

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 authority under said Act, and

WHEREAS, The constitution and Bylaws of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities for the welfare and benefit of the tribes and tribal members, and

- WHEREAS:
1. Like land, water, and minerals, jobs in private employment on or near the Fort Berthold Reservation are an important resource for Indian people and Indians must use their rights to obtain their rightful share of such jobs as they become available.
 2. Indians have unique and special employment rights and the Three Affiliated Tribes tribal government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians.
 3. Indians are also entitled to the protection of the laws that the Federal government has adopted to combat employment discrimination, and tribal governments can and should play a role in the enforcement of those laws.
 4. The Three Affiliated Tribes believes it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indians and to

eradicate discrimination against Indians.

NOW THEREFORE BE IT RESOLVED That:

1. The Three Affiliated Tribes does hereby establish the Three Affiliated Tribes Tribal employment rights office, (hereinafter called "Office") as an independent office of the tribe, reporting directly to the Tribal Business Council or it's designate. The Director of the Office shall be selected by the Tribal Business Council according to the Three Affiliated Tribes Personnel, Policies, and Procedures. The Director shall have the authority necessary for him to carry out the purposes of the office not in conflict with the Three Affiliated Tribes Personnel, Policies, and Procedures. The Office shall have the authority to issue rules, regulations, and guidelines to implement the employment rights requirements imposed by this resolution, to hold hearings, to subpoena witnesses and documents, to require employers to submit reports and to take such other actions as are necessary for the fair and vigorous implementation of this resolution.
2. All employers operating within the exterior boundaries of the Fort Berthold Reservation are hereby required to give preference to Indians in hiring, promotion, training, all other aspects of employment, and in subcontracting. Said employers shall comply with the rules, regulations, and guidelines of the employment rights office that set out the specific obligations of the employer in regard to Indian preference.
3. Any covered employer who has a collective bargaining agreement with one or more unions shall obtain written agreement from said union(s)

stating that the union shall comply with the Indian preference laws, rules, regulations, and guidelines of the Three Affiliated Tribes. Such agreement shall be subject to the approval of the employment rights office. Such agreement does not constitute official tribal recognition or sanction of any union.

4. Any employer who fails to comply with the laws, rules, regulations, or guidelines on employment rights of the Three Affiliated Tribes or who fails to obtain the necessary agreements from its signatory unions shall be subject to sanction which shall include but are not limited to: denial of the right to commence business on the Fort Berthold Reservation, civil fines, suspension of the employer's operation, termination of the employer's operation, denial of the right to conduct any further business on the Fort Berthold Reservation, payment of back pay or other relief to correct any harm done to aggrieved Indians, and the summary removal of employees hired in violation of the Three Affiliated Tribes' employment rights requirements.

Sanctions shall be imposed by the Director, after allowing the employer an opportunity to present evidence showing why it did not violate the requirements or why it should not be sanctioned. An employer shall have the right to appeal to the tribal court any decision by the Director that imposes sanctions on him.

5. In implementing the requirements of this ordinance, the Employment Rights Office is authorized to:
 - a. Impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire, by craft

or skill level.

- b. Require covered employers to establish or participate in such training programs as the Office determines necessary in order to increase the pool of qualified Indians on the Fort Berthold Reservation as quickly as possible.
- c. Establish in conjunction with the Tribal Employment and Training Program, a tribal hiring hall and impose a requirement that no covered employer may hire a non-Indian until the tribal hiring hall has certified that no qualified Indian is available to fill the vacancy.
- d. Prohibit any covered employer from using qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity. In developing regulations to implement this requirement, the Office shall adopt the EEOC guidelines on these matters to the extent they are appropriate. However, the Office shall have the right to impose additional requirements, beyond those established by EEOC, in order to address employment barriers that are unique to Indians.
- e. To enter into agreements with unions to insure union compliance with this resolution.
- f. To require employers to give preference in the award of contracts and subcontracts to tribal and other Indian-owned firms and entities.

*\$ _____ or more shall pay a one-time fee of * _____ of the total amount of the contract. The fee may be paid in installments over the length of the contract. *Amounts to be determined by Tribal Business Council at a later date.

- b. Every covered employer, other than construction contractors, shall pay an annual fee on a percentage of the total amount of the contract (percentage rate to be determined by the Tribal Business Council at a later date). This fee shall not apply to educational, health, governmental, or non-profit employers.

