



Council of the Cherokee Nation

Meeting Minutes

Executive and Finance Committee

Thursday, September 24, 2009

3:00 PM

Legislative Conference Room

CALL TO ORDER

Chair Jack D. Baker called the meeting to order at 3:13 p.m.

INVOCATION

Councilor Bill John Baker gave the invocation.

ROLL CALL

Present 14 - Bill John Baker; David Thornton Sr. ; Don Garvin; Meredith Frailey; Cara Cowan Watts; Buel Anglen; Jack D. Baker; Tina Glory Jordan; Jodie Fishinghawk; Janelle Fullbright; Harley Buzzard; Bradley Cobb; Chuck Hoskin, Jr. and Julia Coates

Absent 1 - Chris Soap

Late Arrival 2 - S. Joe Crittenden and Curtis Snell

APPROVAL OF MINUTES

Councilor Cobb made a motion to approve the August 27th regular session minutes. Councilor Cowan Watts seconded the motion. Motion carried.

REPORTS:

Financial Report/Treasurer Report - Callie Catcher

Ms. Catcher offered to answer questions from her written report. Councilor Fishinghawk inquired as to what would need to be done to not be able to have a front company. Ms. Catcher stated the existing Act does prohibit brokering and fronting. She stated it is part of the certification process. She stated the specific instance referred to in the emails related to a procurement that was based solely on price. This was interpreted by Acquisition Management staff that if a vendor is TERO Certified as an Indian owned company and the procurement is based solely on price that they would get Indian preference just like any other TERO vendor. Subsequent to those discussions Diane Kelley and the TERO staff have amended the TERO certificates to reference job skills. The new design of the TERO certificate references the skill codes on the back which clarifies the issue that when we go through the certification process we are only going to certify a vendor in certain business areas. Councilor Fishinghawk inquired if new certificates would be provided for every vendor. Ms. Catcher requested the question be deferred to Diane Kelley's report.

Cherokee Nation Entertainment - David Stewart

Mr. Stewart stated June was one of the worst months they have had. They are up approximately 40% from June to July. They incurred significant expense in August due to the opening. He stated although the revenue numbers are good they will have a lot of expense. They expect a turn around in September. Mr. Stewart reported their debt at \$27ml with cash flow of approximately \$10ml a month. They have finished the initial round of advertising on a regional basis for Hard Rock so they will now focus on the local market. The Cherokee employment is at 59%. They will not have significant hiring until the event center is complete at Catoosa and the hotel is complete at West Siloam. They are currently a little over staffed at West Siloam. The event center construction is underway and going well. They are working on the second story of the hotel in West Siloam. The hotel will have a very traditional look. In regard to TERO they have implemented the prompt payment act with Flintco excluding disputed invoices. They have implemented retainage release upon request as long as the contractual requirements are met. They have added new contract language for the retainage to be released at the subcontractor level rather than the project level. They have added language to contracts requiring subs to comply with Indian preference in TERO. They have several options on disclosing bid amounts they are contemplating. One would provide TERO 1, 2 and 3 without disclosing names and the winning bid. Councilor Cobb inquired how long the CNE or CNB board could operate without a full board. Mr. Stewart stated there are certain authority limits he has in which he can not act without board authority such as certain expenditures and signing contracts. He stated the board could operate indefinitely but without certain business decisions. Councilor Glory-Jordan inquired if they have policies stating how someone qualifies to sit on the board. Mr. Stewart stated he doesn't believe there is anything written. In his perspective they look at talent and experience to complement the board to become well rounded. Councilor Glory-Jordan stated she would like to see a requirement that the board members must be Cherokee. Mr. Stewart stated 90% of their board members are Cherokee. He commented Mr. Humphrey isn't Cherokee but brings experience of big business treasury functions and has a financial background. He stated the exception to the rule would only be when they feel they bring an experience level that is needed. Councilor Glory-Jordan voiced concern for someone sitting on dual boards. She requested these concerns be extended to the Board. She requested the new language in the contracts regarding the TERO requirements be provided to the Council. Councilor Hoskin Jr. suggested the nominations be presented earlier to allow the Council time to obtain answers. Councilor Hoskin Jr. referred to a letter from a CNE employee who is complaining about working through a staffing agency. He inquired to what extent staffing agencies are being used. Mr. Stewart stated it is very minimal. Councilor Hoskin Jr. inquired about the lower amounts of organizational donations. Mr. Stewart stated due to the economic times normal is being redefined. The charitable contributions amounts have decreased somewhat. Councilor Fishinghawk inquired about the bid awards being placed on the website. Mr. Stewart stated they are not at this time; he committed to have it done by next month. Councilor Fishinghawk asked Mr. Stewart what Indian preference means to him. Mr. Stewart stated in bidding preference they look at the bids and if there is the same or close to the same quality, the same timeliness, ability to meet deadline, same staffing capability, and the same financial capability to do the job they would have preference for the Cherokee. He stated price is an issue that has to be comparable. He gave an example if a bid was \$100,000 and a Cherokee bid of \$120,000 they have to make a decision to on whether to spend \$20,000 of the Cherokee's money and in this case they wouldn't they would take the \$100,000 bid. He stated all of the decisions are subjective, they are not objective decisions. Councilor Fishinghawk inquired what "to the greatest extent feasible" means. Mr. Stewart stated it is a line that draws between getting the value and the job done on

