

LEGISLATIVE

RESOLUTION NO. AS-2009-5

ABSENTEE SHAWNEE TRIBE OF OKLAHOMA

SPECIAL EXECUTIVE COMMITTEE MEETING

FEBRUARY 27, 2009

A RESOLUTION DULY ADOPTED BY THE EXECUTIVE COMMITTEE OF THE ABSENTEE SHAWNEE TRIBE OF OKLAHOMA HEREBY ESTABLISHING THE ABSENTEE SHAWNEE TRIBAL EMPLOYMENT RIGHTS ORDINANCE UNDER THE ABSENTEE SHAWNEE CODE OF LAW AND THE ESTABLISHMENT OF THE TRIBAL EMPLOYMENT RIGHTS OFFICE TO HELP IMPROVE THE QUALITY OF LIFE FOR OUR TRIBAL CITIZENS AND OTHER NATIVE AMERICANS IN OUR JURISDICTIONAL AREA BY PROTECTING THEIR RIGHTS IN EMPLOYMENT, TRAINING AND ECONOMIC OPPORTUNITIES IN AND NEAR THE ABSENTEE SHAWNEE TRIBE TERRITORIAL JURISDICTION.

WHEREAS, the Absentee Shawnee Tribe of Oklahoma is a federally recognized Indian tribe exercising all inherent sovereign rights from time immemorial; and

WHEREAS, the Absentee Shawnee Tribe of Oklahoma has a Constitution approved by the Department of the Interior, last amended in August 1988; and

WHEREAS, the Executive Committee of the Absentee Shawnee Tribe of Oklahoma is empowered by the Constitution to speak and otherwise conduct business in the name of, and on behalf of, the Absentee Shawnee Tribe of Oklahoma; and

WHEREAS, it is the responsibility of the Executive Committee to uphold its constitutional responsibility to the Tribe and its membership as the highest priority; and

WHEREAS, the authorities granted by this Resolution shall be continuing until and unless rescinded by separate action of this body, and

WHEREAS, the Executive Committee of the Absentee Shawnee Tribe of Oklahoma recognizes that as a sovereign nation, the Absentee Shawnee Tribe of Oklahoma has inherent sovereign power to implement and enforce special employment rights on behalf of Indians; and,

WHEREAS, Indians are entitled to the prevention of federal laws concerning prevention of employment discrimination and the Absentee Shawnee Tribe can and should play a role in enforcement of such; and,

WHEREAS, the Executive Committee of the Absentee Shawnee Tribe of Oklahoma recognizes that it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indian workers and businesses and to eradicate discrimination against Indians; and,

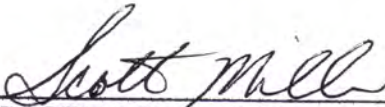
WHEREAS, the establishment of the Tribal Employment Rights Ordinance and Tribal Employment Rights Office will assist in and require the fair employment of Indians to create employment and training opportunities for citizens of the Absentee Shawnee Tribe and other Indians, and to prevent discrimination against Indians in the employment practices of employers who are doing business within the territorial jurisdiction of the Absentee Shawnee Tribe of Oklahoma.

NOW THEREFORE BE IT RESOLVED that the Executive Committee of the Absentee Shawnee Tribe of Oklahoma hereby does establish the Tribal Employment Rights Ordinance as a part of the Absentee Shawnee Tribe of Oklahoma Code of Law and the establishment of the Absentee Shawnee Tribal Employment Rights Office,

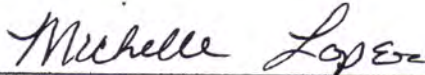
BE IT FURTHER RESOLVED, that this resolution shall be the policy of the Absentee Shawnee Tribe of Oklahoma until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

We, Scott Miller, Governor and Michelle Lopez, Secretary of the Absentee Shawnee Tribe of Oklahoma, do hereby certify that this Resolution No. L-AS-2009-5 to be a true and exact copy as approved by the Executive Committee of the Absentee Shawnee Tribe of Oklahoma at a duly called meeting held on February 27, 2009, there being a quorum present, by vote of 4 in favor, 0 opposed, and 0 abstentions, as follows: Lt. Governor Little Axe: Yes; Secretary Lopez: Yes; Treasurer Chisholm: Yes; Representative Onzahwah: Yes; Governor's vote, if required, N/A.



SCOTT MILLER, Governor



MICHELLE LOPEZ, Secretary



Absentee Shawnee Tribe Employment Rights Ordinance

Section 100. Title.

This law shall be entitled the “Absentee Shawnee Tribe Employment Rights Ordinance.”

[History:]

Section 101. Findings and Purpose.

