Case No. 1:09-cv-141-JTN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

LITTLE RIVER BAND OF OTTAWA INDIANS,

Plaintiff,

v.

NATIONAL LABOR RELATIONS BOARD,

Defendant.

SUR-REPLY OF THE NATIONAL LABOR RELATIONS BOARD

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INTRODUCTION & SUMMARY OF ARGUMENT

In its Reply brief, the Little River Band of Ottawa Indians ("the Band") has failed to rebut what the text of the National Labor Relations Act ("NLRA") and seventy years of case law make plain—namely, that Section 10(f) of the Act, 29 U.S.C. § 160(f), deprives district courts of subject-matter jurisdiction to hear challenges to NLRB unfair labor practice cases, even when the district court is presented with assertions of irreparable injury. *See, e.g., Myers v. Bethlehem Shipbuilding Co.*, 303 U.S. 41 (1938); *Detroit Newspaper Agency v. NLRB*, 286 F.3d 391 (6th Cir. 2002). Indeed, the Band has not cited to a single case where, contrary to *Myers* and *Detroit Newspaper*, a plaintiff successfully established district court jurisdiction to enjoin the NLRB from investigating, prosecuting, or adjudicating an unfair labor practice case.[1] Nor does the Band dispute the settled proposition that a specific jurisdictional provision such as Section 10(f), which empowers only circuit courts to review final Board orders in unfair labor practice cases, controls over general jurisdictional statutes. *See Owners-Operators Indep. Drivers Ass'n of Am.,*

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[1] Although it is convenient legal shorthand to refer to *Myers* as establishing an "exhaustion rule," it should not be forgotten that *Myers* itself and cases following its holding reject the *existence*, rather than the *discretionary exercise*, of district court jurisdiction. *See Myers*, 303 U.S. at 48 ("The District Court is without jurisdiction to enjoin hearings . . . ."); *Detroit Newspaper*, 286 F.3d at 401 ("The district court erred in finding that it had subject matter jurisdiction over this cause . . . ."); *see also Myers*, 303 U.S. at 51 n.9 (administrative exhaustion is "not merely a rule governing the exercise of discretion"). But even if *Myers* could legitimately be described as announcing a discretionary rule, the Band fails to cite two compelling reasons for requiring exhaustion in this case: "courts should not prematurely interfere with agency processes . . . [and] agencies should have an opportunity to correct their mistakes." *Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation v. Board of Oil & Gas Conservation*, 792 F.2d 782, 791 (9th Cir. 1986).

Inc. v. Skinner, 931 F.2d 582, 589 (9th Cir. 1991).

Instead, the Band's Reply brief erroneously takes the position that 28 U.S.C. §§ 1331 and 1362 are, in fact, specific jurisdictional statutes empowering district courts to hear challenges to NLRB unfair labor practice proceedings, at least when such challenges are brought by tribal governments alleging harm to their sovereignty interests. To support this argument, the Band disregards the generic language used by both provisions and wholly ignores the cases cited in the NLRB's Response brief rightly classifying Sections 1331 and 1362 as conferring general grants of jurisdiction. (*See* Resp. Br. at 22-23). Instead, in an unpersuasive effort to recast those provisions as specific statutes that mean much more than what Congress intended, the Band relies on cases either discussing inapposite principles or arising in markedly different contexts. In the end, these arguments cannot remedy the fatal jurisdictional defect in this case. Thus, the Band has failed to satisfy its burden to prove the existence of subject-matter jurisdiction, and accordingly this case—like others before it that were similarly controlled by *Myers*—must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1).

ARGUMENT

1. By their plain words, Sections 1331 and 1362 are general jurisdictional statutes covering "all cases" raising federal questions. As the First Circuit has observed, "[t]he 'arising under' language in the two statutes is parallel; and the purpose of Section 1362 was probably just to confer federal jurisdiction where it otherwise would exist over Indian cases without regard to the amount-in-

controversy requirement that governed Section 1331 at the time (but has been since repealed)." *Penobscot Nation v. Georgia-Pacific Corp.*, 254 F.3d 317, 322 (1st Cir. 2001). In contrast to Section 10(f) of the NLRA, neither provision addresses statutory jurisdiction over unfair labor practice matters. Rather, as many courts have determined, both Sections 1331 and 1362 contain "general grant[s] of jurisdiction." *TTEA v. Ysleta del Sur Pueblo*, 181 F.3d 676, 682 (5th Cir. 1999). On this basis alone, Section 10(f) governs as the more specific jurisdictional statute.

