



# Council of the Cherokee Nation

## Meeting Minutes Executive and Finance Sub Committee - TERO

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Tuesday, March 17, 2009

1:30 PM

Legislative Conference Room

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### CALL TO ORDER

Chair Cowan Watts called the meeting to order at 2:13 p.m.

Councilor Chuck Hoskin Jr. made a request to be a member of this committee. Councilor Thornton made a motion to honor this request. Councilor Crittenden seconded the motion. Motion carried.

### INVOCATION

Councilor Hoskin Jr. gave the invocation.

### ROLL CALL

*Councilors Frailey, Soap and Jack D. Baker were present but do not serve on this committee.*

**Present** 9 - Cara Cowan Watts; Jodie Fishinghawk; Janelle Fullbright; Harley Buzzard; S. Joe Crittenden; Buel Anglen; David Thornton Sr. ; Chuck Hoskin, Jr. and Curtis Snell

**Absent** 2 - Tina Glory Jordan and Don Garvin

**Late Arrival** 1 - Bill John Baker

1.

AN ACT REPEALING AND SUPERSEDING CHEROKEE NATION LAW REGARDING LABOR AND THE EMPLOYMENT RIGHTS ORDINANCE AND DECLARING AN EMERGENCY

§ 25

*Mr. Todd Hembree stated the amendment is to strike section D and replace with a new section. He read the new wording.*

*Chief Smith requested an opportunity to address the committee. Chief Smith stated there have been discussions for some period of time. He stated he had requested complaints be sent to him regarding this issue. He stated he did receive numerous complaints. He stated what they have discovered is without exception the place of issue is subcontracting by general contractors. Some of the issues with subcontracting deal with retainage. He stated he has visited with CNE and has learned they have instituted a policy to review all retainages by all sub contractors on a quarterly basis to ensure they are not being held longer than necessary. The real issue is the relationship between the contractor and the subcontractor. The other issues between the two are performance, payment, and if an Indian subcontractor*

was available when a non Indian received the job. He stated the creation of the One Stop Shop stopped some of the complaints of not knowing when bids or jobs were happening. He stated they have not received any complaints about the Cherokee Nation not paying promptly. He stated a critical question is what the purpose of Indian preference is. He questioned if the issue is to subsidize all businesses including the 51% Indian owned to encourage Indian businesses to grow and become sound businesses. If the idea is to encourage Indian businesses to grow the One Stop Shop and a Business Development Center to help these businesses become competitive not only in our work but other work as well. The great value of Indian preference is a mistaken conclusion that Indian businesses will hire Indians. He stated this isn't always the case. Non Indian companies hire as many or more Indians on their crews than Indian owned companies do. He suggested the possibility of creating incentives and penalties for hiring Indians by the subcontractor. He stated there is a process in place to do this in regard to penalties however what is discovered is that it is sometimes cheaper to pay the fine as a cost of doing business rather than going out to find the Indian labor. A remedy to this would be to create the incentives. He stated the Act as presented will not accomplish these intents. He suggested a focus group to concentrate on the issues of subcontracting. Councilor Buzzard stated the complaints he receives is from Indian owned companies who never receive the bids. Chief Smith stated this could be accomplished by breaking apart the packages to allow smaller companies to bid. This Act will not accomplish this. He stated he has spoke to Mr. David Stewart about having someone designated to handle the Indian preference contracts. He stated Flintco has taken efforts to become more pro active by setting up an Indian division. Councilor Buzzard commented about the bid opening process and the bids not being read publically. He requested they be read publically once the bid is awarded so the TERO vendors can go back after the fact and know how much they were off to enable them to prepare for the next bid process. Chief Smith stated he didn't see a problem with this request. Chief Smith stated the stimulus package now offers a tribal preference instead of an Indian preference. Councilor Hoskin Jr. agreed that Indian preference doesn't necessarily mean more Indian employees. He questioned if there is a conflict in policy that gives Indian preference and a policy that encourages Indian employment. Chief Smith stated they do not track each other 100%. He stated the goal of Indian employment can be reached easier and more simply by raising the fines and creating some kind of incentive for hiring. Councilor Hoskin Jr. inquired if continuing along the track of the sub committee but add stiffer fines would the same goal be met. Chief Smith stated there is a lot of items in this bill that doesn't address what the core problems are. Mr. Stewart stated they do not track because preference happens on the bidding side and the hiring happens after the bid is awarded. The protection of the bidding process and to have competitive bids is the important part to CNE. If there is preference then people won't bid because ultimately they know who will receive the bid, this increases cost which decreases dividend and decreases profit. Protection of the bidding process is crucial not only to the tribe but to keep business integrity. He stated there are other ways to encourage Cherokee employment. Chair Cowan Watts stated as point of information that she totally disagrees. She stated any hiring other than core employees must be hired under Indian preference. Chief Smith referred back to the fines that it is sometimes easier and cheaper just to pay the fines. Mr. Hembree stated the major change in this law is making TERO applicable to the Cherokee Nation and its entities. Chief Smith stated it applies now and there is no question that there is Indian preference. He stated this has never been an issue. The issue has been with subcontracting and construction. He suggested inserting more teeth by policy due to it being an ultimate goal. Councilor Hoskin Jr. stated at this point there isn't enforcement. Chief Smith disagreed stating we have an employee appeals board and tribal court. Councilor Anglen announced he attended the pre bid for the Toby Keith Restaurant and voiced concern for how unorganized the process was. He stated people never received information. Chief