schedule to the point where they feel it won't. Councilor Fishinghawk inquired if the advocate had been appointed. Mr. Stewart stated Jerry Crew has been appointed as the internal advocate. Councilor Fishinghawk read from a complaint letter regarding TERO. She then asked what was being done to correct the issues. Mr. Stewart stated this is the first he has seen of the letter and he would check into the problem. Councilor Fishinghawk requested he report back to the Council. Councilor Bill John Baker inquired if their board members serve until they have been replaced. Mr. Stewart stated there isn't a termination date therefore they serve at will until they are replaced. Councilor Cowan Watts requested a report back showing part time positions similar to the letter discussed today. She stated she has been vocal of her concerns regarding the nomination process. Speaker Frailey inquired if Mr. Stewart was at a point to discuss the proposed restructuring of the boards and the restructuring of the business development strategy. Mr. Stewart stated they are close. He stated individual strategies are developed when there needs to be some holistic look at the companies and their strategies to ensure they don't bump into each other, to make sure they have sufficient capital and sufficient resources. He stated this is the reason for the two members from each company in the Jobs Growth Act. Eventually there is hope of one board with several committees. Councilor Hoskin Jr. inquired about the status of the tax credits CNB was bringing into the communities. He requested a list of where they are going and where they have been to this point. Mr. Stewart stated Margarete is close to completing this task and he would forward the information as promised.

Cherokee Nation Businesses - David Stewart

Mr. Stewart provided the CNB update within the CNE report.

Councilor Bill John Baker made a motion to amend the agenda to add new business #1 as a resolution authorizing matching funds for the Cherokee Nation Economic Development Trust Authority. Councilor Fishinghawk seconded the motion. Motion carried.

Cherokee Nation Industries - Robert Drvostep

Mr. Drvostep reported their revenue for the month of August was \$7.572ml versus a budget of \$12.337ml versus prior year of \$5.998ml. He stated they exceed the prior year but fell short of the budget. Their profit for the month was \$20,000. Councilor Bill John Baker inquired about the number of layoffs they have had. Mr. Bryan Collins stated they have had zero layoffs. He stated they have had a change in schedule where temporary laborers or full time volunteers took some time off due to lack of work. Councilor Bill John Baker inquired as to how many have taken time off due to the schedule changes. Mr. Collins replied 23 this week and 5 next week. Councilor Bill John Baker inquired if they have temporary workers who have been at CNI for 6 years. Mr. Collins commented no. Councilor Fishinghawk inquired if the situation they discussed regarding the 20 year worker had been taken care of. Mr. Collins inquired if it was _____. Chair Jack D. Baker announced no names could be given. Councilor Cowan Watts called point of order stating she wanted to make sure it is clear for everyone involved that this is a personnel issue and there can not be names given. Mr. Hembree stated it goes beyond no names in that a circumstance can not be described to fit one person or just a few. He suggested speaking in generalities. Councilor Fishinghawk inquired if the two email situations had been resolved. Ms. Tonette Hummingbird commented they had been. Councilor Fishinghawk inquired about the issue at Bixby. Mr. Collins stated they are working on