2. *Moe v. Confederated Salish & Kootenai Tribes of the Flathead Reservation*, 425 U.S. 463 (1976), does not support a contrary conclusion with respect to Section 1362. To be sure, the Indian tribe in *Moe* relied in part upon Section 1362 to establish district court jurisdiction in its constitutional challenge to a state tax scheme as applied to on-reservation Indians. But, the Supreme Court did not uphold the exercise of such jurisdiction on the grounds that, as the Band erroneously maintains, Section 1362 automatically confers jurisdiction to protect "tribal prerogatives." (Reply Br. at 6.) Indeed, nothing in *Moe* suggests that jurisdiction under Section 1362 exists over *any* federal-question lawsuit involving a supposed or threatened injury to tribal sovereignty, notwithstanding other limitations on the district court's authority. Rather, *Moe* sustained jurisdiction over the Tribe's suit largely on the basis of an entirely different jurisdictional statute that does not apply to this case.

To begin its analysis, the Court in *Moe* noted that the Tribe's suit was facially barred by the Tax Injunction Act, codified at 28 U.S.C. § 1341, which generally

withdraws jurisdiction from district courts to "enjoin, suspend, or restrain the assessment, levy or collection of any tax under State law." The broad—indeed general—language of Section 1362 was of no assistance to the Tribe because "the mere fact that a jurisdictional statute such as § 1362 speaks in general terms of 'all' enumerated civil actions does not itself signify that Indian tribes are exempted from the provisions of [Section] 1341." *Moe*, 425 U.S. at 472. However, upon examining the legislative history of Section 1362, which was "hardly . . . unequivocal," *id.* at 473, the Supreme Court discerned "a congressional purpose to open the federal courts to the kind of claims that could have been brought by the United States as trustee [for a tribe], but for whatever reason were not so brought," *id.* at 472. Section 1362 thus contains "an implication that 'a tribe's access to federal court to litigate [federal-question cases] would be *at least in some respects* as broad as that of the United States suing as the tribe's trustee.'" *Blatchford v. Native Vill. of Noatak*, 501 U.S. 775, 784 (1991) (alteration and emphasis in original) (quoting *Moe*, 425 U.S. at 473). Crucial to the Court's analysis, a long-recognized exception permitting suits brought by the United States existed under Section 1341. *See Dep't of Employment v. United States*, 385 U.S. 355, 358 (1966). Thus, because the United States was exempt from the limitations of the Tax Injunction Act and "could have brought these actions, by itself or as coplaintiff," *Moe*, 425 U.S. at 473, the Court concluded that "the Tribe [wa]s not barred from doing so here," *id.* at 475.

The critical statute in *Moe* was therefore Section 1341, not Section 1362. The latter provision merely guaranteed the Tribe treatment equivalent to that received

by the United States under the former provision; it did not supply jurisdiction on its own. This important point explains why the Band's reliance on *Moe* is misplaced. For, in contrast to the tribe in *Moe*, the Band here cannot show "an unbroken line of authority[] and convincing evidence of legislative purpose," *Dep't of Employment*, 385 U.S. at 358 (footnote omitted) (cited in *Moe*, 425 U.S. at 474-75), recognizing or endorsing any similar exception with respect to the relevant jurisdictional statute—that is, Section 10(f). Accordingly, *Moe*'s gloss on Section 1362 does not permit the exercise of district court jurisdiction over the instant suit.[2]

The Band's claim of jurisdiction under Section 1362 further lacks merit because Congress long ago established a presumption that no actionable injury can result simply from being subject to unfair labor practice proceedings. As the Supreme Court observed in *Myers*, the rationale for limiting judicial review to final Board orders in unfair labor practice cases was the congressional conclusion that until