Such fees shall be paid to the Tribal government and shall be placed in a special account to be used to meet the operating costs of the Office. The Office shall be responsible for collecting said fees and is authorized to establish such rules and regulations as are necessary to insure a fair and timely fee collection process. An employer or contractor who fails to pay the required fee shall be subject to the sanctions provided for in paragraph 4 of this Resolution. The Office is authorized to develop a program to rebate some or all of the fees paid by an employer if that employer is found to be in compliance with the requirements imposed by this resolution and is making a substantial effort to employ, train, and promote Indians.

8. The Tribal Employment and Training Program (CETA) and the BIA Employment Assistance Program shall devote such amount of their resources as is necessary to preparing Indians for the job opportunities to be opened up by the employment rights program. Also, the Tribal Employment and Training Program is hereby mandated to establish a construction worker trainee program and to obtain certifica-

tion for that program from the Department of Labor. The Directors of the Tribal employment and training programs, the BIA Employment Assistance program, and the tribal education program shall coordinate with the Director of the Employment Rights Office in the development of their training plans.

9. The Tribal CETA program shall make available to the Office up to five Public Employment slots to pay the salaries of Office employees. Within six months after the appointment of the Office Director, he or she shall present to the Tribal Council a plan for the financing of the Office out of monies other than from the Tribal Treasury. The plan shall indicate the expected amount of revenue from the Employment rights Fees, and other potential sources of funding for the Office, including but not limited to new funds or reallocation of existing funds from such sources as CETA, ONAP, EEOC, BIA Employment Assistance, HUD, and EDA.
10. Any covered employer or union or person which retaliates against any worker, employer, union or other person or other entity because of the person or entity's exercise of its right under this ordinance shall be subject to sanction by the TERO. Further, the TERO is authorized to issue a temporary injunction to prevent any harm or further harm caused by an employer, union or person's retaliatory actions with Tribal Business Council approval.

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

I, the undersigned, as 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 11 members of whom 7 constituting a quorum, 8 were present at a Special meeting, thereof duly called, noticed, convened, and held on the 7 day of August, 19 80; that the foregoing resolution was duly adopted at such meeting by the affirmative vote of 8 members, 0 members opposed, 0 members abstained, 0 members passed, and that said resolution has not been rescinded or amended in any way.

Chairman (voting) (~~not voting~~).

Dated this 7 day of August, 19 80.

Lillie Walker
Secretary, Tribal Business Council

Richard D. [Signature]
Chairman, Tribal Business Council

MODEL GUIDELINES

The following Guidelines are issued pursuant to the authority granted to the Fort Berthold Tribal Employment Rights Office (hereinafter the "Office") by tribal Resolution # _____, which requires the preferential employment of Indians by all employers operating within the exterior boundaries of the Fort Berthold Reservation.

1. Coverage. The Guidelines shall be binding on all existing and future employers operating within the exterior boundaries of the Fort Berthold Reservation (hereinafter the "Reservation"). "Employer" means any person, company, contractor, subcontractor or other entity that is located or otherwise engaged in work on the Fort Berthold Reservation, and that employs five or more persons. The term "Employer" does not include Federal, state, county, or other governmental agencies. It does include any contractor or subcontractor of a governmental agency, if that contractor is engaged in work on the Reservation. An employer is engaged in work on the Reservation if at least five of its employees spend at least a majority of their time performing work within the exterior boundaries of the Reservation on a continuing basis.

If an employer is engaged in work on the reservation, these Guidelines shall also apply to any other facilities of the employer that are located within a reasonable commuting distance from the reservation. Where a covered employer has already agreed, in a contract or other document, to give preference to Indians, these

guidelines shall define the specific obligations of that employer assumed in such agreement. The Office reserves the right to phase in the requirements set out in these Guidelines by first applying them to selected types of employers. For example, the Office may determine it is appropriate to apply them only to construction contractors during the first year of the Office's operation.

2. Publication. The obligation of all employers to comply with Tribal Employment Rights requirements shall be made known to all existing and future employers. All bid announcements issued by any tribal, Federal, state or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with these Guidelines and that bidder may contact this Office to obtain additional information.