(a) Findings

The General Council of the Absentee Shawnee Tribe hereby makes the following findings regarding the need for and purpose of the Absentee Shawnee Tribe Employment Rights Ordinance:

- (1) Jobs subcontracts and contracts in the private sector within the territorial jurisdiction of the Absentee Shawnee Tribe are important resources for Indian people and Indians must use their rights to obtain their share of such opportunities as they become available; and,
- (2) Indians have unique and special employment, subcontract and contract right, including Congressional recognition of the power of Indian tribes to impose preferential requirements on the grounds that the exemption is consistent with the federal government’s policy of encouraging Indian employment and with the special legal position of Indians; and,
- (3) Indians are entitled to the protection of federal laws concerning prevention of employment discrimination, and the Absentee Shawnee Tribe can and should play a role in the enforcement of such laws; and,
- (4) The Absentee Shawnee Tribe has the inherent sovereign power to pass laws to implement and enforce special employment rights on behalf of Indians; and,
- (5) The General Council of the Absentee Shawnee Tribe recognizes that it is important to establish an employment rights program and office in order to use the aforementioned laws and powers to increase employment of Indian workers and businesses and to eradicate discrimination against Indians.

(b) Purpose

- (1) The purpose of the Absentee Shawnee Tribe Employment Rights t Ordinance is to assist in and require the fair employment of Indians to create employment and training opportunities for citizens of the Absentee Shawnee Tribe and other Indians, and to prevent discrimination against Indians in the employment practices of employers, who are doing business within the territorial jurisdiction of the Absentee Shawnee Tribe of Oklahoma.

[History:]

Section 102. Definitions.

Terms contained in the Absentee Shawnee Tribe Employment Rights Ordinance shall be defined as follows:

- (a) “Commerce” shall include all trade, traffic, distribution, communication, and transportation, provision of services, manufacturing, production, agricultural production, building, maintenance, construction, banking, mining and energy production.
- (b) “Commission” as used in this Ordinance shall mean the Absentee Shawnee Tribe Employment Rights Commission.
- (c) “Director” as used in this Ordinance means the Director of the Absentee Shawnee Tribe Employment Rights Office.
- (d) “EEOC” shall mean the Equal Employment Opportunity Commission of the United States.
- (e) “Employee” shall mean any employee, any applicant for employment, and any former employee whose employment has ceased as a consequence of or in connection with a current labor dispute or because of an unfair labor practice. The “employee” shall not include any individual employed in the domestic services of any family or person at his home, or any individual employed by any other person who is not an employer as herein defined.
- (f) “Employer” shall mean any person, partnership, Corporation or other entity that employs, for wages, two or more employees.
- (g) “Tribal Employment Rights Office” shall mean the Absentee Shawnee Tribe Tribal Employment Rights Office as established in the Absentee Shawnee Tribe Employment Rights Ordinance.

- (h) "Entity" means any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization. The term "entity" is intended to be as broad and encompassing as possible to ensure applicability of the Absentee Shawnee Tribe Employments Right Ordinance herein to all employment and contract activities within the Tribes jurisdiction and the term shall be so interpreted by the Commission and the Courts.
- (i) "Government Commercial Enterprise" means any activity by the Absentee Shawnee Tribe or of the state government that is not a traditional government function as defined by the Internal Revenue Service.
- (j) "Immediate family" means brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, half-sister, or brother, sister, son , daughter, mother or father by adoption.
- (k) "Indian" means any enrolled citizen of a federally recognized Indian tribe.
- (l) "Indian owned firm or entity" means any commercial, industrial or other business which is owned by an Indian or other Indian owned firm or entity, provided that such Indian ownership constitutes not less than fifty-one percent (51%) of the enterprise.
- (m) "Resident Indian" shall mean any enrolled citizen of a federally-recognized tribe who resides within the territorial jurisdiction of the Absentee Shawnee Tribe not less than sixty (60) days preceding the initial date any contract for work on land within the territorial jurisdiction of the Tribe is let or the initial date any employment offers are made by an employer permanently located on lands within the territorial jurisdiction of the Absentee Shawnee Tribe.
- (n) "Tribe" means the Absentee Shawnee Tribe of Indians of Oklahoma.
- (o) "Absentee Shawnee Tribe District Court" means the District Court as defined in Title Courts, §2(d) of the Code of Laws of the Absentee Shawnee Tribe of Indians of OK.
- (p) "Absentee Shawnee Tribal Police" means the law enforcement personnel defined in the Police Department Standard Operating Procedures Manual of the Absentee Shawnee Tribe of Indians of Oklahoma.
- (q) "Non-resident Indian" means any Indian who is not a resident Indian as defined by §102 (m) herein.

- (r) "AST TERO" means the Absentee Shawnee Tribe Tribal Employment Rights Office.
- (s) "Territorial jurisdiction" means the property held in trust by the United States of America on behalf of Absentee Shawnee Tribe of Indians of Oklahoma and all property located outside said boundaries owned in fee by the Absentee Shawnee Tribe of Indians of Oklahoma or held in trust by the United States on behalf of individual citizens of the Absentee Shawnee Tribe of Indians of Oklahoma.
- (t) "Tribal Secretary of the Absentee Shawnee Tribe" means the Tribal Secretary of the Absentee Shawnee Tribe of Oklahoma Executive Committee whom has the responsibility to prepare agenda for all meetings under the direction of the Governor. The Tribal Secretary shall be responsible for preparing timely notices of all meetings and the disseminations of each notice.
- (u) "Union" or "labor union" means any organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

[History:]

Section 103. Establishing of Tribal Employment Rights Office.

