has alleged a wide range of discrimination based on race and disability at the government agency where its members work. Local 12 said that the agency has "abysmal" training procedures for preventing discrimination, along with "subjective performance appraisals" that promote "cultural norms" and "less diverse" college-educated employees over experienced non-college-educated veterans. Which agency? The **Department of Labor**, under **Secretary Thomas Perez** (a strong proponent of the idea of "disparate impact" as proof of discrimination) and his predecessor, **Hilda Solis**.

The newest frontier for union organizing: college athletes. Backed by the **United Steelworkers** (not to be confused with the **Pittsburgh Steelers**), the **National College Players Association** filed a petition with the NLRB on behalf of football players at **Northwestern University** led by quarterback **Kain Colter**. "Right now the **NCAA** [the National Collegiate Athletic Association, which governs college sports] is like a dictatorship," he said. "The only way things are going to change is if players have a union."