

HO-CHUNK NATION CODE (HCC)
TITLE 6 – PERSONNEL, EMPLOYMENT AND LABOR CODE
SECTION 3 – TRIBAL EMPLOYMENT RIGHTS ORDINANCE

ENACTED BY LEGISLATURE: June 10, 2009

CITE AS: 6 HCC § 3

This Ordinance supercedes the Ho-Chunk Nation Tribal Employment Rights Ordinance enacted October 7, 1997 by Legislative Resolution 10/7/97A and amended by Legislative Resolution 2/9/99A.

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1. Authority.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(e) of the Constitution grants the Legislature the power to raise revenue, including the power to levy and collect taxes and license fees.

c. Article V, Section 2(f) of the Constitution grants the Legislature the power to set the salaries, terms and conditions of employment for all government personnel.

d. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

e. Article V, Section 2(q) of the Constitution grants the Legislature the power to issue charters of incorporation, to charter corporations and other organizations for economic or other purposes, and to regulate their activities.

f. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

2. Purpose. This Ordinance is enacted to require employers doing business on or near land owned by the Ho-Chunk Nation to give preference to enrolled members of the Ho-Chunk Nation and other Indians in employment hiring, training, and promotion.

3. Applicability. This Ordinance applies on or near all lands presently owned, acquired in the future by the Ho-Chunk Nation, as authorized by Article 1 Sections 1 and 2 of the Ho-Chunk Constitution.

4. Declaration of Policy.

a. It is the public policy of the Ho-Chunk Nation to foster employment opportunities for its members and other Indian people.

b. It is the public policy of the Ho-Chunk Nation to protect the economic and societal interests of its members and other Indians by taking measures to eliminate employment discrimination against Indian people.

c. It the intent and purpose of this Ordinance to promote the employment and training of Indians, consistent with the Indian Hiring Preference requirements of Title VII of the Civil Rights Acts of 1964 (42 U.S.C. § 2000c-2(i)) as applied to any Indian, business or enterprise “on or near” an Indian reservation, and the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450 *et seq.*) which requires preference be given to

Indians, Indian-owned economic enterprises, and Indian organizations in the administration and award of all federal contracts, subcontracts, or grants for the benefit of Indians.

5. **Definitions.** Terms used in this Ordinance have the following meaning:

a. “Bid Bond” means type of bond required in public construction projects which must be filed at the time of the bid and which protects the public agency in the event that the bidder refuses to enter into a contract after the award to him or withdraws his bid before the award.

b. “Certified Indian Owned Firm Or Entity” means and includes any commercial, industrial or other business firm or entity which has been certified by the TERO Commission to be fifty-one percent (51%) or more owned, managed, and controlled by one or more Indians.

c. “Chairperson” means the Chairperson of the TERO Commission.

d. “Commerce” means and includes all trades, traffic, distribution, communications, transportation, provisions of services, manufacturing production, agricultural production, building maintenance, construction, banking, mining, and energy resource production.

e. “Commission” means the TERO Commission, covered in Section 22 of this Ordinance.

f. “Commissioner” means a member of the TERO Commission.

g. “Core Crew” means a contractor’s core crew which is composed of full time employed individuals necessary to satisfy his/her reasonable needs for supervisory or specially experienced personnel to assure an efficient execution of the contract work. Any Indian already employed by a contractor shall be included in the core crew, regardless of job function, to avoid the unintended results of having a contractor lay-off or terminate an Indian employee to hire another under this provision.

h. “Corporation” means a “domestic corporation” for profit organized under the Nation’s Business Corporation Ordinance and a foreign corporation formed under the laws of any other jurisdiction.

i. “Covered Employer” means and includes any person or entity that employs at least one employee at a job-site located on land owned by the Ho-Chunk Nation or whose employment contract for the benefit of land owned by the Ho-Chunk Nation is in the sum of one thousand dollars (\$1,000.00) or more.

j. “Crafts” mean handmade products produced in small quantities, usually performed as a hobby rather than one’s only means of making a living.

k. “Director” means the Ho-Chunk Nation TERO Director.