The Absentee Shawnee Tribe Tribal Employment Rights Office (AST TERO) is hereby established, and full supervisory authority over implementation of the Absentee Shawnee Tribe Employment Right Ordinance shall vest in said office. The Tribal Employment Rights Office shall be administered by a Director in conjunction with administration of the Division of Education and Employment, and shall report directly to the Office of the Tribal Representative of the Absentee Shawnee Tribe.

[History:]

Section 104. Authority of Director

The Director of the Tribal Employment Rights Office shall have the authority to do all of the following functions and actions:

- (a) Hire staff;
- (b) Expend funds appropriated by the Executive Committee;
- (c) Obtain and expend funding from federal, state or other sources to carry out the purpose of the office subject to approval of the Executive Committee;

- (d) Administer the policies, powers and duties prescribed in the Absentee Shawnee Tribe Tribal Employment Rights Ordinance;
- (e) Require employers to submit reports;
- (f) Establish programs subject to the Executive Committee's approval, in conjunction with federal and tribal offices to provide counseling and support to Indian workers in order to assist them in retaining employment. Employers shall be required to participate in and to cooperate with such support and counseling programs.
- (g) Enforce the provisions of the Absentee Shawnee Tribe Employment Rights Ordinance and enforce regulations adopted pursuant to § 108 herein by issuance of cease and desist orders, imposition of fines and posting notices, provided such actions are not inconsistent with 25 USC § 1301, et.seq.; and
- (h) Take other actions as are necessary for the fair and vigorous implementation of the Absentee Shawnee Tribe Employment Rights Act.

[History:]

Section 105. Absentee Shawnee Tribe Employment Rights Commission.

- (a) Establishment of Absentee Shawnee Tribe Employment Rights Commission.

The Absentee Shawnee Tribe Employment Rights Commission is hereby established.

- (b) Members.

The Commission shall consist of a three (3) member administrative review board who shall be appointed by the Governor subject to confirmation by the Executive Committee in accordance with the Appointment Procedures of the Absentee Shawnee Tribe Administrative Manual. When the initial Commissioners are appointed, one shall be appointed to serve a one (1) year term, one shall be appointed to serve a two (2) year term, and one shall be appointed to serve a three (3) year term. Thereafter, each term shall be for a period of three (3) years, commencing January 1 of the year following the December 31 expiration date of said term. The Executive Committee shall have the authority to remove a Commissioner for cause prior to expiration of the Commissioner's term.

- (c) Qualifications for Commissioners.

- (1) The Commissioners must live within the jurisdiction of the Absentee Shawnee Tribe of Indians of Oklahoma.

- (2) Must be an enrolled Absentee Shawnee Tribal Citizen.
- (3) Must have knowledge of construction.
- (4) Must know the employment laws.
- (5) Must have a Human Resources background.
- (6) Must be of 18 years of age or older.
- (7) Must have an interest in the work of TERO.
- (8) Must be available when called upon.
- (9) Must be willing to go through training. Must be able to pass a criminal background check and drug test.

(d) Duties of the Commissioners.

The Commission shall have the following powers and duties:

- (1) Develop and promulgate all regulations authorized to be implemented pursuant to the provisions of §108 herein;
- (2) Provide oversight of the Absentee Shawnee Tribe Tribal Employment Rights Office.
- (3) Hold hearings for the purpose of subpoenaing witnesses and documents and the taking of evidence;
- (4) Review and issue rulings and orders pertaining to appeals of decisions by the Absentee Shawnee Tribe Tribal Employment Rights Office by aggrieved parties;
- (5) Enter into agreements with unions to ensure union compliance with this Ordinance.
- (6) Petition the Tribe's District Court for orders as necessary and appropriate to enforce the decisions of the Commission or Director and any sanctions imposed by them.

(e) Quorum.

A majority of the Commission shall constitute a quorum to transact business. When a vacancy occurs in the Commission, the remaining members may exercise all the powers of the Commission until the vacancy is filled.

(f) Conflict of Interest

- (1) No member of the Commission shall participate in any action or decision by the Commission directly involving himself/herself; a member of his/her immediate family; any person, business or other entity of which he/she is a member or of which a Commissioner's immediate family member is an employee or in which he/she or a member of his/her immediate family has a substantial ownership interest or with which he/she or a member of his/her immediate family has a substantial relationship.

(2) Nothing in this section shall preclude a Commissioner from participating in any action or decision by the Commission which generally affects a class of persons, regardless of whether the Commissioner or a member of his/her immediate family is a member of the affected class or affects the nation, a tribal enterprise, a person or entity in a contractual relationship with the Tribe or a Tribal Enterprise, regardless of whether the Commissioner is a citizen of the Tribe.

(3) A Commissioner may voluntarily recuse himself/herself and decline to participate in any action or decision by the Commission when the Commissioner, in his/her discretion believes he/she could not act fairly or without bias.

(g) Mileage and Per Diem.

Members of the Commission shall be entitled to receive, upon presentation of proper vouchers, such stipend as are in effect for members of other Commissions of the Absentee Shawnee Tribe.

[History:]

Section 106. Regulations; Promulgation.