Those agencies responsible for issuing business permits for the Reservation or otherwise engaged in activities involving contact with prospective employers on the Reservation shall be responsible for informing such prospective employers of their obligations under these Guidelines. Within one month of the effective date of these Guidelines, the Office shall send copies of the Guidelines to every employer presently operating on the Reservation. It shall be the responsibility of the Office to send copies of any amendments or revision of the Guidelines to all covered employers.

3. Specific Indian Preference Obligations of Covered Employers
 - a. Minimum numerical goals and timetables for the employment of Indians

The Office will establish the minimum number of Indian persons

that each employer must employ on its work force during the year that its employees work on the Reservation, in order for that employer to be in compliance with its Indian preference obligations.

The numerical goals shall be set for each craft, skill area, job classification, etc., used by the employer and shall include administrative, supervisory and professional categories. The goals shall be expressed in terms of man-hours of Indian employment as a percentage of the total man-hours worked on the employer's work force in that job classification. (e.g., no less than 50% of all carpenter man-hours shall be worked by Indian carpenters.) The goal shall be realistic and shall be based on surveys of the available Indian man-hour pool and of projected employment opportunities.

For new employers, the goal shall be established for the entire work force. The employer shall meet with the Office as much before it actually begins work as is possible (e.g., immediately after a bid is accepted and a contract signed). The employer shall provide the projects it will need. The Office shall then set specific goals and timetables for that employer after considering any special factors or circumstances that the employer wishes to present. The employer shall incorporate the goals into its plan for complying with the Guidelines (as provided for in paragraph 5 of these Guidelines), and shall agree in writing to meet those goals. An employer who fails to provide such a written statement will not be permitted to commence work on the Reservation. For existing employers on the Reservation, the goals shall be a percentage of the new employees projected to be employed during the forthcoming year by that employer. The employer shall agree to said goals in writing

and they shall be incorporated into the Plan provided for in paragraph 5 of these Guidelines.

For new and existing employers, the goals shall be reviewed by the Office at least once a year and shall be revised if necessary, to reflect changes in the number of Indians available or changes in the employers' hiring plans. Each employer shall submit monthly reports to the Office, on a form provided by the Office, indicating the number of Indians in its work force, how close it is to meeting its goals, monthly hires, fires, and other information. An employer who fails to submit monthly reports in a timely manner shall be subject to the sanctions provided for in these Guidelines.

Each employer shall meet its minimum goals for the employment of Indians or shall demonstrate that it has made a best effort to meet its goals. The Office shall have the right to issue a notice of non-compliance any time during the year, when based on reports submitted by the employer and other evidence, the Office has reason to believe that the employer is not meeting, or is not making a good faith effort to meet, its goals. Upon receipt of such notice, an employer shall be entitled to a hearing as provided for in paragraph 7 of these Guidelines. The burden shall be on the Office to demonstrate that an employer has failed or is failing to meet its goals. The burden shall then shift to the employer to demonstrate that it made a best effort to meet its goals. It shall be no excuse that the union(s) with which the employer has a collective bargaining agreement providing for exclusive referral, failed to refer Indians. An employer who is found to be out of compliance

because it failed or is failing to meet its goals, and who is unable to demonstrate that it made a best effort to do so, shall be subject to the sanctions provided for in paragraph 8 of these Guidelines.

- b. Training. All employers, as requested by the Office, shall participate in training programs to assist Indians become qualified in the various job classifications used by the employer. Employers engaged in construction shall employ the maximum number of trainees or apprentices possible. The ratio of trainees to fully qualified workers shall be set by the TERO after discussions with the employer. For construction projects, the number shall be no less than the minimum ratio established by the Department of Labor and generally shall be greater. All trainees or apprentices shall be Indian. Where an employer is not presently participating in a union apprenticeship program, the tribe shall make a best effort to bear the costs of such training programs but employers may be required to also bear part of the cost. Employers with collective bargaining agreements with unions shall be required to obtain agreement from the union to agree to establish advanced apprenticeship and journeyman upgrade programs.

