

Title 14 – Employment

Chapter 3 – Labor Organizations

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Legislative History

Enacted:

Ordinance 312 Enacting an Ordinance Concerning Labor Organizations (05/01/12), BIA (5/15/12).

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14-03.010 Title

This Chapter shall be cited as the “Swinomish Labor Organizations Code”.

[History] Ord. 312 (05/1/12).

14-03.020 Definitions.

For purposes of this Chapter:

- (A) **“Business Agent”** means any person who acts or attempts to act for or on behalf of any Labor Organization in:
 - (1) The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in or by, a Labor Organization; or
 - (2) Soliciting or receiving from any employer any right or privilege for employees.

- (B) **“Department”** means the **Office of Planning and Community Development**.

- (C) **“Employer”** means any person that is located or otherwise engaged in work on land within Swinomish Indian Country and that employs two (2) or more persons to perform work in return for payment. The term **“Employer”** includes state, county, and other governmental agencies and contractors or sub-contractors of a governmental agency, and also includes the Swinomish Indian Tribal Community.
- (D) **“Felony”** means an offense punishable by more than one year imprisonment, regardless of jurisdiction.
- (E) **“Labor Organization” or Labor Union” or “Union”** means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and desiring to operate on any land within Swinomish Indian Country.
- (F) **“Labor Organizations Code”** means Title 14, Chapter 3 of the Swinomish Tribal Code.
- (G) **“Member”** means or “Swinomish tribal member” or “tribal member” means an enrolled member of the Swinomish Indian Tribal Community.
- (H) **“Person”** means any natural person, Labor Organization, trust, unincorporated association, corporation, partnership, company, firm or other entity.
- (I) **“Reservation”** means all the lands and waters within exterior boundaries of the Swinomish Indian Reservation.
- (J) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (K) **“Swinomish Indian Country,”** means:
- (1) All land within the exterior boundaries of the Swinomish Indian Reservation, including but not limited to land under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and specifically including rights-of-way running through the Reservation;
 - (2) All Indian allotments or other lands held in trust for a Swinomish Tribal member or for the Tribe, or otherwise subject to a restriction against alienation imposed by the United States, and the Indian titles to which have not been extinguished, including easements and rights-of-way running through the same, whether such allotments or lands are inside or outside of the exterior boundaries of the Swinomish Indian Reservation; and
 - (3) All lands owned by the Tribe whether or not held in trust by the United States.
- (L) **“Tribe” or “Tribal Community”** means or refers to the Swinomish Indian Tribal Community, a federally recognized Indian Tribe reorganized pursuant to Section Sixteen

of the Indian Reorganization Act of 1934, which is composed of members tracing their ancestry to the aboriginal Swinomish, Samish, Kikiallus and Lower Skagit bands of Indians.

- (M) **“Tribal Court”** or **“Court”** means the Swinomish Tribal Court.
- (N) **“Tribal Enterprise”** means a governmental instrumentality of the Tribe, separate and distinct from the Tribe, that can sue and be sued in its own name.

[History] Ord. 312 (05/1/12).

14-03.030 Findings.

The Swinomish Tribal Senate finds the following:

- (A) The Tribe possesses the inherent power to exclude non-members from Swinomish Indian Country, which includes the lesser power to place conditions on entry, on continued presence, or on conduct on such land, and to regulate conduct that threatens or effects the political integrity, economic security, and health and welfare of the Swinomish Indian Tribal Community as a unique people and a sovereign government;
- (B) Various Labor Organizations and their business agents have entered and may enter land within Swinomish Indian Country, without the authorization of the Tribe, through their connection with employers who have lawfully entered such lands pursuant to leases, rights-of-way, permits, easements and other consensual relationships with the Tribe or individuals enrolled in the Tribe;
- (C) The unauthorized entry of various entities and persons on land within Swinomish Indian Country threatens the political integrity, economic security and the health, safety and welfare of the Tribe and its members;
- (D) The individual freedom of choice in the pursuit of employment on land within Swinomish Indian Country should be encouraged as a matter of public policy and law of the Tribe; and
- (E) The right to work should not be subject to undue restraint, coercion, or infringement based upon membership in, affiliation with, or financial support of a Labor Organization, or upon the refusal to join, affiliate with, or support financially or otherwise a Labor Organization.