The Commission, assisted by the Tribal Employment Rights Office, shall promulgate any rules and regulations necessary for implementation of the Absentee Shawnee Tribe Employment Rights Ordinance, and consistent with the provisions of said Ordinance and other applicable laws of the Tribe provided that said rules and regulations are approved by the Absentee Shawnee Tribe Employment Rights Commission. The Commission shall insure that all rules, regulations, and guidelines accord issued provide notice to the public and further that all rules, regulations and guidelines accord affected parties' rights to due process of law. Except in cases where the Commission has determined that an emergency situation exists, the Commission shall follow the following minimal procedures in issuing all rules, regulations and guidelines:

(a) Notice of Proposed Regulations.

All proposed rules, regulations, and guidelines shall be sent to the Executive Committee and shall be posted in at least two public places within the territorial jurisdiction of the Absentee Shawnee Tribe, and shall be maintained in the Absentee Shawnee Tribe Employment Rights Office, and the Secretary's Office and made available for public inspection for not less than twenty (20) days from the date notice was mailed to the Executive Committee.

(b) Comment Period.

The Absentee Shawnee Tribe Employment Rights Office shall accept comment from any interested parties during the (20) day notice period required in §106 (a) herein.

(c) Finalization.

The Absentee Shawnee Tribe Employment Rights Commission shall prepare and approve final rules, regulations and guidelines following the comment period, after reviewing any comments made. The preamble to such final rules, regulations and guidelines shall state the major issues raised by the comments, if any.

(d) Effective Date of Regulations.

Following Commission approval of the final rules, regulations and guidelines, said rules, regulations and guidelines shall be posted in a public place within the territorial jurisdiction of the Absentee Shawnee Tribe and shall be filed in the Absentee Shawnee Tribe Tribal Employment Rights Office, and the Tribal Secretary's Office, which shall be open to public inspection. The effective date of the final rules, regulations and guidelines shall be the date upon which they are filed with the Secretary's Office.

[History:]

Section 107. Indian Preference in Employment.

All entities awarding contracts for supplies, services, labor and materials in an amount of \$5,000.00 or more, where the majority of the work on the contract or subcontract will occur within the territorial jurisdiction of the Tribe, shall give preference in contracting and sub-contracting to qualified entities that are certified by the Commission as fifty-one percent (51%) or more Indian-owned and controlled, with a first preference to qualified entities that are fifty-one percent (51%) or more owned and controlled by local Indians. The requirements of §108 herein shall apply to the award of contracts awarded directly by the Tribe, by the federal or state government or their subdivisions, and shall apply to any contracts awarded by any commercial enterprises of the Tribe even if said contract(s) must be submitted to the Tribe's Executive Committee for approval; or Tribal programs or divisions other than commercial enterprises for approval. Tribal programs or divisions other than commercial enterprises shall be required to comply with these requirements, and shall be required when submitting a contract to the Tribe's Executive Committee for approval, to indicate, as part of the submission to the Executive Committee, the steps taken to award the contract to a local Indian contractor. The requirements of §108 herein shall apply to all subcontractors awarded by a tribal, federal or state direct contractor or grantee, whether or not the prime contract was subject to these requirements. All covered entities, shall comply with the rules, regulations, guidelines and orders of the

Commission which set forth the specific obligation of such entities in regard to Indian preference in contracting and subcontracting. The Commission shall establish a system for certifying firms as Indian preference and local Indian preference eligible.

[History:]

Section 108. Indian Preference. Hiring Regulations.

The Commission shall promulgate regulations which impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire, by craft or skill level or which establishes percentage hiring goals by craft or skill level for specified employment fields.

[History:]

Section 109. Training

Employers subject to the provisions of the Absentee Shawnee Tribe Employment Rights Ordinance herein shall establish or participate in such training program as the Commission deems necessary to increase the pool of Indians eligible for employment within or outside the territorial jurisdiction of the Tribe.

[History:]

Section 110. Hiring Hall

The Absentee Shawnee Tribe Tribal Employment Rights Office is authorized to establish in conjunction with a the Tribe's Human Resources Department a hiring hall or skills bank, and impose a requirement that no covered employer may hire a non-Indian until the Tribe's Human Resources Department has certified that no qualified Indian is available to fill the vacancy, with a first preference in referral to local Indians.

[History:]

Section 111. Job Qualifications.

No employer subject to the provisions of the Absentee Shawnee Tribe Employments Rights Ordinance shall use job qualifications criteria or other personnel requirements that serve as barriers to Indian employment as a reason for non-compliance with Indian preference, unless the employer can demonstrate that such criteria or requirements are required by business necessity.

[History:]

Section 112 Religious Freedom.

Employers shall make a reasonable accommodation to the religious beliefs of Indian workers in accordance with guidelines to be developed by the Absentee Shawnee Tribe Tribal Employment Rights Office and approved by the Commission.

[History:]

Section 113. Compliance of Act by Unions.

Every union with collective bargaining agreement with an employer must file a written agreement stating that the union will comply with the Code of Laws of the Absentee Shawnee Tribe and with the rules, regulations and orders of the Commission. Until such agreement is filed with the Absentee Shawnee Tribe Tribal Employment Rights Office and the Commission, the employer may not commence work within the territorial jurisdiction of the Absentee Shawnee Tribe of Indians of Oklahoma. The Commission will provide a model union agreement for use by all unions who have a collective bargaining agreement with any employer. Every union agreement with an employer or filed with the Commission must provide:

(a) Indian Preference

The union will give preference to Indians in job referrals regardless of which union referral list they are on.

