

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and having authority under said Act; and

WHEREAS, The Constitution and By-Laws of the Three Affiliated Tribes authorizes the Tribal Business Council to engage in activities for the welfare and benefit for the Tribe and tribal members; and

WHEREAS, The Tribal Business Council of the Fort Berthold Reservation has retained Vance R. Gillette, Attorney at Law, Bismarck, North Dakota to represent Jody Fox, daughter of Reba Boepple Halliday, North Dakota and Heather Huber, daughter of Dennis and Beverly Huber, Halliday, North Dakota in their respective effort to appeal their daughters eligibility with the State CETA - Job Service; and

WHEREAS, Vance R. Gillette has been retained for their representation at the fee of one-thousand dollars (\$1,000.00); and

WHEREAS, This retainer fee is to be paid to Vance R. Gillette out of Tribal Attorney Fees

NOW THEREFORE BE IT RESOLVED THAT, payment be made to the Law Offices of Vance R. Gillette in the amount of one-thousand dollars (\$1,000.00) for legal representation made and described in attached progress report.

C E R T I F I C A T I O N

I, the undersigned, as the Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of eleven(11) members of whom seven(7) constitute a quorum; 10 were present at a Regular meeting, thereof duly called, noticed, convened and held on the 10 day of July, 1980; that the foregoing resolution was adopted at such meeting by the affirmative vote of 7, 0 opposed, 1 abstained, 0 passed, and that the said resolution has not been rescinded or amended in any way.

Chairman (voting) (not voting).

Dated this 10 day of July, 1980.

Ellie Walker
Secretary, Tribal Business Council

ATTEST:

Vance R. Gillette
CHAIRMAN, Tribal Business Council

VANCE GILLETTE
Attorney at Law
P. O. BOX 2379
BISMARCK, NORTH DAKOTA 58501
PHONE 701-258-9033

July 1, 1980

Thomas Eagle
Tribal Council
Three Affiliated Tribes
New Town, ND

Dear Mr. Eagle:

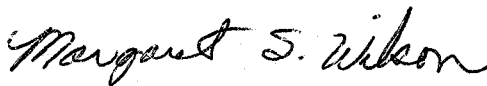
I am advised by Mrs. Boepple and Mrs. Huber that (1) you would like a progress report on their CETA action; (2) the Council has passed a resolution supporting this action on the merits; (3) the Council has allocated a one thousand dollar retainer to this Law Office, with back-up funds, if such becomes necessary.

Enclosed find a current progress report. A hearing date will be set the week of July 6th for this case, and we will thereof advise you. If you have any present questions on the matter, feel free to telephone our office.

I request a copy of the Tribal Resolution and a check for the retainer payable to Law Offices of Vance Gillette.

Thank you for your interest in this matter, its ramifications extend beyond the instant petitioners to other CETA eligible Three Affiliated Tribal Members.

Sincerely,



Margaret S. Wilson
Researcher

MW/cmw

cc: Mr. & Mrs. Huber
Mr. & Mrs. Boepple

TO: Vance Gillette

FROM: M. Wilson *(signature)*

DATE: 6/30/80

RE: CETA CASE - PROGRESS REPORT
Boepple & Huber v Job Service

1. Overview Of Current Fact Situation:

On 6/27/80, representatives from Job Service and Mary College agreed to the following in my presence as concerns the Jody Fox case at Mary College: (1) By channel of 'transitional services' Job Service will provide Jody with room, board, and training. Jody's work site is DANA. Mary college will pay some for sure, and all if possible of Jody's original salary of around \$900.00. Jody is to remain at Mary College. She is not to be transferred to BJC. She does not waive any rights to further recovery from Job Service, nor does she concede that her original eligibility determination by CETA was correct.

Allegedly, on 6/30/80, 14 of the original 16 children were reinstated to BJC on terms similar to Jody Fox at Mary College. Job Service will pay for their room, board, and training. BJC will pick up the salaries. We do not have this in writing. It appears that 2 children were not reinstated. We think one mother did not want to send her child back to the program, and one child was found to be 'way over the guidelines' and hence not eligible for 'transitional services.' I haven't checked on this last point.

2. Action Recommended:
- A) File a legal comment paper with the Department of Labor, D.C.
 - B) Carry through with the first administrative appeal in Job Service as originally planned.
 - C) Subsequent to the appeal, evaluate the advisability of (1) court action (2) further administrative action in the D.C. Department of Labor. Elements to be considered include satisfaction obtained, amount of damage the eligibility criteria will do to families next summer, breadth and cost/benefit analysis of a suit challenging the code, possibility of a political settlement.
 - D) Prior to the administrative appeal more fact gathering needs to be done, particularly statistics on seasonal work on Ft. Berthold.

3. Reasoning for Recommendation:

A) Filing a legal comment with the Department of Labor is a step in exhausting administrative remedies. Also, DOL has the power to change the eligibility requirements that we are contesting. This is an important comment and requires a time commitment in research and drafting, because it may obviate need for future legal measures, and it creates a permanent record.

B) Taking the case through the first formal appeal will exhaust most administrative remedies; will maintain an overt hold on Job Service to come through with reinstatement; while in administrative appeal we have access to Job Service regulations, in-house work-books, manuals, how-to-instructions, etc., hence we won't have to do legal discovery.

C) The children involved have allegedly been reinstated, although some salary matters are not entirely clear. The real question to evaluate, absent hindsight, is whether these kids are going to be ineligible next summer for these programs. We think so. If this is correct, serious consideration needs to be given to legal action, and to a joinder of interested parties.

As an aside, I understand that shortly CETA jobs will be limited by law to 78 weeks. This will cut-off people who have been holding CETA jobs on a semi-permanent basis. The purpose of this change is to create more temporary jobs, and alleviate de facto permanent jobs. The accuracy of this information needs to be checked, and if verified, some future planning to get around it needs to happen, or maybe a Tribal exemption can be obtained.

D) We need to gather facts on CETA operations on and off the Reservation how many jobs it supplies on Ft. Berthold; percentage of labor force on seasonal work and on CETA jobs; average incomes; method of computing income on the Reservation; type of relationship between DOL and Ft. Berthold quality of service.

4. Current Legal Position: Our current legal position is to encourage Job Service to make restitution while we simultaneously refuse to waive rights on the original breach by Job Service.

This raises the problem of whether the case will be moot if the kids return to school. The answer is no, because (1) the case is capable of repetition and evading review, and (2) a voluntary partial cessation by the defendant is outside the scope of the mootness doctrine. Hence, when the kids return to school the case is still legally justicible.

Case Law: We have U.S. Supreme Ct. cases from 1911 through 1978 holding in our favor. No problems in this area are foreseeable.

5. Specific Points in Issue: A) Whether computation of income by taking the last 6 months and doubling it discriminates against seasonal employees on the Ft. Berthold Reservation.

B) Whether including a step-father's income in eligibility determination is discriminatory.