l. “Doing Business.” Within statutes on service of process on foreign corporations, means equivalent to carrying on, conducting or managing business. A foreign corporation is “doing business”, making it amenable to process within the Nation, if it does business therein in such a manner as to warrant the inference that is present there. Or that it has subject itself to the jurisdiction and laws in which the service is made. The doing of business is the exercise in the state of some of the ordinary functions for which the corporation was organized. What constitutes “doing business” depends on the facts in each particular case. The general rule is that the business need only have certain “minimum contacts” with the Nation to make it amenable to process in the Nation.

m. “EEOC” means the Equal Employment Opportunity Commission of the United States.

n. “Employee” means and includes any currently working person of a Covered Employer, and any person whose work has ceased as a consequence of any labor dispute or as a result of unfair labor practices of a Covered Employer.

o. “Employee on Land Owned by the Ho-Chunk Nation” means and includes any employee who engages in or renders employment related services in excess of ten (10) hours per week at a job site located on land owned by the Ho-Chunk Nation, but does not include periodic deliveries of goods unless the employer maintains a permanent facility on Ho-Chunk land.

p. “Employer” means and includes, but not limited to, any person, partnership, corporation, or other entity who engages in commerce through compensated agents or service provider, or who is hired pursuant to a contract for services for the benefit of the Ho-Chunk Nation, at a site located on land owned by the Ho-Chunk Nation. However, the term shall not include the Ho-Chunk Nation Government, the United States Government or any wholly owned government corporation, or any state or political subdivision thereof, but shall include any independent contractors and sub-contractors hired by these governmental units.

q. “Entity” means and includes any person, partnership, corporation, joint venture, government, governmental enterprise, or any other natural or artificial person or organization.

r. “Firm” means business entity or enterprise. Unincorporated business. Partnership of two or more persons.

s. “Gross Payroll” means the total amount of payroll funds, not including any deductions for federal, state or local taxes, paid to employees of covered employers located on or near Ho-Chunk Nation lands is for purposes of compliance and used to confirm rate of pay with projects or work to be performed on Ho-Chunk Nation lands.

t. “Hearing Officer” means the member(s) of the TERO Commission who is appointed to preside over the hearings.

u. “Ho-Chunk Legislature” or “Legislature” means the duly elected legislative body governing the Ho-Chunk Nation.

v. “Indian” means and includes any individual who is a duly enrolled member of a federally recognized Indian Tribe.

w. “Indian Land” means the territory of the Ho Chunk Nation shall include all lands held by the Nation or the People, or by the United States for the benefit of the Nation or the People, and any additional lands acquired by the Nation or by the United States for the benefit of the Nation or the People, including but not limited to air, water, surface, subsurface, natural resources and any interest therein, notwithstanding the issuance of any patent or right-of-way in fee or otherwise, by the governments of the United States or the Ho Chunk Nation, existing or in the future.

x. “Indian Preference” means the contractor agrees to give preference to Indians who can perform the work required regardless of age(subject to existing laws and regulations), sex, religion, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation) who are not fully qualified to perform under this contract. Preference shall be given in employment, training, recall and other employment activities as allowed by federal law, in the following order: (1) enrolled members of the Ho-Chunk Nation; (2) Indian spouses of Ho-Chunk Nation members; and (3) Non-member Indians. Preference in contracting and subcontracting shall be given to Certified Indian-owned firms and entities without regard to tribal affiliation that have the minimal requisite skills and experience for the job.

y. “Indian Tribe” means and includes any Indian Tribe, Band, or other organized group or community, including Alaska Native Village or unit defined or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

z. “Land Owned By the Ho-Chunk Nation” means any real property in which the Ho-Chunk Nation or any of its members, individually or severally, hold at least a fifty-one percent (51%) property interest, including Ho-Chunk lands held in trust by the United States Government on behalf of the Ho-Chunk Nation or its members.

aa. “Limited Liability Company” (LLC) means a “domestic limited liability corporation” organized under the Ho-Chunk Nation Limited Liability Company Act and a “foreign limited liability corporation” formed under the laws of any other jurisdiction.