(b) Cooperation with the Commission.

The union will cooperate with the Commission in all respects and assist in the compliance with, and enforcement of, the Absentee Shawnee Tribe Employment Rights Ordinance and related regulations and agreements.

(c) Registration.

The union will establish a mechanism allowing Indians to register for job referral lists by telephone or mail.

(d) Training Program.

The union will establish a journeyman upgrade and advanced apprenticeship program.

(e) Temporary Work Permits.

The union will grant temporary work permits to Indians who do not wish to join the union.

July.

(f) Recognition of Unions.

Nothing herein or any activity by the Commission authorized hereby shall constitute official tribal recognition of any union or tribal endorsement of any union activities within the Absentee Shawnee Tribe.

[History:]

Section 114. Employment Rights Fee.

An employment Rights Fee is necessary to raise revenue for the operation of the Absentee Shawnee Tribe Tribal Employment Rights Office, and is hereby authorized to be imposed by the Tribal Employment Rights Office as follows:

- (a) Every covered employer or entity with a construction contract in the sum of \$1,000 or more shall pay a fee of 2% of the total amount of the contract. Such fee shall be paid by the employer or entity prior to commencing work in the Tribe's territorial jurisdiction. However, where good cause is shown, the Director may authorize a construction contractor to pay said fee in installments.
- (b) The fee shall be collected by the Absentee Shawnee Tribe Tribal Employment Rights Office Director. The Absentee Shawnee Tribal Employment Rights Director shall provide for an efficient and orderly fee collection process.

[History:]

Section 115. Reporting and On-Site Inspections.

Employers shall submit reports, and other information requested by the Commission. The Commission and its representative shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with the Absentee Shawnee Tribe Employment Rights Ordinance and rules, regulations and orders of the Commission. The Commission shall have the right to inspect and copy all relevant records of any employer, or any signatory union or subcontractor and shall have a right to speak to workers and conduct investigations on job sites.

[History:]

Section 116. Complaints.

- (a) Parties Entitled to File Complaint.

(1) Director.

If the Director has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with the Absentee Shawnee Tribe Employment Rights Ordinance or any rules, regulations or orders of the Commission, it may file a complaint and notify such party of the alleged violations.

(2) Individual Indian.

If any Indian believes that an employer has failed to comply with the Absentee Shawnee Tribe Employment Rights Ordinance or rules, regulations or orders of the Commission, or believes he has been discriminated against by an employer because he is an Indian, he may file a complaint with the Director specifying the alleged violation. If any employer fires, lays off, or *penalizes in any manner*, any Indian employee without just cause and proper notification of the Absentee Shawnee Tribe Tribal Employment Rights Office that employee shall be subject to the penalties provided in §119(f) herein.

(3) Employer or Union Complaint Procedure.

If an employer or union believes that any provision of the Absentee Shawnee Tribe Employment Rights Ordinance or any rules, regulation or order of the Commission is illegal or erroneous, it may file a complaint with the Commission specifying the alleged illegality or error.

(a) Contents of Complaint.

The complaint shall be in writing and shall provide such information on the form provided and approved by the Commission so that the Director can carry out an investigation.

[History:]

Section 117. Investigations.

(a) Investigation Deadline.

The Director shall within thirty (30) days of the date on which a complaint is filed; complete an investigation of the complaint unless the Director requests and is granted an extension by the Commission, and said extension shall be for no more than thirty (30) days.

(b) Investigatory Authority of Director

The Director or his delegate may enter, during business hours, the place of business or employment of any employer for the purpose of such investigations, and may require the covered employer or entity to submit such reports as he deems necessary to monitor compliance with the requirements of the Absentee Shawnee Tribe Employment Rights Ordinance §108 herein and any rule or order hereunder. When requesting any reports or other information from a covered employer, the Director shall request that the covered employer identify all material which contains trade secrets or privileged or confidential commercial, financial, or employment information. Any material so identified shall be kept confidential by the Director unless on the request of the Director or other interested party, the Commission determines that the material does not contain confidential information, the release of which would cause unnecessary or excessive business or financial injury or would invade individual privacy. If upon investigation, the Director has reason to believe a violation has occurred, he/she shall proceed pursuant to the provisions of §119 herein.

[History:]

Section 118. Investigatory Powers of Director and Commission.

(a) Power to Require Testimony and Production of Records.

For the purpose of investigations or hearings, which in the opinion of the Director or the Commission, are necessary and proper for the enforcement of this act herein, a Commissioner, the Director, or any field compliance officer designated by the Director may administer oaths or affirmations, subpoena witnesses, take evidence, and require, by citation, the production of books, papers, contracts, agreements or other documents, records or information which the Director or the Commission deems relevant or material to the inquiry.

(b) Confidentiality of Records.

Any Tribal, state or federal tax records, trade secrets, or privileged or confidential commercial, financial, or employment information subpoenaed pursuant to this section or used in a compliance hearing or subsequent appeal to the Tribe's District Court, shall be confidential records of the Commission or the said Court, shall not be opened to public inspection, and shall be used only by the Director, the Commission, parties to a compliance hearing or subsequent appeal to the Tribe's District Court, and the Tribe's District Court.

