Unite Here Local 30 v. Sycuan Band of Kumeyaay Nation, ___ F.4th ___, 2022 WL 1594948 (9th Cir. May 20, 2022)

- **Holdings:** District court did not abuse its discretion by declining to exercise supplemental jurisdiction over a tribe's counterclaim seeking a determination that the National Labor Relations Act preempted its labor relations ordinance. The counterclaim also constituted a defense to a suit seeking arbitration and therefore did not give rise independently to federal question jurisdiction. Arbitration was properly ordered by the district court because a valid contract existed between the plaintiff labor organization and the tribe which bound the parties to arbitrate disputes arising under the ordinance and contained a waiver of the latter's immunity from suit.
- **Summary:** Defendant Sycuan Band of the Kumeyaay Nation entered into a class III gaming compact with the State of California under the Indian Gaming Regulatory Act, which required the Nation to adopt a tribal labor relations ordinance. The ordinance, in relevant part, contained a process for labor organizations to seek representation of casino employees:

  > Sycuan agreed "that if a union first offers in writing that it and its local affiliates will comply with [certain provisions of the TLRO] the Tribe shall comply with [other provisions]." Included in those provisions is a promise to "resolve all issues, including collective bargaining impasses, through the binding dispute resolution mechanisms set forth in Section 13." The TLRO further provides that a union making these promises "shall be deemed an offer to accept the entirety of this Ordinance as a bilateral contract between the Tribe and the union, and the Tribe agrees to accept such offer."

  Plaintiff Unite Here Local 30 made such an offer in 2019, but the Nation declined to comply with the ordinance. After the latter also declined to participate in an arbitration proceeding, Unite Here filed suit in federal district court seeking to compel arbitration. The Nation's answer asserted "(a) the NLRA preempts the TLRO, (b) there is no binding bilateral agreement between Unite Here and Sycuan, (c) parts of the TLRO are unenforceable because the terms are not sufficiently definite, and (d) Sycuan did not waive its sovereign immunity with respect to Unite Here or NLRA preemption." The Nation further counterclaimed "for declaratory relief claiming that: (1) the NLRA preempts portions of the TLRO, so the dispute between Sycuan and Unite Here is not arbitrable; and (2) Sycuan may still assert its sovereign immunity." The district court dismissed the counterclaim and granted judgment on the pleadings to Unite Here as to the Nation's duty to arbitrate. *Unite Here Local 30 v. Sycuan Band of Kumeyaay Nation*, No. 20-cv-01006 W (DEB), 2020 WL 7260672 (S.D. Cal. Dec. 10, 2020).

  The Ninth Circuit affirmed. The panel first addressed the counterclaim's dismissal. It held that "[t]he district court correctly concluded that it had supplemental, but not original, jurisdiction over Sycuan's counterclaim, and did not abuse its discretion in declining to exercise that jurisdiction" because the legal and factual issues underlying Unite Here's claim and the counterclaim were "sufficiently similar" and thus "form[ed] a part of the same case or controversy concerning the meaning and effect of the TLRO." The panel additionally characterized as "compelling reasons" for not exercising supplemental jurisdiction California's contentions, as amicus curiae, that the Nation failed to give the State "notice and then attempt to resolve the issue through the Compact's dispute resolution process before filing the counterclaim" and "Sycuan's

litigating Compact interpretation in a case where the State is not a party."

Nor did the lower court err in concluding that the counterclaim did not present a federal question susceptible to jurisdiction under 28 U.S.C. § 1331:

> [U]nder the well-pleaded complaint rule the federal question must be present on the face of a properly pleaded complaint and a "defense is not part of a [claimant]'s properly pleaded statement of his or her claim." ... For declaratory judgments, "courts apply the well-pleaded complaint rule to the impending or threatened action, rather than the complaint seeking declaratory relief." ... Here, that impending or threatened action is Unite Here's claim for an order compelling arbitration. Although styled as a counterclaim for declaratory relief, Sycuan raises preemption as a defense to Unite Here's claim. Under these circumstances, federal question jurisdiction cannot arise from such a defense.

The panel added that jurisdiction over Unite Here's request for arbitration lay under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), "which gives subject matter jurisdiction to federal courts 'for violation[s] of contracts between an employer and a labor organization[,]'" and that such section "cannot give original jurisdiction over the counterclaim challenging the TLRO's validity because the challenge is to the agreement between Sycuan and the State of California, not a contract between an employer and a labor organization."

The panel then turned to the Nation's duty to arbitrate and began by holding that a valid agreement existed with Unite Here:

> [W]hen Sycuan promised California that it would adopt and maintain the TLRO, Sycuan communicated to the union that no further assent was necessary. The TLRO is essentially an open-ended offer to any union to enter into a bilateral contract. When Unite Here sent the November 2019 letter and made promises to Sycuan, Unite Here accepted Sycuan's offer. As consideration for the contract, Unite Here made the promises contained in Section 7(b)—i.e., promises not to disparage the Tribe, attempt to influence the outcome of tribal elections, engage in economic disruption at the casino or strike-related picketing on tribal lands. When Sycuan received the November 2019 letter, an enforceable contract was formed.

Given this agreement, the panel applied settled principles of labor arbitration law under which "[a] court should decide only challenges to 'the arbitration clause itself'" and "[c]hallenges to 'the contract's validity [are] considered by the arbitrator in the first instance.'" Here, "Sycuan's preemption argument is a challenge to the contract as a whole, not the arbitration clause." In response to the Nation's claim of immunity from suit, the panel pointed to its "agree[ment] in Section 13(e) of the Compact's TLRO to waive its immunity from suit for the purpose of compelling arbitration" and to *C & L Enters. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411 (2001), which stands for rule that "when a tribe agrees to judicial enforcement of an arbitration agreement it waives its immunity concerning that agreement."

- **Relevant (2021) Deskbook Sections:** 7:21 n.5; 12:45 n.4