bb. “Non-Certified Indian-Owned Firms or Entity” means and includes any commercial, industrial, or other business which is less than fifty-one percent (51%) Indian-owned or which has less than fifty-one (51%) management and control being exercised by an Indian or Indians, as determined by the TERO Commission.

cc. “Notice” means that written communication as required to be given to named parties in an action and to all interested persons to an action, and in all instances where a specific person is not addresses, shall be sufficient if such notice is published in a news publication serving the geographic area where the action occurs and is posted in a public place on or nearby land owned by the Ho-Chunk Nation.

dd. “OFCCP” means the Office of Federal Contract Compliance Program of the United States.

ee. “On or Near Ho-Chunk Lands” means on land owned by the Ho-Chunk Nation or the distance within that area surrounding land owned by the Ho-Chunk Nation that a person seeking employment could reasonably be expected to commute to and from in the course of the work day.

ff. “Performance Bond” means type of contract bond which protects against loss due to the inability or refusal of a contractor to perform his contract.

gg. “Person” means and includes both natural persons and artificial persons, including but not limited to, corporations, partnerships, joint ventures, sole proprietorships, associations, unions, trusts, trustees, and agents.

hh. “Secretary” means the Secretary of the U.S. Department of the Interior or duly authorized representative of the Secretary.

ii. “Sole Proprietorship” means a form of business in which one person owns all the assets of the business in contrast to a partnership, trust or corporation. The sole proprietor is solely liable for all the debts of the business.

jj. “Spouse” means one’s husband or wife, and “surviving spouse” is one of a married pair who outlive the other.

kk. “TERO” means the Tribal Employment Rights Ordinance of the Ho-Chunk Nation.

ll. “Tribal Member” means any person whose name appears on the Official Membership Roll of the Ho-Chunk Nation.

mm. "TJSBP" means TERO Job Skills Bank Participant.

nn. “Vendor” means any outside provider of goods or services, excluding Ho-Chunk owned businesses. This definition also excludes the vending of “crafts” by Ho-Chunk members or other Indians on land held in trust or owned by the Ho-Chunk Nation

6. Indian Preference Requirement.

a. All guidelines adopted by the TERO Commission for attaining the goals of Indian Preference in Employment including, but not limited to, contracting and subcontracting practices, minimum numerical hiring goals, hiring timetables, hiring halls, training promotions and layoffs policies shall be incorporated into this Ordinance to be effective.

b. Such guidelines shall be adopted by the Commission and submitted to the Legislature for the amendment and restatement of this Ordinance.

7. Scope of Indian Preference.

a. Enrolled Members. All covered employers shall grant preference to enrolled members of a federally recognized Indian tribe in hiring, promotion, training, lay-offs, and all other elements of employment.

b. Spouses of Enrolled Members. All covered employers shall grant preference to the Indian spouses of enrolled members of a federally recognized Indian tribe in hiring, promotion, training, lay-offs, and all other elements of employment.

c. TERO Certified Indian-Owned Firms.

(1) All covered employers shall grant preference in awarding contracts and sub-contracts to TERO certified Indian-owned firms or entities owned by enrolled members of a federally recognized Indian tribe over all other firms or entities.

(2) All covered employers shall grant preference in awarding contracts and sub-contracts to TERO certified Indian-owned firms or entities whose principal place of business is located on or near lands owned by the Ho-Chunk Nation over firms whose principal place of business is not located on such lands.

(3) All covered employers shall grant preference to certified Indian-owned firms or entities, without regard to the location of their respective place of business, over Non-Indian firms or entities.

d. Non-TERO Registered Indian-Owned Firms.

(1) All covered employers shall give preference to Non-TERO Registered Indian-owned firms or entities whose principal place of business is located on or near land owned by the Ho-Chunk Nation over non-Indian firms or entities.

(2) All covered employers shall give preference to Non-TERO Registered Indian-owned firms or entities over Non TERO Registered firms or entities without regard to the location of their principal place of business.

8. Indian Preference Certification.

a. Purpose.

b. Required Level of Ownership.