[History:]

Section 119. Decisions by Commission, Violation Process.

(a) Notification of Violation.

When after conducting an investigation, initiated by a complaint pursuant to §116 herein, the Director has reason to believe a violation of this Ordinance or regulations issued pursuant to it has occurred, the Director shall notify the covered employer or entity in writing, specifying the alleged violations. The Director may withhold the name(s) of the complaining party if he has reason to believe such party shall be subject to retaliation. The Director shall seek to achieve an informal settlement of the alleged violation. If he is unable to do so, he shall issue a formal notice of non-compliance, which shall also advise the covered employer or entity of his right to request a hearing.

(b) Formal Notice of Non-Compliance.

The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer or entity with a reasonable time to comply, which in no event shall be less than five (5) business days from the date of receipt of such notice, unless the Director has reason to believe irreparable harm will occur during that period, in which case the Director may require that compliance occur within fewer than five (5) business days.

(c) Request for Hearing.

If the party fails or refuses to comply, the party may request a hearing before the Commission which shall be held no sooner than five (5) business days and no later than thirty (30) days after the date for compliance set forth in the Director's notification to the party charged of a violation, unless an expedited hearing is deemed necessary by the Commission to avoid irreparable harm. If a party fails or refuses to comply and does not request a hearing, the Commission may proceed pursuant to §119(f).

(d) Bond During Pendency of Proceedings.

If the party requests a hearing pursuant to §119(c) herein, and the Director has good cause to believe that there is a danger that the party requesting the hearing will remove itself or its property from the jurisdiction of the Tribe prior to the hearing, he may, in his discretion, require the party to post a bond with the Commission in an amount sufficient to cover possible monetary damages that may be assessed against the party at the hearing.

If the party fails or refuses to post said bond, the Commission may proceed pursuant to §119(f). The Director may also petition the Tribe's District Court for such interim and injunctive relief as is appropriate to protect the rights of the Commission and other parties during the pendency of the compliant and hearing proceedings.

(e) Conduct of Hearings.

Any hearing held pursuant to §119 herein shall be conducted by the Commission. Hearings shall be governed by the following rules and procedures:

- (1) All parties may present testimony of witnesses and other evidence and be represented by counsel at their expense.
- (2) The Commission may have the advice and assistance at the hearing of counsel provided by the Tribe.
- (3) The Chairman of the Commission or the vice-chairman shall preside and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion.
- (4) The Commission may consider any evidence which it deems relevant to the hearing, and conduct of the hearing shall be governed by the rules of practice and procedure which may be adopted by the Commission and made available to the public through the formal process for promulgating rules as specified in §106.
- (5) The Commission shall not be bound by technical rules of evidence in the conduct of hearings, and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission.
- (6) The hearing may be adjourned, postponed and continued at the discretion of the Commission.
- (7) At the final close of the hearings, the Commission may take immediate action or take the matter under advisement.
- (8) In any hearing before the Commission where the issue is compliance by an employer with any of the requirements and provisions of the Absentee Shawnee Tribe Employment Rights Act, the burden of proof to show said compliance shall be on the employer, rather than on the employee or other complainant.
- (9) The Absentee Shawnee Tribe Tribal Employment Rights Office shall notify all parties within thirty (30) days after the last hearing of its decision in the matter by issuing a decision in writing and keeping those decisions filed in the AST TERO and the Secretary's Office.

- (10) No stenographic record of the proceedings and testimony shall be required except upon arrangement by and at the cost of the party charged.

(f) Remedies Upon Commission Determination of Violation.

If, after the hearing, the Commission determines that the alleged violation occurred and that the party charge has no adequate defense in law or fact, or if no hearing is requested, the Commission may:

- (1) Deny such party the right to commence business within the territorial jurisdiction of the Absentee Shawnee Tribe;
- (2) Suspend such party's operation within the territorial jurisdiction of the Absentee Shawnee Tribe;
- (3) Terminate such party's operation within the territorial jurisdiction of the Absentee Shawnee Tribe;
- (4) Deny the right of such party to conduct any further business within the territorial jurisdiction of the Absentee Shawnee Tribe;
- (5) Impose a civil fine on such party in an amount not to exceed \$50.00 dollars for violation, provided that each day during which a violation exists shall constitute a separate violation;
- (6) Order such party to make payment of back pay to any aggrieved Indian employee
- (7) Order such party to dismiss any employees hired in violation of the Tribe's Employment Rights requirements;
- (8) Require employment promotion and training of Indians injured by the violation;
- (9) Order the party to take such other action as is necessary to ensure compliance with this act and the Code of Laws of the Absentee Shawnee Tribe or to remedy any harm caused by a violation of said chapter, consistent with the requirements of the Indian Civil Rights Act, 25 U.S.C. 1301 et seq.

(g) Commission Decision; Protection.

The Commission's decision shall be in writing, shall be served on the charged party by registered mail or in person no later than thirty (30) days after the close of the hearing provided in §119(e). Where the party's failure to comply immediately with the Commission's orders may cause irreparable harm, the Commission may petition the Tribe's District Court, and the District Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of this act herein, pending the party's appeal or expiration of the time for appeal.