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[2] If anything, *Moe* suggests a much more limited scope of application for Section 1362. As stated, the central controversy in *Moe* was the state's imposition of a tax scheme as applied to on-reservation Indians. Clearly, the *imposition* of taxing authority by a *state*, which "ha[s] no authority over Indians in Indian Country unless it is expressly conferred by Congress," *Cheyenne-Arapaho Tribes of Okla. v. Oklahoma*, 618 F.2d 665, 668 (10th Cir. 1980), raises serious questions about injury to tribal sovereignty. *See Agua Caliente Band of Cahuilla Indians v. Hardin*, 223 F.3d 1041, 1048 (9th Cir. 2000) ("[I]n the context of state taxation of *tribes*, there are preemption considerations and *competing* sovereignty interests . . . ."). By contrast, these same concerns are not present, or at least do not rise to the same level, when an agency of the *federal government*—an undisputedly "superior sovereign," *Montana v. Gilham*, 133 F.3d 1133, 1137 n.4 (9th Cir. 1998)—merely *asserts* regulatory authority subject ultimately to circuit court review and enforcement. Indeed, the Band does not cite to a single case where Section 1362 has been used in the aggressive manner that the Band purports to use it—that is, as a sword to frustrate a federal agency's original jurisdiction. Thus, assuming arguendo that Section 1362 supplies jurisdiction to protect "tribal prerogatives," the Band finds no support for its invocation under the present circumstances.

such an order issues, an aggrieved person is definitively "'not injured and cannot be heard to complain.'" 303 U.S. 41, 48 n.5 (quoting H.R. Rep. No. 74-1147, at 24 (1935)). Thus, the Band's asserted basis for jurisdiction here—i.e., alleged injury to tribal sovereignty caused by unfair labor practice proceedings—is fundamentally at odds with Congress's determination that no injury occurs until after the Board issues a final order, at which time circuit court review is available pursuant to Section 10(f).

Moreover, even if Congress had not so determined, the Band's claim of injury to its sovereignty here is illusory. The specific "injury" claimed by the Band is the perceived insult to its dignity and status as a tribal government that would result if the Agency were to ascribe validity to the Teamsters' allegation that the Band qualifies as an NLRA "employer." (*See* Reply Br. at 8.) But, even if this were to occur, the Agency's determination would not in any way diminish the Band's ability to continue to act as a government. The Band's injury argument might have some force if the Agency could issue self-enforcing orders on the basis of such a determination. But, the NLRB has no such power. *Myers*, 303 U.S. at 48. It can only demand that the Band present arguments why it should not be held liable for violating the NLRA. Indeed, should the General Counsel issue an administrative complaint on the basis of the Teamsters' charge, the Band need only follow the course charted in *San Manuel Indian Bingo & Casino*, 341 N.L.R.B. 1055 (2004), *further proceedings*, 345 N.L.R.B. 1047 (2005), *enforced*, 475 F.3d 1306 (D.C. Cir. 2007), and file a motion to dismiss with the Board on jurisdictional grounds. If

those arguments fail to carry the day before the Board, the Band will have an adequate opportunity to present those very same arguments to an appropriate circuit court. And if the circuit court ultimately sides with the Band, that decision—unless overturned by the Supreme Court—will authoritatively settle in that circuit the issue that is central to the pending unfair labor practice case—namely, Board jurisdiction over tribes applying their own labor relations ordinances. This procedure, though perhaps undesirable to the Band, cannot reasonably be characterized as causing "injury," let alone "irreparable injury," to tribal sovereignty.[3]

In sum, the Band attempts to convince this Court that Section 1362, which the Supreme Court has labeled a "most unremarkable statute," *Blatchford*, 501 U.S. at

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[3] The Band badly misreads *EEOC v. Karuk Housing Tribal Authority*, 260 F.3d 1071 (9th Cir. 2001), which involved a federal agency's effort to enforce an administrative subpoena against an Indian tribe. As the NLRB has previously noted, (*see* Resp. Br. at 18-19,) subpoena enforcement cases are wholly distinguishable because, in such situations, a federal agency calls upon a district court—under an appropriate grant of jurisdiction such as Section 11 of the NLRA, 29 U.S.C. § 161—to compel a contumacious party to take affirmative action subject to contempt sanctions in the event of noncompliance. It is therefore understandable why some courts, like the Ninth Circuit in *Karuk*, examine the agency's jurisdiction over the underlying administrative proceeding even before the agency itself has had the opportunity to decide the matter in the first instance. Were it otherwise, the subpoenaed party might be irreparably injured because "the prejudice from compliance [with the subpoena] is real." 260 F.3d at 1078. But, outside the limited context of subpoena enforcement, nothing in *Karuk* states or implies that an Indian tribe is excused from administratively exhausting a challenge to agency jurisdiction. Nor does *Karuk* suggest that exhaustion itself is the source of the injury to tribal sovereignty. Rather, the Ninth Circuit took pains to emphasize that it was "the prejudice of subjecting the Tribe *to a subpoena* for which the agency does not have jurisdiction [that] results in irreparable injury vis-à-vis the Tribe's sovereignty." *Id.* at 1077 (emphasis added); *accord Reich v. Great Lakes Indian Fish & Wildlife Comm'n*, 4 F.3d 490, 492 (7th Cir. 1993) (quoted in *Karuk*, 260 F.3d at 1078).