Smith stated it needs to be determined if this is an ongoing problem or an exception. Councilor Anglen stated it seemed as though Flintco wasn't ready for the bid to happen then expected the vendors to submit a bid in a week's time. Councilor Thornton agreed and has received complaints over the years that the bids come too soon, not enough time is given to respond, and Cherokee companies have worked for every tribe but their own. Chief Smith suggested if standardizing processes between prime contractors needs to be done it should be charged to CNE or CNB. Councilor Snell stated the problems he hears about revolve around being paid on a timely basis. Most are saying it takes around 120 days to receive payment. He stated most of the subcontractors can't function without payment for this period of time. Chief Smith stated this isn't the Cherokee Nation not paying it is the contractors.

Chair Cowan Watts inquired if Councilor Snell wished to become a member of the committee. Councilor Snell acknowledged he would like to become a member. Councilor Bill John Baker made a motion to accept Councilor Snell as a member of this sub committee. Councilor Crittenden seconded the motion. Motion carried.

Mr. Hembree stated what needs to be determined is this current TERO Act adequate. If the answer is no then we need to determine how to go about changing it and add strength.

Chair Cowan Watts suggested moving forward with the proposed amendments then meet next time with a clean document showing all of the action from the sub committee. She suggested having an amended clean document to the May Rules committee. She stated we have been about this process for approximately 9 months and voiced concern for the lack of a timely response on requested input on issues. She questioned why the staff hasn't come forward to address concerns of this committee and present information. She stated she is glad about the retainage information and that the issue will be addressed. She stated she appreciates the idea of tearing and that it could be properly administered through policy instead of legislation. Chief Smith requested a definition of tearing. Chair Cowan Watts gave an example. She stated the law today mandates a lot of these issues but it isn't implemented. She stated if there are serious concerns with the newly proposed legislation submit those concerns in writing to allow the committee to determine a workable compromise with the Administration. Councilor Frailey questioned from a business perspective in regard to Indian preference is there a way to strengthen this and the contracting actions to help ensure Indian preference. Mr. Stewart stated after listening to the discussion it seems a lot of the problems are a devil in the details in the enforcement. He stated they spend a lot of time and effort to be fair and protect the tribe. He requested this committee allow the businesses to preserve the competition but be fair and work out the details so that when someone does do business they do it in a profitable way. They need to focus on getting people paid, ensuring fairness, and not hold up processes that allow them to do business. He stated he would rather be given the opportunity to do this rather than to enforce an overall new commission process. The current processes are good just need to work on the details. He stated there are improvements to be made but they aren't as evasive as this law. Chief Smith stated the issues suggested can not be corrected through legislation. He questioned why it is so pressing to pass this legislation now. He suggested anyone who wants to attend meet with him, Mr. Stewart, Ms. Kelley, and Mr. Overacker to discuss core issues. Mr. Stewart offered to present to the committee the entire TERO process at CNE from beginning to end rather than piece by piece. Speaker Frailey suggested a special Rules meeting to allow Mr. Stewart the opportunity to give this presentation. Mr. Stewart agreed to contact with proposed dates. Councilor Bill John Baker requested Ms. Kelley voice concerns of going to a commission. Ms. Kelley stated in the 1980's when TERO was brought to the Cherokee Nation there were no TERO's in the State of Oklahoma. She stated