[History:]

Section 120. Appeals.

(a) Manner of Taking Appeal.

An appeal to the Tribe's District Court may be taken from any final order of the Commission by any party adversely affected thereby. Said appeal must be filed with the Court no later than twenty (20) days after the date of the entry of the Order. The appeal shall be taken by serving written notice of appeal with the Tribe's District Court, with a copy to the Director. The notice of appeal shall set forth the Order from which appeal is taken; specify the grounds upon which reversal or modification of the Order is sought; and be signed by the appellant. The filing of the appeal may be subject to the filing fees as imposed by the Tribe's District Court.

(b) Stay of Commission Order Pending Appeal; Bond.

The Order of the Commission shall be stayed pending the determination of the Tribe's District Court, provided that such stay may be conditioned upon the posting of a bond if the Director petitions for a bond and the Court, for good cause shown, orders the appealing party to post a bond sufficient to cover monetary damages that the Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the Commission's order if that order is upheld by the court.

(c) Standard of Review.

The Tribe's District Court shall uphold the decision of the Commission unless it is demonstrated that the decision of the Commission is arbitrary, capricious or in excess of the authority of the Commission.

(d) Reversal on Appeal.

If the order of the Commission is reversed or modified, the Court shall by its mandate specifically direct the Commission as to further action in the matter, including making and entering any order or orders in connection therewith and the limitations, or conditions to be contained therein.

(e) Enforcement of Commission Order.

If the Commission's order is upheld on appeal, or if no appeal is sought within twenty (20) days from the date of the party's receipt of the Commission's order, the Commission shall petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the Commission and the sanctions imposed by it.

[History:]

Section 121. Confiscation and Sale.

If twenty-one (21) days after a decision by the Commission pursuant to §119g), no appeal has been filed, or thirty (30) days after a decision by the Court on an appeal from a decision by the Commission pursuant to §119 a party has failed to pay monetary damages imposed on it or otherwise comply with an order of the Commission or the Court, the Commission may petition the Court to order the Tribe's Chief of Police to confiscate, and hold for sale, such property of the party as is necessary to ensure payment of said monetary or to otherwise achieve compliance. Said petition shall be accompanied by a list of property belonging to the party which the Commission has reason to believe is within the jurisdiction of the Tribe, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the Tribe's Chief of Police to confiscate and hold said property or as much as is available. The Tribe's Chief Police shall deliver in person or by certified mail, a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it. If thirty (30) days after confiscation, the party has not come into compliance, the Court shall order the Chief of Police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the Commission and all costs incurred by the Court and Chief of Police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

[History:]

Section 122. Orders to Police.

The Tribe's Chief of Police and his/her designee are hereby expressly authorized and directed to enforce such cease and desist or related orders as may from time to time be properly issued by the Commission and the Director. Such orders do not require a judicial decree or order to render them enforceable. No Law enforcement officer shall be civilly liable for enforcing such orders so long as the order is signed by the Director and the Commission. The Tribe's Police shall not enforce a removal order of the Director unless it is accompanied by a judicial decree by the Tribe's District Court.

[History:]

Section 123. Publication of Law.

- (a) The Commission shall notify all covered employers of the Absentee Shawnee Tribe Employment Rights Ordinance and their obligation to comply. 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 the Absentee Shawnee Tribe

Employment Rights Ordinance and all rules, regulations and orders of the Commission.

- (b) All tribal agencies responsible for issuing business permits for activities within the territorial jurisdiction of the Absentee Shawnee Tribe of Indians of Oklahoma or otherwise engaged in activities involving contact with prospective employers within the Absentee Shawnee Tribe of Indians of Oklahoma shall be responsible for advising such prospective employers of their obligations under the Absentee Shawnee Tribe.
- (c) The Absentee Shawnee Tribe Tribal Employment Rights Office shall send a copy of the Absentee Shawnee Tribe Employment Rights Ordinance to every employer doing business within the territorial jurisdiction of the Absentee Shawnee Tribe of Indians of Oklahoma.

[History:]

Section 124. Publication of Law.

As of the effective date of the Absentee Shawnee Tribe Employment Rights Ordinance, no new employer may do business with the Absentee Shawnee Tribe of Indians of Oklahoma until it has consulted with the Absentee Shawnee Tribe Tribal Employment Rights Office in order to meet its obligations under this law.

[History:]

Section 125. Applicability.

The Absentee Shawnee Tribe Employment Rights Ordinance shall be binding on all covered employers whether or not they have previously operated on the lands within the territorial jurisdiction of the Absentee Shawnee Tribe of Indians of Oklahoma and whether or not they are doing so at the time of the implementation of the Absentee Shawnee Tribe.

[History:]

Section 126. Severability.

If any portion of the Absentee Shawnee Tribe Employment Rights Ordinance shall be ruled invalid by a court of competent jurisdiction, that portion shall cease to be operative, but the remainder of the Act shall continue in full force and effect.

[History:]

Section 127. Effective Date.

The Absentee Shawnee Tribe Employment Rights Ordinance shall become effective from the date of its approval by the Executive Committee of the Absentee Shawnee Tribe.

[History:]

Section 128. Tribal Prevailing Wage Scale.