- c. Unions. Employers with collective bargaining agreements shall be required to obtain written agreement from all signatory unions, stating that the Union will comply with the Tribe's Indian preference requirements, before the employer will be permitted to commence work on the reservation. Such agreement shall be subject to the approval of the Office. The Union must agree to give absolute preference to Indians in referral, regardless of which

Union referral list they are on; to cooperate with the tribal hiring hall; and to establish mechanisms so that Indians do not have to travel great distances on a regular basis to retain their place on the union lists (this would involve phone or mail reregistration, a union suboffice on the reservation, etc.); to establish journeyman upgrade and advanced apprenticeship programs; to indenture and refer only Indian apprentices to the Employer; to "blanket in" to the union all Indians who qualify for journeyman status and who wish to join the union; to grant temporary work permits to Indians who do not wish to join the union; and to meet such other requirements as the Office deem necessary to carry out the Tribe's Indian preference program. The model union agreement provided at the end of these Guidelines is, by reference, incorporated into these Guidelines. The Office's participation in a written agreement with a union in no way constitutes official tribal recognition of the union or tribal endorsement of any recruiting activities conducted by the union.

- d. Job Qualifications and Personnel Requirements. An employer may use no job qualification criteria or personnel requirement which serves as a barrier to the employment of Indians and which is not required by business necessity. The burden will then be on the Employer to demonstrate that such criteria or requirement is required by business necessity. If the employer fails to meet this burden, he will be required to eliminate the criteria or personnel requirement at issue. Employer shall also make reasonable accommodation to the religious beliefs of Indian workers. In implementing these requirements, the

Office shall be guided by the principles established by the EEOC Guidelines, particularly 29 CFR Parts 1604 through 1607. However, the Office retains the right to go beyond the EEOC principles in order to address employment barriers that are unique to Indians.

Where the Office and employer are unable to reach agreement on the matters covered in this paragraph, a hearing, as provided for in paragraph 7 shall be held. The director shall make a determination on the issues and shall order such actions as he deems necessary to bring the employer into compliance with this paragraph. The employer may appeal the decision under the procedures provided for in paragraph 9.

- c. Tribal Hiring Hall. The employer may recruit and hire workers from whatever sources are available to him and by whatever process he so chooses, provided that he may not hire a non-Indian until he has given the Office a reasonable time to locate a qualified Indian. For the purposes of this section, "reasonable time" shall be defined as follows: For construction jobs, the Office shall have 48 hours to locate and an additional 12 hours to refer, a qualified Indian; for all other kinds of employment, the Office shall have five working days. However, the Office shall consider waivers of these time periods upon a showing by the employer that such time periods impose an undue burden on the employer. An employer with collective bargaining agreements with a union(s) shall not be required to follow this procedure if the unions agree to place on their referral lists all names that are called into them by the Office (see model union agreement). However, if an union fails to meet its obligations

to refer Indians, the Office reserves the right to require the employer to accept Indian referrals from sources other than the union.

Any non-Indian worker found to be employed in a job which was not first cleared through this hiring hall procedure shall be subject to summary removal from the job by the Office and the employer shall be subject to a fine of \$500 for each violation, except that the employer is entitled to a hearing and appeal in accord with the provisions of paragraphs 7 and 9 of the Guidelines.

f. Counseling and Support Programs. The Office, in conjunction with other tribal and Federal offices, will provide counseling and other support services to Indians employed by covered employers to assist such Indians retain employment. Employers shall be required to cooperate with such counseling and support services.

g. Preference in Subcontracting to Tribal and Indian-Owned Firms. Employers shall give preference in the award of subcontracts to tribally-owned and other Indian-owned firms and enterprises. An Indian-owned firm is one that qualified as such under the Three Affiliated Tribes regulations. The Office shall maintain a list of such firms and the employer shall make use of said list. Employers shall not be required to take any extraordinary measure on their own to identify or locate Indian-owned enterprises.

h. Layoffs. In all layoffs and reductions in force, no Indian worker shall be terminated if a non-Indian worker in the same craft is still

employed. The non-Indian shall be terminated first so long as the Indian meets the threshold qualifications for the job. Further, if the employer lays off by crews, qualified Indians shall be transferred to crews that will be retained so long as there are non-Indians in the same craft employed elsewhere on the job-site.

i. Promotion. The employer shall give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For all supervisory positions filled by non-Indians, the employer shall file a report with the Office stating what Indians, if any, applied for the job, the reasons why they were not given the job, and what efforts were made to inform Indian about the opportunity.

j. Summer Students. Indians shall be given preference in the hiring of summer student help. The employer shall make every effort to promote after-school, summer, and vacation employment for Indian youth.