the situation it is a pending situation. Councilor Fishinghawk inquired about an individual who has worked for CNI temporarily for 20 years. Mr. Collins stated he would have to look into the situation that he is unsure. He stated he doesn't know of anyone who has worked for 20 years and is temporary unless they have taken a temporary status by request. If they choose not to work full time they can work a flex schedule. Councilor Hoskin Jr. inquired if this is challenges to someone's unemployment or are there other issues. Ms. Hummingbird stated they respond to any claims they receive. She is unaware of any challenges. Councilor Fishinghawk stated the complaints she is receiving are from people who have been there for a number of years and are being laid off due to a lack of work. She inquired if testing was being done at CNI. Mr. Collins agreed. Councilor Fishinghawk stated the series of tests is to work on a line and the new people and non Indians were kept while the full bloods and long term workers were sent home. Councilor Glory-Jordan commented that a month ago Mr. Collins stated the Bixby issue would be resolved within a week. Mr. Collins stated there are several issues to be taken care of and some of those have now become investigations. He stated due to the investigations he would be unable to speak in open forum. They are working diligently to resolve the issue with the assistance of internal audit and their legal department. Councilor Glory-Jordan inquired if we would be able to get back the approximate \$600,000 paid out in dirt. Mr. Collins they have paid for the dirt and are moving forward with the project and the City of Bixby. The recovery of those funds is in the investigation mode. Councilor Glory-Jordan inquired if the City of Bixby would provide a change order. Mr. Collins stated they would not. Councilor Glory-Jordan stated this makes a huge difference to the bottom line. This \$600,000 could have kept the employees from being laid off. She stated the profit is blown for this project. Mr. Collins agreed for that particular time frame. Councilor Glory-Jordan requested the information be provided to the Council as soon as the situation is resolved. Mr. Collins stated in regard to the lack of work they have full time employees and peak time temporary employees. The temporary's have the opportunity to go full time after approximately six months depending on attendance, performance, in good standing and their supervisor recommends them for full time. The lack of work happens when a company they do work for changes their schedule or reduces their inventory. During this time they are scheduling training for other lines but moves from line to line can not happen without passing the tests. The employees are either asked to take training or time off. Councilor Cowan Watts inquired as to the current percentage of Cherokees in regard to hiring. Mr. Collins stated from the production standpoint it is very high with 90% or above. Although as you move up into different levels if the Cherokees are available and qualified they get preference however there are positions where Cherokees don't even apply. Councilor Cowan Watts inquired as to what other minorities include. Ms. Hummingbird replied they have to report minorities on the EEO reports. Councilor Bill John Baker inquired if a three month unpaid vacation would be considered a layoff. Mr. Collins commented he would consider it a layoff. Speaker Frailey inquired if the employees sent home due to a lack of work are eligible for unemployment compensation. Ms. Hummingbird stated everyone is encouraged to apply however the State makes the eligibility determination. Councilor Hoskin Jr. stated the determination is based largely on what the employer reports. Ms. Hummingbird stated they report the facts but do not respond to contested claims. Councilor Fishinghawk referred to the handout provided by Mr. Collins and inquired why in August of 2008 there was 85.9% Cherokees and in August of 2009 there was 71.5%. What caused the almost 15% drop. Mr. Collins stated in the fall of 2008 Human Resources began reviewing the personnel files for blue cards and CDIB cards. He referred to the chart handed out and stated they have no tracking prior to 2005. Within the numbers shown for August of 2009 of the 51 in the Native American column they believe there are approximately 35 who are Cherokee but do not have a blue card to show tribal citizenship to provide preference. He stated the numbers on the handout include all facilities not just Stilwell. Councilor Fishinghawk inquired how

many are Stilwell. Mr. Collins stated approximately 350 in Stilwell. Councilor Fishinghawk requested the number of layoffs each month and of those how many are Cherokee. Councilor Glory-Jordan requested next month to break down this chart provided a little more by breaking down by upper management versus blue collar workers as well as gender. Councilor Cobb inquired if Councilor Fishinghawk's request was just for her or for the entire Council as he would also like to review the report.

