

FOR CONTRACT NO.: 11-241224

# INFORMATION HANDOUT

## AGREEMENTS

Resolution (Fort Yuma Indian Reservation)

**ROUTE: 11-Imp-8-R155.8**

RESOLUTION

R-23-79

A RESOLUTION ESTABLISHING A TRIBAL EMPLOYMENT RIGHTS OFFICE ON THE FORT YUMA INDIAN RESERVATION.

WHEREAS: Like land, water, and minerals, jobs in private employment on or near the Quechan 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,

WHEREAS: Indians have unique and special employment rights and the Quechan Tribal Government has the inherent sovereign power to pass laws to implement and enforce these special rights on behalf of Indians,

WHEREAS: 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 these laws,

WHEREAS: The Quechan Tribe 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 the Quechan Tribe does hereby establish the Quechan Tribal Employment Rights Office, as an office of the Tribal Government, reporting directly to the Tribal Council. The Office shall have the authority to issue rules, regulations, and guidelines to implement the employment right requirements imposed by this resolution, to require employers to submit reports and to take such other actions that are necessary for the fair and vigorous implementation of this resolution subject to approval of the Tribal Council.

All employers operating within the exterior boundaries of the Quechan 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.

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 Quechan Tribe. Such agreement shall be subject to the approval of the Tribal Council. Such agreement does not constitute official tribal recognition or sanction of any union.

Any employer who fails to comply with the laws, rules, regulations, or guidelines on employment rights of the Quechan Tribe or who fails to obtain the necessary agreements from its signatory unions shall be subject to sanctions which shall include but are not limited to: Denial of the right to commence business on the Quechan Reservation, Fines, Suspension of the employer's operation, Termination of the Employer's operation, Denial of the right to conduct any further business on the Quechan 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 Quechan Tribe's 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 Council any decision by the Director that imposes sanctions on him.

In implementing the requirements of this resolution, 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 Quechan 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 Equal Employment Opportunity Commission guidelines on these matters to the extent that they are appropriate.
- e. To require employers to give preference in the award of sub-contracts to tribal and other Indian-owned firms and entities.
- f. To establish programs, in conjunction with other tribal and Federal Offices, to provide counseling and support to Indian workers to retain employment. Employers shall be required to participate in and/or cooperate with such support and counseling programs.

- g. Take such other actions that are necessary to achieve the purposes and objectives of this Resolution. In implementing these components, the Office shall have the discretion to begin by implementing certain aspects of these components or by applying all of the components to limited kinds of employers. Whatever approach to phasing in the program the TERO decides to use, it shall develop at a gradual pace in order to insure a stable and effective program.

The Office is authorized to enter into cooperative relationships with Federal Employment Rights Agencies, such as EEOC and Office of Federal Contract Compliance Programs in order to eliminate discrimination against Indians on and off of the Quechan Reservation. The Office shall investigate the feasibility of establishing a Tribal Fair Employment Practice Commission and of entering into a formal relationship with EEOC as provided for in Section 706 of Title VII of the 1964 Civil Rights Act, and shall report back to the Council on its findings within 24 months. However, no Tribal FEPC shall be entered into with EEOC unless prior approval has been obtained from the Tribal Council.

An Employment Rights Fee, to raise revenue for the operation of the Office, is hereby imposed as follows:

- a. Every covered construction contractor with a contract of \$100,000 or more shall pay a one-time fee of 1/2 of 1% of the total of amount of the contract. The fee may be paid in installments over the length of the contract.
- b. Every covered employer, other than construction contractor with twenty or more employees or gross sales of \$100,000 or more shall pay an annual fee of 1/2 of 1% of the annual payroll of that employer. This fee shall not apply to educational, health, governmental, or non-profit employers

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

The foregoing Regulation was presented at a Special Council meeting which convened on June 19, 1979, duly approved by a vote of 5 for and 0 against, by the Tribal Council of the QUECHAN INDIAN TRIBE, pursuant to authority vested in it by Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378), and Article IV, Section 1 (a), Section 4 and Section 16 of the Quechan Tribe Constitution and Bylaws. This resolution is effective as of the date of its approval.