4. Subcontractors

The Indian preference requirements contained in these Guidelines shall be binding on all subcontractors of covered employers, regardless of tier, and shall be deemed a part of all resulting subcontract specifications. The employer shall have the initial and primary responsibility for insuring that all subcontractors comply with these requirements and the Office reserves the right to impose sanctions on the employer, as well as on the subcontractor, if the subcontractor fails to comply.

5. Compliance Plans

From the effective date of these Guidelines, no new employer may commence work on the Reservation until it has met with this Office and

developed an acceptable plan for meeting its obligations under these Guidelines.

6. Reporting and On-Site Inspections

Employers shall submit reports and such other information as are requested by the Office. Employees of the Office shall have the right to make on-site inspections during regular working hours in order to monitor an employer's compliance with these Guidelines. Employees of the Office shall have the right to inspect and copy all relevant records of an employer, of the employer's signatory unions or subcontractors, to speak with workers on the job site, and to engage in similar investigatory activities. All information collected by the Office shall be kept confidential, unless disclosure is required during a hearing or appeal as provided for in paragraphs 7, 9 and 10 of these Guidelines.

7. Compliance and Hearing Procedures

If the Director of the Office believes that an Employer (including a subcontractor) has failed to comply with any of the requirements set out in these Guidelines, he or she shall so notify the employer in writing, specifying in detail the alleged violation(s). The employer shall then be entitled to a hearing before a committee appointed by the Tribal Business Council. Hearing procedures shall comply with the requirements of due process but will not be bound by the formal rules of evidence. The employer shall be entitled to present evidence and to call witnesses to demonstrate that the employer made a best effort to do so and therefore should not be subject to sanctions. The Committee shall have the right to subpoena witnesses and present evidence in the Tribe's behalf, and to take such

other steps as are necessary to insure a fair and complete hearing on the issues. On the basis of the evidence presented at the hearing and the information collected by the Office, the Committee shall determine whether or not the employer complied with its Indian preference requirements. If the Committee determines that the employer is out of compliance and has not made a best effort to comply, the Committee shall impose one or more of the sanctions provided for in paragraph 8 of these Guidelines as appropriate, and shall order the employer to take such corrective action as is necessary to remedy any harm done to the tribe or to individual Indians by the employer's non-compliance. The Committee shall send written notice of the decision to the employer.

8. Sanctions

In the event that an employer is found to be out of compliance with the requirements of these Guidelines, the Committee with Tribal Business Council approval shall be entitled to impose any or all of the following sanctions, as appropriate, after considering such mitigating factors as the employer's effort to comply and its efforts to remedy any harm done by its non-compliance:

- a. Impose monetary fines.
- b. Suspend the employer's operation until corrective action is taken or a plan for corrective action is developed.
- c. Terminate the employer's operation.
- d. Prohibit the employer from engaging in any future operations on the Reservation.
- e. Require the employer to remove certain workers and/or to hire certain workers.
- f. Provide back pay, employment, promotion, training and/or other relief to Indians who were harmed by the employer's non-compliance.

g. Require the employer to make such changes in its procedures or policies as is necessary in order to comply with these requirements.

9. Appeals

The employer shall have the right to appeal any decision of the Committee to the Fort Berthold Tribal Court. An appeal must be filed within 20 days after receipt of notice of the Committee's decision. The Committee shall represent the interest of the Tribe during the appeal.

10. Individual Complaint Procedure

Any Indian, group of Indians, or representatives of a class of Indians, who believe that an employer has failed to comply with these Guidelines, or who believe that they have been discriminated against by a covered employer because they are Indian, may file a complaint with the Office. Persons may file whether or not they can show that they were personally harmed by the employer's non-compliance. Upon receipt of a complaint, the Office shall conduct an investigation of the charge and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved, the Committee shall hold a hearing on the matter, shall make a determination on the validity of the charge, and shall order such relief as is necessary to make whole any Indian who was harmed by the employer's non-compliance or discriminatory behavior. The decision shall be in writing and shall be sent to all parties.

Either part shall have the right to appeal the decision of the Committee to the Tribal Court as provided for in Paragraph 9. Such appeal must be filed within 20 days after receipt of the decision notice from the Committee. In conducting the hearing provided for in this paragraph, the Committee shall have the same powers, and shall be bound by the same requirements, as those set out in regard to the hearing provided for in paragraph 7 of these Guidelines.