she takes issue with a lot of the stuff being proposed they worked hard to get this implemented so other tribes in the State could follow their lead to develop. Indian Preference has always been in the regulations and has been for years. She stated they used a blue print from a reservation to create this law. They started to get equal employed it was never intended to be a watch dog. She stated through Chad Smith and Julian Fite they were able to put teeth into the legislation and include fines. She stated the TERO staff is intermingled with Career Services. Jon Overacker is strictly TERO and is attending the bid openings due to not having enough staff. Career Services is handling the budget for TERO. She stated she handles the technicalities and the complaints. She stated the staff is not equipped to do some of the things being asked in the legislation. Chair Cowan Watts stated the budget shows four full time employees and three mixed. Councilor Hoskin Jr. inquired if it is a staffing issue or the underlying policy that is the compliance issue. Ms. Kelley stated it is the policy. She stated most of her staff are trained to be job developers. If policies are in place with teeth watch dogs wouldn't be needed. Councilor Hoskin Jr. asked if she has had an opportunity to review all of the proposed amendments. Ms. Kelley stated she has and has made notes. She apologized for not being present at all of the meetings but is aware they haven't been invited to all meetings. She stated they would like to have the opportunity to sit down and go over some of the terminology and language proposed. Chair Cowan Watts stated for the record all meetings are public meetings per the Constitution therefore she is always welcome. She stated HUD has been doing review over the last several years and they are taking issue with TERO compliance.

Chair Cowan Watts gave appreciation to Ms. Kelley for being present. She stated there are eight items that have been tabled including the commission. She requested this sub committee take action one way or another so Mr. Hembree can create a clean document with all amendments to be reviewed at the special rules committee to be set by Speaker Frailey.

Mr. Hembree stated the commission was considered and passed. Chair Cowan Watts clarified the records from the last meeting show amendments were made within the commission but Councilor Glory-Jordan made a motion to table the commission as a whole. She suggested addressing the commission after the other amendments are addressed. He began with the proposed amendments in Section 26.

#### Section 26

Mr. Hembree stated this is the prompt payment section and has been made into a separate act. He stated if it becomes law it will be incorporated into the TERO Act.

#### Section 27

This proposed amendment is to change Judicial Appeals Tribunal to Cherokee Nation Supreme Court. Councilor Thornton made a motion for approval. Councilor Anglen seconded the motion. Motion carried.

#### Section 31

Mr. Hembree went over the proposed changes. Councilor Thornton made a motion to approve. Councilor Buzzard seconded the motion. Motion carried.

Mr. Hembree stated this concludes the new un discussed proposed amendments. He went back to the tabled sections beginning with Section 25.

*Section 25*

*Mr. Hembree went over the proposed changes. He stated this creates an employee cause of action. Councilor Thornton requested input from Mr. Stewart before deciding on this proposal. Chair Cowan Watts stated she is opposed to this amendment. Councilor Thornton made a motion to keep section D as is. Councilor Anglen seconded the motion. Motion carried.*

*Section 5 E*

*Chair Cowan Watts stated with no motion to bring off the table it dies. No motion was made therefore the proposed amendment dies.*

*Section 5 X*

*No motion was made to bring this off of the table therefore it dies.*

*Section 5 A through E*

*This adds the independent commission. She stated if added today it could be stricken or amended at the full rules or special rules committee. No motion was made therefore the proposed changes die.*

*Section 24*

*Chair Cowan Watts made a request the language "or any citizen of the Cherokee Nation" be stricken. Councilor Thornton made a motion to pass as suggested by Chair Cowan Watts. Councilor Anglen seconded the motion with a friendly amendment to strike "employee". Chair Cowan Watts read the language as amended as follows "A complaint may also be initiated by a TERO vendor." Motion carried.*

*Mr. Hembree stated he would incorporate all changes to the legislation and provide a draft document for the special rules committee. Chair Cowan Watts suggested Ms. Kelley, Mr. Stewart, Ms. Knight, and Chief Smith also be given the draft legislation to review in two weeks.*

ANNOUNCEMENTS

ADJOURNMENT

**Councilor Anglen made a motion to adjourn. Councilor Crittenden seconded the motion. Motion carried.**

STAFF PRESENT:

<i>Chief Chad Smith</i>	<i>Gregg Simmons</i>	<i>Tracy Petty</i>
<i>Diane Kelley</i>	<i>Melanie Dodge</i>	<i>Jon Overacker</i>
<i>Dale Gipson</i>	<i>Doug Evans</i>	<i>Melanie Knight</i>
<i>Daryl Legg</i>	<i>Nettie Dethridge</i>	<i>Christine Rogers</i>
<i>Rob Daugherty</i>		

VISITORS PRESENT:

*Todd Hembree*  
*Brent Thompson*

*Shawn Slaton*  
*Robert Huffman*

*David Stewart*  
*Dana Geib*

APPROVAL / DISTRIBUTION

**Minutes submitted by: Shelli Brittain, Legal & Legislative Coordinator**

**Motion to approve minutes made by:** \_\_\_\_\_

**Minutes attested and concurred by:** \_\_\_\_\_

**Date:** \_\_\_\_\_