QUECHAN TRIBAL COUNCIL

BY:

/S/

VINCENT HARVIER, PRESIDENT

/S/

PATRICIA E. QUARLUPE, SECRETARY

APPROVED

/S/

FELIX MONTAGUE

SUPERINTENDENT

## T.E.R.O. GUIDELINES

The following guidelines are issued pursuant to the authority granted to the Quechan Tribal Employment Rights Office (hereinafter called the "Office") by Tribal Resolution #R-23-79, which requires preferential employment of Indians by all employers operating within the exterior boundaries of the Quechan Reservation.

### 1. Coverage

The guidelines shall be binding on all existing and future employers within the exterior boundaries of the Quechan Reservation (hereinafter called "the Reservation"). "Employer" means any person, company, contractor, sub-contractor or other entity that is located or otherwise engaged in work on the Quechan 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 sub-contractor of a governmental company, 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 the reasonable commuting distance from the Reservation. Where a covered employer has already agreed, in 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 select 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. Publications

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 agency will be obligated to comply with these guidelines and that a 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 revisions 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 any 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 manhours of Indian employment as a percentage of the total manhours worked on the employers work force in that job classification. (e.g., no less than 50% of all carpenter manhours shall be worked by Indian carpenters.) The goals shall be realistic and shall be based on surveys of the available Indian manhour pool and of projected employment opportunities.

For new employers, the goals 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 Office with a precise list of the number and kinds of employees it 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 these 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 as necessary, 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 is not meeting, or is not making 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 subjected 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 Office 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 costs. Employers with collective bargaining agreements with Unions shall be required to obtain agreement from the Unions to agree to establish advanced apprenticeship and journeyman upgrade program.

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 re-registration, a Union sub-office on the Reservation, etc.); to establish journeyman upgrade and advanced apprenticeship programs; to indenture and refer only Indian apprentices to the Employer; to blanket into 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 may deem necessary to carry 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 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 requirements which serves as a barrier to the employment of Indians and which is not required by business necessity. The burden shall be on the Office to demonstrate that a criteria or personnel requirement is a barrier to Indian employment. The burden will then be on the Employer to demonstrate that such criteria or requirements 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. Employers 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 rights 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 procedure provided for in paragraph 9.

e. 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

purpose 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 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 a 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 paragraph 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 sub-contracts to tribally-owned and other Indian-owned firms and enterprises. An Indian-owned firm is one that has qualified as such under the BIA Self-Determination 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 extra-ordinary 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 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 workers 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. Sub-Contractors

The Indian preference requirements contained in these guidelines shall be binding on all sub-contractors of covered employers, regardless of tier, and shall be deemed a part of all resulting sub-contract specifications. The employer shall have the initial and primary responsibility for insuring that all sub-contractors comply with these requirements and the Office reserves the right to impose sanctions on the employer, as well as on the sub-contractor, if the sub-contractor 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 request -

ed 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 sub-contractors, 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 paragraph 7, 9 and 10 of these guidelines.

7. Compliance and Hearing Procedure

If the Director of the Office believes that an Employer (including a sub-contractor) has failed to comply with any of these 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 the Director. 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 has complied with the requirements of these guidelines or that the employer made a best effort to do so and therefore should not be subject to sanctions. The Director shall have the right to subpoena witnesses and documents, to put witnesses under oath, to call 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 Director shall determine whether or not the employer(s) complied with its Indian Preference requirements. If the Director determines that the employer is out of compliance and has not made a best effort to comply, the Director 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 Director 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 Director 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 Director to the Quechan Tribal President. An appeal must be filed within twenty (20) days after receipt of notice of the Director's decision. The Director 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 Director 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 an 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 Director to the Tribal Court as provided for in paragraph 9. Such appeal must be filed within twenty (2) days after receipt of the decision notice from the Director. In conducting the hearing provided for in this paragraph, the Director 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.