Career Services/Employment - Diane Kelley

Ms. Kelley introduced her staff in attendance as Willard Mounce, Jon Overacker, Derek Meigs, Larry Ketcher, Tammy Beaver, Rob Daugherty, Don Greenfeather and Larry Vance. She provided a packet which included a list of who serves on the certification committee. The packet also includes other information pertaining to TERO. She gave a back ground of the TERO office and provided information on the TERO website, marketing, up coming classes, and links for 8A and Section 8 certifications. She also provided a sample copy of letters provided to vendors with their new certificates with the skill sets listed on the back of the certificate. Councilor Buzzard inquired who would monitor the West Siloam Springs project. Ms. Kelley stated Dale Gibson. Councilor Buzzard requested a report next month showing how many Native Americans and Native American contractors are on site working. Councilor Glory-Jordan inquired if everyone will receive a new TERO certificate. Ms. Kelley stated everyone will receive a new certificate with the skill sets listed on the back. Councilor Cowan Watts requested in addition to Councilor Buzzard's request to include if the contractor and sub contractors contacted the job bank. Councilor Glory-Jordan inquired about the layoffs in the youth program. Ms. Kelley stated last year the Summer Youth Program over income funds didn't begin until June and was extended to December and some into January if they were in College. The program started on time this year and the funds were available for the program through the first of August. Some funds were available to allow some of the older students to continue through the end of September. Councilor Glory-Jordan inquired if the stimulus funds could be used to continue some of the older students. Ms. Kelley stated the letter sent to the students explained if they wanted to apply for stimulus funds or 10247 funds they could. Councilor Glory-Jordan inquired if in the future they wish to allow the older students to continue in a mentor type position for ten to fifteen hours per week funds would need to be located. Ms. Kelley agreed and stated the paperwork has already been done to terminate the students at this point. If funds are located the application process would have to begin all over again. Councilor Glory-Jordan inquired what would be needed from this body to be able to continue some of those positions using a portion of the \$100,000 available the first of October. Ms. Catcher stated there isn't any action that would need to come from this body. She stated Career Services administers this program and does a great job. She suggested some statistical reports be brought next month to show how many students fall in each category. Most of the summer youth if not all who are funded through this tribal program are over income. Ms. Kelley provided information for the Day Work program.

Commerce - Anna Knight

Ms. Knight offered to answer questions from her report. Councilor Cowan Watts commented on the great work compiled in the joint report from Commerce and Career Service in regard to TERO.

CONSENT ITEMS:

T.E.R.O. CERTIFICATIONS

Councilor Cowan Watts moved to approve. Councilor Garvin seconded the motion. Councilor Cowan Watts reminded everyone that this is the last meeting of the fiscal year and all community assistance funds that are not expended will go back in to the general pool of funds. Motion carried.

CEMETERY RESTORATION ASSISTANCE APPLICATIONS

Chair Jack D. Baker commented there is a special request from Bacone to redo their cemetery for \$4,500 rather than the normal limit of \$500. Councilor Bill John Baker made a motion to suspend the rules and go ahead and fund the Bacone cemetery request for \$4,500. He stated the cemetery contains Cherokee orphans. Councilor Hoskin Jr. seconded the motion. Motion carried.

Councilor Thornton made a motion to approve the cemetery assistance applications. Councilor Hoskin Jr. seconded the motion. Motion carried.

LAW ENFORCEMENT REQUESTS

Mr. Evan stated in addition to the two items listed in the report there are six additional requests as:

**The Town of Westville - \$5,000 Crittenden - \$5,000 Fishinghawk
Watts Police Department - \$5,000 Crittenden - \$4,000 Fishinghawk
City of Stilwell - \$5,000 Crittenden - \$5,000 Fishinghawk
Adair County Sheriff Office - \$6,249 Crittenden – \$12,249 Fishinghawk
Rogers County Sheriff Office - \$2,807 Cowan Watts
Inola Police Department - \$2,656 Cowan Watts**

Speaker Frailey requested to add the City of Pryor for \$1,249. Councilor Thornton moved to approve. Councilor Cowan Watts seconded the motion. Motion carried.

