We have been following a pair of Sixth Circuit cases concerning the NLRB’s jurisdiction over tribal casinos. In the first case, NLRB v. Little River Band of Ottawa Indians Tribal Government, a split panel determined that the NLRB could block a Michigan tribe’s restrictions on organized labor in its casinos. In the second case, Soaring Eagle Casino and Resort v. NLRB (which came out shortly after the first) the panel determined that it was bound by Little River, but all three panelists agreed that Little River was wrongly decided. As a result, the law in the Sixth Circuit rests on a decision that was supported by only 2 of the 6 panelists to consider the issue, an oddity which we noted might lead to en banc review.

Petitions were filed in both cases and, just recently, the Court denied en banc review of the decision in Little River. However, an en banc determination has not yet come down with respect to Soaring Eagle. We will continue to monitor the situation, which will either lead to an interesting en banc review or highlight just how restricted en banc review is becoming.

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