[History] Ord. 312 (05/1/12).

14-03.040 Jurisdiction.

- (A) All persons who enter land within Swinomish Indian Country shall be deemed to have given implied consent to the jurisdiction of the Tribe and shall be subject to the provisions of the Labor Organization Code.

- (B) This Chapter shall apply to Swinomish Indian Country to the maximum extent permitted by law.

[History] Ord. 312 (05/1/12).

14-03.050 Authority

The authority for this Chapter is Article VI, Sections 1(k)(a), (l), and (m) of the Constitution of the Tribe and the inherent authority of the Tribe to regulate conduct that threatens or effects the political integrity, economic security, and health and welfare of the Swinomish Indian Tribal Community as a unique people and a sovereign government by protecting employment relations within the Reservation and to exclude non-members from Swinomish Indian Country, which includes the lesser power to place conditions on entry, on continued presence, or on conduct on such land.

[History] Ord. 312 (05/1/12).

14-03.060 Registration of Labor Organizations.

- (A) Every Labor Organization engaged in any activity within Swinomish Indian Country shall file a report with the Department, on or before sixty (60) days after this Chapter is enacted by the Senate, or within forty-eight (48) hours of any subsequent first entry on land within Swinomish Indian Country, and thereafter on or before December thirty-one (31) of each year. The report, which shall be filed by the president or the business agent of the labor organization, shall contain the following information:

- (1) The name and address of the Labor Organization;
- (2) The names and addresses of the president, secretary, treasurer, and business agent of the Labor Organization;
- (3) The name and address of the national or international organization, if any, with which it is affiliated; and
- (4) A copy of any collective bargaining agreement between the Labor Organization and any employer in Swinomish Indian Country, if any.

- (B) The president or the business agent of the Labor Organization shall

- (1) file with the Department a notice of any changes to the information required by Section 14-03. 060(A) no more than twenty (20) days after the changes are made; and
- (2) provide any additional information requested by the Tribe.

[History] Ord. 312 (05/1/12).

14-03.070 Business Agents.

- (A) No person shall act as a business agent in Swinomish Indian Country without first obtaining a license to do so from the Tribe.
- (B) A person may apply for a Business Agent License by:
 - (1) Completing and filing an application under oath with the Department;
 - (2) Paying a license fee of two hundred dollars (\$200.00);
 - (3) Submitting a full set of fingerprints of the applicant, which shall be taken by the Swinomish Police Department or other law enforcement agency authorized by the Senate to do so; and
 - (4) Submitting a statement signed by the president and the secretary of the Labor Organization showing his or her authority to act as a business agent for the Labor Organization.
- (C) No person shall be granted a license to act as a business agent in Swinomish Indian Country if that person:
 - (1) Has been convicted of a felony and has not had his/her civil rights restored under the law of the jurisdiction where the conviction occurred, whether by judicial or executive action; or
 - (2) Is found by the Tribe to not be a person of good moral character. Evidence of lack of good moral character includes, but is not limited to,
 - a) a substantial criminal record, regardless of whether the convictions are felonies or misdemeanors;
 - b) conviction of a misdemeanor involving moral turpitude, e.g., fraud, theft;
 - c) dishonorable discharge from the U.S. Armed Forces;
 - d) involuntary termination from employment due to fraud, bribery, embezzlement, or other misfeasance.

The Tribe, in its discretion, may conduct or cause to be conducted an independent background investigation of the applicant to determine the applicant's eligibility for a license.

- (D) Upon compliance with Section 14.03.070(B) and (C), the Senate shall issue the license. If at any time after the issuance of the license the Senate receives reliable information based on either the background investigation or another source that the licensee is ineligible to hold a license hereunder, then the Senate shall suspend or revoke the license, in which case the licensee may within thirty (30) calendar days appeal the suspension or

revocation to the Tribal Court. The license shall run for the calendar year for which it is issued unless sooner surrendered, suspended, or revoked.