COMMUNITY ASSISTANCE

Chair Jack D. Baker announced an updated handout had been provided. Mr. Evans provided additional items in addition to the updated handout as follows:

**Adair County Fair Board - \$1,000 Crittenden - \$1,000 Fishinghawk
Greasy Community Organization - \$2,000 Crittenden - \$2,000 Fishinghawk
Stilwell High School - \$1,339 Crittenden - \$1,340 Fishinghawk**

Councilor Cowan Watts moved to approve. Councilor Thornton seconded the motion. Motion carried.

ROADS

Mr. Evans stated there are no additions or changes to the Roads report provided in the packet. Councilor Garvin moved to approve. Councilor Cowan

Watts seconded the motion. Motion carried.

OLD BUSINESS

1. AN ACT REPEALING AND SUPERSEDING CHEROKEE NATION LAW REGARDING LABOR AND THE EMPLOYMENT RIGHTS ORDINANCE SETTING FORTH REQUIREMENTS FOR THE CONTRACTING PROCESS FOR TERO EMPLOYEES

Councilor Fishinghawk moved to approve. Councilor Glory Jordan seconded the motion. Councilor Cowan Watts stated there have been several issues brought to her attention. She voiced concern for the issues being brought forward this late however given the strides that have been in the reports today, the fact that Ms. Kelley's budget for her staff is mixed and the indication this proposed legislation would probably be vetoed she moved to table both old business #1 and #2 for one month. Councilor Cobb seconded the motion.

The motion to table both items 1 and 2 failed with the following roll call vote:

Yea: 8 - Don Garvin; Meredith Frailey; Cara Cowan Watts; Buel Anglen; Jack D. Baker; Harley Buzzard; Bradley Cobb and Julia Coates

Nay: 8 - Bill John Baker; S. Joe Crittenden; David Thornton Sr. ; Tina Glory Jordan; Jodie Fishinghawk; Janelle Fullbright; Curtis Snell and Chuck Hoskin, Jr.

Mr. Hembree stated this will complete the amendments to item 1 and now is ready for an up or down vote. Councilor Buzzard voiced issue with the definition of Core Crew. Mr. Hembree suggested if the Act passes the opportunity is available to change the language at Full Council which would provide time for the language to be developed.

Councilor Glory-Jordan called for the question. Secretary Knight requested time to make a statement. Mr. Hembree stated with Ms. Knight not being a member of the Council it is at the discretion of the Chair to allow her to make a statement. Chair Jack D. Baker allowed Ms. Knight to make a brief statement. Ms. Knight stated the Administrations objections to the Act as it is currently written. She stated they strongly support Cherokee preference and have been looking at changing and have been modifying policies for some time now to make them more responsive to Cherokee preference. There are two main things in regard to the directions if this Act one being the establishment of the Commission which in review of the problems that have arisen under TERO and our implementation it is not in their opinion that a Commission would resolve for either the Council or the Administration. In fact pulling out the TERO office as described by Ms. Kelley and segregating it from Career Services would be debilitating to the office. Secondly in their review they have been looking at the direction in which this is headed in terms of a tiered preference for both contracting and employment. In the legal research they have discovered issues which the Attorney General is now reviewing. She stated they promoted a one month delay on this Act to allow time to complete the review in regard to tribal preference. Mr. Stewart requested a few moments. Councilor Glory-Jordan called point of clarification and inquired what a call for the question actually meant if discussion is allowed to continue. Mr. Hembree stated a call for the question is a motion to end debate which required a 2/3 vote of the Council to end debate. The Chair in his discretion has allowed Ms. Knight to speak and on a point of order you can request to vote on your previous question. A yes vote would be to end debate and a no vote would be to continue discussion. He recommended taking a vote on the previous question.

The vote to call for the question and end debate failed with the following roll

call vote:

Yea: 5 - S. Joe Crittenden; Tina Glory Jordan; Jodie Fishinghawk; Curtis Snell and Chuck Hoskin, Jr.

Nay: 9 - Don Garvin; Meredith Frailey; Cara Cowan Watts; Buel Anglen; Jack D. Baker; Janelle Fullbright; Harley Buzzard; Bradley Cobb and Julia Coates

Abstain: 1 - David Thornton Sr.