Employers that participate in the industries specified in Appendix 1 as attached and incorporated herein by reference and perform work within the territorial jurisdiction of the Absentee Shawnee Tribe shall be required to comply with the Absentee Shawnee Tribe's Tribal Prevailing Wage Scale as provided for in Appendix 1.

[History:]

Appendix 1

Absentee Shawnee Tribe of Oklahoma TRIBAL PREVAILING WAGE SCALE – COMMERCIAL & BUILDING

EFFECTIVE: 02/27/09

Within the territorial jurisdiction of the Absentee Shawnee Tribe.

*This scale may change without notice due to geographical market trends or cost of living allowances.

Commercial & Building Construction (other than residential)		02 /27/ 2009
Classification	Wage Rate	Training Fee
Asbestos Worker	\$21.00	n/a
Boilermaker	\$20.00	n/a
Bricklayer	\$13.00	n/a
Carpenter	\$12.50	n/a
Cement mason/finisher	\$13.00	n/a
Drywall taper/finisher	\$17.00	n/a
Electrician	\$23.00	n/a
Ironworker	\$14.50	n/a
Laborer – concrete & rebar	\$10.00	
Laborer – general	\$10.00	
Laborer – pipelayer	\$10.50	
Painter	\$12.00	n/a
Pipefitter/Welder/Plumber	20.50	n/a
Insulation Installer/Applicator	14.00	n/a
Sheetmetal	\$17.50	n/a
HEO – backhoe	\$12.00	n/a
HEO – blade/grader	\$12.00	n/a
HEO – bulldozer	\$12.00	n/a
HEO – crane	\$17.00	n/a
HEO – Excavator	\$14.00	n/a
HEO -loader	\$15.00	n/a
HEO - roller	\$15.00	n/a
Truck Driver, dump, flat-bed, water, fuel, oil	\$12.00	n/a

Entities with Collective Bargaining Agreements with Unions may use their apprenticeship programs, so long as an agreement from said union is made to utilize Indian apprentices on tribal projects.

Reference: 2009 TERO Ordinance, Section 128 , Tribal Prevailing Wage Scale.

**Absentee Shawnee Tribe of Oklahoma
TRIBAL PREVAILING WAGE SCALE – Heavy/Highway**

EFFECTIVE: 02 /27 /2009

The Tribe’s Prevailing Wage Scale shall apply to all residential, commercial, heavy and highway construction that occurs within the jurisdictional boundaries of the Absentee Shawnee Tribe of Oklahoma.

*This scale may change without notice due to geographical market trends or cost of living allowances.

Heavy & Highway Construction	02 / 27 / 2009	
Classification	Wage Rate	Training Fee
Carpenter,including concrete forms,drywall hanging & metal stud framing	\$20.50	n/a
Electrician	\$23.00	n/a
HEO – backhoe	\$12.00	n/a
HEO – blade/grader	\$12.00	n/a
HEO – bulldozer	\$12.00	n/a
HEO - crane	\$18.00	n/a
HEO - excavator	\$13.00	n/a
HEO - loader	\$15.00	n/a
HEO - roller	\$15.00	n/a
HEO - scraper	\$15.00	n/a
HEO – screed, oiler	\$15.00	n/a
Iron Worker	\$14.50	n/a
Laborer – fence, guardrail, asphalt raker & jackhammer	\$15.00	
Laborer – general	\$10.00	
Laborer – pipelayer	\$10.00	
Painter (traffic control, striper)	\$10.00	n/a
Pipefitter/Welder/Plumber	\$17.00	n/a
Truck Driver, dump-flatbed, transport, water,fuel, oil	\$12.00	n/a

Entities with Collective Bargaining Agreements with Unions may use their apprenticeship programs, so long as an agreement from said union is made to utilize Indian apprentices on tribal projects.

Reference: 2009 TERO Ordinance, Section 128 , Tribal Prevailing Wage Scale.

Absentee Shawnee Tribe of Oklahoma
TRIBAL PREVAILING WAGE SCALE – Heavy/Highway

EFFECTIVE: 02/27/ 2009

The Tribe’s Prevailing Wage Scale shall apply to all residential, commercial, heavy and highway construction that occurs within the jurisdictional boundaries of the Absentee Shawnee Tribe of Oklahoma.

*This scale may change without notice due to geographical market trends or cost of living allowances.

Residential Construction (single family units including apartments up to 4 stories 02/ 27 / 2009		
Classification	Wage Rate	Training Fee
Bricklayer	\$13.00	n/a
Carpenter	\$12.00	n/a
Cement mason	\$13.00	n/a
Drywall hanger	\$11.00	n/a
Electrician	\$17.50	n/a
Flooring Installer	\$13.00	n/a
Insulation Installer	\$13.00	n/a
Laborer	\$9.00	
Painter	\$11.00	n/a
Plumber	\$17.50	n/a
Roofer	\$12.00	n/a
Sheetmetal	\$15.50	n/a
Truck Driver	\$12.008	n/a

Entities with Collective Bargaining Agreements with Unions may use their apprenticeship programs, so long as an agreement from said union is made to utilize Indian apprentices on tribal projects.

Reference: 2009 TERO Ordinance, Section 128 , Tribal Prevailing Wage Scale.