775, produces the most remarkable of results—that is, an unprecedented and expansive exception to the airtight strictures of Section 10(f) review in unfair labor practice cases. If the Band is correct, all 562 federally-recognized Indian tribes would be entitled to march into district court to preempt the General Counsel from investigating—and the Board from adjudicating—properly filed unfair labor practice charges, at least where a tribe makes a claim of injury to tribal sovereignty. Such a drastic and extraordinary result is not supported by the text of Section 1362, by cases interpreting its scope, or indeed by logic. Accordingly the Band has failed to carry its burden of establishing the existence of subject-matter jurisdiction under that provision.[4]

3. The Band's next contention is that Section 1331—an undeniably general grant of federal-question jurisdiction—confers authority on this Court to hear the instant case. Once again, the Band relies on *Florida Board of Business Regulation v. NLRB*, 686 F.2d 1362 (11th Cir. 1982), for support. (*See* Reply Br. at 15-16.) And, once again, this argument fails to withstand scrutiny.

As the NLRB has previously explained, *Florida Board* arose in the very different context of a *representation* proceeding where the State of Florida had no control over the employer's decision whether to refuse to bargain with the union, and consequently, lacked an adequate opportunity to secure the protections of judicial

[4] Where, as here, there are no "doubtful expressions to resolve," rejecting the Band's insupportably broad view of jurisdiction under Section 1362 does not violate the canon that "statutes passed for the benefit of Indian tribes . . . are to be liberally construed." *Navajo Tribal Util. Auth. v. Ariz. Dep't of Revenue*, 608 F.3d 1228, 1233 (9th Cir. 1979) (internal quotation omitted).

review. The unique circumstances of this case led the Eleventh Circuit to recognize a very narrow exception permitting district courts to issue declaratory relief under Section 1331 when "a plaintiff who cannot seek review of the Board's order in the Court of Appeals . . . claims that the Board violated his federal rights." 686 F.2d at 1370. As a charged party in an unfair labor practice case with access to the protections of judicial review pursuant to Section 10(f), the Band clearly does not meet this threshold criterion.

In response, the Band can only offer the rebuttal that it "reads the Eleventh Circuit's decision differently." (Reply Br. at 16.) But, there is no reason to believe that the Eleventh Circuit—or any other circuit—would uphold the existence of Section 1331 jurisdiction under the wholly different circumstances of the pending unfair labor practice case, where *Myers* controls because "[a]ny person aggrieved by a final order of the Board," 29 U.S.C. § 160(f), can seek judicial review.

Indeed, several precedents strongly support the NLRB's view. In *Leedom v. Kyne*, 358 U.S. 184 (1958), the Supreme Court recognized another narrow exception to the rule of nonreviewability in representation proceedings. As relevant here, *Leedom* permits district courts to enjoin Board representation case orders when, in the absence of district court jurisdiction, there would be "a sacrifice or obliteration of a right which Congress has given," *id.* at 190 (internal quotation omitted). As the Supreme Court subsequently explained in *Board of Governors of the Federal Reserve System v. MCorp Financial, Inc.*, 502 U.S. 32, 43 (1991), there can be no "sacrifice or obliteration" of a right where "a meaningful and adequate opportunity for judicial

review" is available. *See Detroit Newspaper*, 286 F.3d at 391 (noting that the Supreme Court "rested its decision in *MCorp* solely on the basis that MCorp had available to it review in the appellate courts, thus making district court jurisdiction improper under *Leedom*"). As a result, suits against the NLRB do not qualify for the *Leedom* exception when initiated by those alleged to be employers because such persons and entities always have an adequate opportunity to secure meaningful judicial review—either directly in unfair labor practice cases, or indirectly in representation cases.

McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10 (1963), is fully consistent with this understanding of the limits of district court jurisdiction in cases involving NLRB proceedings. There, the Supreme Court held that a district court had jurisdiction to enjoin an NLRB-ordered representation election involving foreign seamen, who were already represented by a foreign union, on shipping vessels owned by a Honduran corporation. Although three certiorari petitions were involved in *McCulloch*, including one filed by the Honduran company, the Supreme Court only reached the merits with respect to the petition filed by the foreign union, which was not a party to the Board's proceeding, because that union could not secure judicial review through the normal procedures set forth in the NLRA. *See* 372 U.S. at 16.

Indeed, it was on this basis that the Second Circuit distinguished *McCulloch* in *Goethe House New York, German Cultural Center v. NLRB*, 869 F.2d 75 (2d Cir. 1989). In that case, a New York company that was substantially regulated by the

German government invoked *McCulloch* as a basis for enjoining the NLRB from holding a representation election at the company's facility. In reversing the district court, which had granted the injunction, the Second Circuit rejected the company's attempt to establish subject-matter jurisdiction under the auspices of *McCulloch*. The court reasoned as follows:

> In *McCulloch,* the Supreme Court took appeals from two related cases, one initiated in district court by an employer and one initiated by a union. The Court decided to adjudicate only the union-initiated case, and declined to rule on whether the district court had jurisdiction in the employer-initiated case. We believe it significant that the Court's holding in *McCulloch*, as in [*Leedom*], that the district court had jurisdiction, applied to the union-initiated case. Here, since Goethe House is an employer and can seek indirect review, there was no warrant for the district court to assert jurisdiction.

Goethe House, 869 F.2d at 80 (citations omitted).

As shown, even in the context of NLRB representation proceedings, no court has recognized the existence of district court jurisdiction to consider an employer-initiated challenge.[5] Thus, the Band's attempt to extend the limited reach of *Florida Board* to embrace the circumstances of the instant case is without foundation.

4. Equally without merit is the Band's argument that the holding of *McCulloch* provides precedential support for the assertion of district court jurisdiction in this case. (*See* Reply Br. at 14-15.) As already noted, *McCulloch*—like *Florida Board* and *Leedom*—arose (and was decided) in the context of a representation election where the guarantees of judicial review were unavailable to the entity challenging

[5] To the extent that *Lipscomb v. FLRA*, 200 F. Supp. 2d 650, 654-56 (S.D. Miss. 2001), suggests otherwise, it was wrongly decided. (*See* Resp. Br. at 27 n.14.)

the Board's actions. Moreover, district court jurisdiction was sustained in *McCulloch* because resolution of the underlying labor controversy by the NLRB might have fomented "international discord." 372 U.S. at 21. Thus, *McCulloch* has no application here because its reach is limited to those extremely rare occasions where "the Board's assertion of jurisdiction would cause disturbances and embarrassment in international relations." *Goethe House*, 869 F.2d at 77; *see also S.C. State Ports Auth. v. NLRB*, 914 F.2d 49, 52 n.* (4th Cir. 1990); *Squillacote v. Int'l Bhd. of Teamsters, Local 344*, 561 F.2d 31, 36 (7th Cir. 1977). The Band is not a foreign nation, but a "domestic dependent nation[]," *Oneida Indian Nation of N.Y. v. N.Y.*, 860 F.2d 1145 (2d Cir. 1988) (quoting *Cherokee Nation v. Georgia*, 30 U.S. 1, 13 (1831) (Marshall, C.J.)), with interests that occupy a substantively different position than those of the Republic of Honduras in *McCulloch*. Accordingly, the Band's attempt to analogize itself to a foreign government for purposes of establishing district court jurisdiction under *McCulloch* is off base and unsuccessful.