Not In Room: 1 - Bill John Baker

Mr. Stewart voiced two concerns with the Act as the definition of employers and the commission. He had issue with a commission determining employment at the entities. They spend a lot of time with Indian preference and of 3400 employees approximately 60% are Cherokee. This would require a change to 65% and lay off 120 people and hire 120 Cherokees. He stated he doesn't have a problem hiring Cherokees but in a company of this size they have to get the right talent at the right time. He commented he is not saying there aren't Cherokees doing the job it just means they may not be able to locate that Cherokee for that particular spot when needed. One of the reasons they have been successful and profitable is that they have been able to hire people in the right spots with the right talent and the right mix to create a company that makes this kind of money. He encouraged the Council to have the definition of employer apply to TERO as they see it today in terms of subcontractors and contractors to provide rights to Cherokees in that regard and not create another tribunal for employees to get jobs. If they hire Cherokees at the wrong time it is a disservice to the Nation, the company, to that employee and the people that work for them to hire them in that role. Having this placed upon them would not allow them to be efficient and as profitable as they could. They have policies in place, they have a high percent of Cherokees, are highly successful and that is because of the support. It is a free market of an objective environment and not a percent placed environment to be successful. He gave appreciation for the time to speak. Ms. Kelley stated she would be remised if she didn't say anything. She stated she started TERO in the 1980's and at one time was called a Commission. She stated she doesn't like boards and commissions that people need to be held accountable for their jobs. The finance department of Career Service oversee the finances of TERO as well as other Career Service employees doing oversight jobs for TERO. The TERO staff are field people. She stated if you expect a TERO program the way it is now it will not be because of the way it is set up.

Councilor Cowan Watts moved to table old business items 1 and 2 for one month and immediately hear item 1 in new business. Councilor Coates seconded the motion. Motion carried with Councilor Fishinghawk opposed.

2. AN ACT REPEALING AND SUPERSEDING CHEROKEE NATION LAW REGARDING LABOR AND EMPLOYMENT RIGHTS ORDINANCE SETTING FORTH REQUIREMENTS FOR EMPLOYMENT AND EMPLOYEE PREFERENCE OF NATIVE AMERICANS WITH TERO EMPLOYERS

This item was tabled for one month with old business item #1.

NEW BUSINESS

1. A RESOLUTION AUTHORIZING MATCHING FUNDS FOR A CHEROKEE NATION ECONOMIC DEVELOPMENT TRUST AUTHORITY GRANT APPLICATION TO US TREASURY DEPARTMENT, CDFI FUND, TO ESTABLISH AN ACCESS TO CAPITAL PROGRAM FOR THE START-UP OF INDIAN-OWNED BUSINESSES AND THE EXPANSIONS FOR EXISTING BUSINESSES

Councilor Cowan Watts moved to approve. Councilor Garvin seconded the motion. Motion carried.

ANNOUNCEMENTS

ADJOURNMENT

Councilor Garvin made a motion to adjourn. Councilor Cowan Watts seconded the motion. Motion carried at 5:20 p.m.

STAFF PRESENT:

<i>Gregg Simmons</i>	<i>Mike Miller</i>	<i>Don Greenfeather</i>
<i>Anna Knight</i>	<i>Nason Morton</i>	<i>Diane Kelley</i>
<i>Melanie Knight</i>	<i>Willard Mounce</i>	<i>Jon Overacker</i>
<i>Callie Catcher</i>	<i>Larry Ketcher</i>	<i>Doug Evans</i>
<i>Derek Meigs</i>	<i>Rob Daugherty</i>	<i>Tammy Beaver</i>
<i>Larry Vance</i>	<i>Louise King</i>	<i>Debra Lack</i>
<i>Veronica Hix</i>	<i>Mackie Moore</i>	

VISITORS PRESENT:

<i>Bob Drvostep</i>	<i>Todd Hembree</i>	<i>Tonette Hummingbird</i>
<i>Bev Cowan</i>	<i>David Stewart</i>	<i>Shawn Slaton</i>
<i>Jerry Crew</i>	<i>Bob Huffman</i>	<i>Bryan Collins</i>

APPROVAL / DISTRIBUTION

Minutes submitted by: Shelli Brittain, Legal & Legislative Coordinator

Motion to approve minutes made by: *Bill John Baker*

Minutes attested and concurred by: *Jack D. Baker*

Date: *10/29/09*