- (E) A license is a revocable privilege and the burden of proving an applicant's qualification to receive and retain a license is at all times on the applicant or holder of a license.
- (F) All licenses shall be non-transferable and non-assignable.
- (G) All licenses shall expire at midnight on December thirty-one (31) of each year, but may be renewed by the Senate on a form prescribed by the Senate for that purpose and upon the payment of an annual renewal fee of two hundred dollars (\$200.00); however, if any license has been surrendered, suspended or revoked during the year, then the applicant must reapply pursuant to Section 14-03.070(B).
- (H) Grounds for denial, suspension, or revocation of licenses shall include, but not be limited to, failure to satisfy the criteria for a license; submission of a false license application.

[History] Ord. 312 (05/1/12).

14-03.080 Freedom of Choice Guaranteed.

- (A) No person shall be required, as a condition of employment or continuation of employment in Swinomish Indian Country, to:
 - (1) Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a Labor Organization or Union;
 - (2) Become or remain a member of a Labor Organization or Union;
 - (3) Pay dues, fees, assessments or other charges of any kind or amount to a Labor Organization or Union; or
 - (4) 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 Union; or
 - (5) Be recommended, approved, referred or cleared through a Labor Organization or Union.
- (B) Any actual agreement between any Labor Organization or Union and an employer that violates the rights of employees guaranteed by the provisions of the chapter is hereby declared to be against the public policy of the Tribe and of no legal effect.

[History] Ord. 312 (05/1/12).

14-03.090 Violations.

- (A) It shall be a violation of law for any person within Swinomish Indian Country:

- (1) To act as a business agent without having obtained a valid license;
- (2) To solicit membership for or to act as a business agent of any Labor Organization without authority of the Labor Organization to do so;
- (3) To make any false statement in an application for Business Agent License;
- (4) To unlawfully seize or occupy any property during the existence of a labor dispute;
- (5) To coerce or intimidate any employee in the enjoyment of his or her legal rights;
- (6) To coerce or intimidate the family, picket the domicile, or injure the person or property, of any employee or tribal official;
- (7) To engage in picketing in any manner to prevent ingress to and egress from any premises, or picketing other than in a reasonable and peaceful manner.
- (7) To violate any other provision of tribal law.

[History] Ord. 312 (05/1/12).

14-03.100 Penalties.

Any person who, directly, or indirectly, violates any provision of this Chapter shall be subject to a fine not exceeding one thousand dollars (\$1,000.00) for each violation, or exclusion from tribal lands, or both.

[History] Ord. 312 (05/1/12).

14-03.110 Civil Remedies.

Any person injured as a result of any violation or threatened violation of the provisions of this Chapter shall be entitled to injunctive relief from the Tribal Court against any person committing or threatening any such violation, and may, in addition thereto, recover any and all damages, including costs and reasonable attorney fees, resulting from the violation or threatened violation. The remedy shall be independent of, and in addition to, any other penalties and remedies prescribed by applicable law. In any such action any Labor Organization, subdivision, or local thereof shall be bound by the acts of its duly authorized agents acting within the scope of their authority, and may sue or be sued in its common name.

[History] Ord. 312 (05/1/12).

14-03.120 Sovereign Immunity.

The sovereign immunity of the Tribe or its enterprises is not in any way waived or limited by this Chapter, or by any appeal commenced pursuant to this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe or its enterprises. Such sovereign immunity shall extend to the Tribe, its enterprises the Senate, the Office of

Planning and Community Development, Tribal enterprises, all Tribal or Tribal enterprise officials, employees, staff, and agents, as to all actions taken in, or concerning, the administration or enforcement of this Chapter, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

[History] Ord. 312 (05/1/12).

14-03.130 Severability.

The provisions of this Chapter are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, then that declaration shall not effect the remaining provisions of this Chapter. However, nothing in the ordinance codified in this chapter is intended nor shall be construed to violate the National Labor Relations Act to the extent that it is applicable to the Tribe or its enterprises.

[History] Ord. 312 (05/1/12).

14-03.140 Effective Date

This Chapter shall be effective from the date of its approval by the Secretary of the Interior or the Secretary's designated representative.

[History] Ord. 312 (05/1/12).