5. Similarly unavailing is the Band's conclusory assertion that its enactment of a labor ordinance must be treated the same as the enactment of a labor law by a state. (*See* Reply Br. at 17.) As the Band itself acknowledges, the NLRA specifically excludes states from its reach. *See* 29 U.S.C. § 152(2) (excluding states from the definition of "employer"). It is therefore clear from the plain language of the NLRA that the Agency could not rely on its administrative machinery to prosecute an unfair labor practice challenge to a state labor law. Instead, the NLRB must challenge such statutes in federal court on preemption grounds under

the authority of *NLRB v. Nash-Finch Co.,* 404 U.S. 138 (1971). But, to point out the obvious, Indian tribes are not states, *see San Manuel*, 341 N.L.R.B. at 1058 (collecting cases), and are not expressly excluded from the NLRA's definition of "employer." Therefore, in circumstances where an Indian tribe arguably qualifies as the "employer" of covered employees, that tribe cannot claim the same blanket exemption from unfair labor practice liability that a state clearly could.[6]

6. In light of the foregoing, it is unnecessary for this Court to consider the merits of the Band's contentions regarding the Agency's jurisdiction over the Teamsters' charge. Still, one aspect of the underlying unfair labor practice case deserves mention. A central question, and perhaps the only disputed question, presented by the Teamsters' charge is whether the Band qualifies as an "employer" under Section 2(2) of the NLRA. The Band argues that interpretation of this term is conclusively resolved by a set of principles of federal Indian law that it views as controlling. However, throughout this litigation, the Band has refused to acknowledge a competing set of Indian law principles, adopted by the Board in the *San Manuel* decision and by several circuit courts in other cases, that point to a contrary conclusion.

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[6] Although the NLRB has the authority to proceed directly in federal court to enjoin preempted activity under *Nash-Finch*, an unfair labor practice proceeding is the preferred method to adjudicate unlawful conduct because its procedures are more consistent with the NLRA's purpose to separate the prosecutorial and adjudicatory functions of the Agency between the General Counsel and the Board. By contrast, a *Nash-Finch* proceeding puts the Agency in a more institutionally uncomfortable position because it requires the Board to make an ex parte prosecutorial determination, often in the absence of a fully developed factual record.

Thus, under the *Tuscarora/Coeur d'Alene* framework—named for the Supreme Court and Ninth Circuit cases that serve as its origin—a federal law of general applicability covers Indian tribes unless "(1) the law touches exclusive rights of self-government in purely intramural matters; (2) the application of the law would abrogate treaty rights; or (3) there is proof in the statutory language or legislative history that Congress did not intend the law to apply to Indian tribes." *San Manuel*, 341 N.L.R.B. at 1059 (internal quotation omitted). The principles of *Tuscarora* and *Coeur d'Alene* have been widely adopted to sustain the application of a number of employment and civil rights statutes. *See, e.g., Fla. Paraplegic Assn. v. Miccosukee Tribe of Indians*, 166 F.3d 1126, 1129-1130 (11th Cir. 1999) (ADA); *Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174, 177 (2d Cir. 1996) (OSHA); *Smart v. State Farm Ins. Co.*, 868 F.2d 929, 932 (7th Cir. 1989) (ERISA); *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1115 (9th Cir. 1985) (OSHA).

Although the Board does not express an opinion as to whether the *Tuscarora/Couer d'Alene* framework ultimately justifies the assertion of Agency jurisdiction under the circumstances of the pending charge, the NLRB brings this important point to the Court's attention to emphasize that the existence of Agency jurisdiction in the underlying unfair labor practice case is hardly as open-and-shut as the Band would have this Court conclude.[7]

[7] The Band's repeated references to the Interior Department's views regarding the pending unfair labor practice charge, (*see* Reply Br. at 3, 4, 8, 9 n.5, 13 n.9,) have no bearing on the separate question of this Court's jurisdiction to hear the instant case. The Interior Department has not spoken to, and claims no particular expertise with respect to, this more fundamental and ultimately dispositive question.

CONCLUSION

Out of respect for this Court and its processes, the General Counsel has voluntarily deferred further action on the Teamsters' charge, which was originally filed in March 2008, until this Court issues a dispositive ruling in the instant case. The time has come for the Agency to fulfill its statutory responsibility to administer the Act and resume its processing of the Teamsters' charge. For this reason and for others set forth both above and in its Response brief, the NLRB respectfully requests that this Court deny the Band's Motion for Summary Judgment and dismiss the Amended Complaint for lack of subject-matter jurisdiction.

Respectfully submitted,

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