(1) The covered employer, firm, partnership, or corporation business entity must be fifty-one percent (51%) or more Indian owned to be eligible for Indian Preference Certification.

(2) Proof of the requisite level of Indian ownership must be embodied in the Sole Proprietorship, LLC and corporation documents of ownership including, but not limited to, its stock ownership, partnership agreement or other organic documents. Requisite Indian ownership shall include all of the following:

(a) Financial Ownership. The Indian(s) owns 51% or more of the assets and equipment and will receive 51% or more of the assets and profits of the firm or entity upon dissolution.

(b) Management Control. The 51% of Indian ownership provides the Indian owner(s) with a majority of the voting rights or other decisional authority, and all decisions of the firm are to be made by majority vote, except where otherwise required by law. One or more of the Indian owner(s) must exercise substantial control, as a senior level official, in the day-to-day management of the firm, entity as his/her primary employment activity, and have occupational ties and knowledge in the area of business to serve in a senior level position.

(c) Value. The Indian owner(s) provided real capital for the 51% or more ownership through capital, equipment, real property or similar contribution of value commensurate with the ownership share.

c. Required Quality of Performance.

(1) The firm or entity seeking TERO Registered certification shall provide proof that it has the necessary skills and experiences to perform the requirements of the contract or subcontract.

(2) Acceptable proof of requisite skills and experience includes, but is not limited to, documentation of the firm or entity's quality of performance, specialized licenses, trade certificates, employment references, or other reliable information pertaining to the qualifications of the firm or entity.

(3) The TERO Commission shall review and evaluate the documentation submitted by the firm or entity and shall maintain and update the information on an annual basis.

d. TERO Certification Procedures.

(1) The covered employer, firm, partnership, corporation or business entity shall complete an application for certification to the Tribal Employment Rights Office, along with the required certification fee.

(2) The TERO staff will be available to assist a firm or entity in completing the application for certification or recertification shall review the application, and conduct such research as it deems appropriate.

(3) The TERO Director within 15 business days of the submission of the TERO certification or registration recommendation shall issue a written decision on the application.

(4) Denial of TERO Certification or registration may be appealed pursuant to the hearing and appeals procedures set forth in this Ordinance to the TERO Commission.

e. Withdrawal, Revocation or Suspension of TERO Certification.

(1) Upon receipt of a signed written complaint from the TERO Certified or Registered firm or filed by another firm, the TERO Director may initiate proceedings to withdraw, revoke or temporally suspend the certification or registration of any firm or entity.

(2) The TERO Director shall prepare a decision for the Complainant and shall send a copy to the firm or entity by registered mail in 15 business days.

(3) All TERO Director's decisions shall be appealable to the TERO Commission based on the evidence received by the TERO Director.

(4) The TERO Commission shall set a date for hearing on the certification in accordance with the hearings procedures in this Ordinance. The TERO Commission will issue a decision to reinstate, revoke, or temporally suspend the TERO certification, as appropriate.

(5) The decision of the TERO Commission may be appealed to the Ho Chunk Nation Tribal Court.

f. Change in Status and Annual Reports.

(1) Each TERO Certified or Registered Indian-owned firm or entity shall submit a written report to the TERO Director regarding any changes in its ownership or control status within thirty (30) days after such changes have occurred.

(2) Each TERO Certified Indian-owned or Registered firm or entity shall, on the anniversary of its certification, update the information provided in its initial application on an Annual Report form. Failure to provide information pursuant to these requirements shall constitute nonappealable grounds for withdrawal of TERO certification or Registration.

9. Permit Process - Construction

a. Bid Permit.

(1) Every covered employer, General Contractor and including all subcontractors but not TERO Certified Indian-owned firms shall pay a bid permit filing fee based upon the total bid price.

(a) For bids in excess of five thousand dollars (\$5,000.00) to a maximum of ten thousand dollars (\$10,000.00), the filing fee shall be set forth by the TERO Commission.

(b) For bids in excess of ten thousand dollars (\$10,000.00), the bid permit-filing fee shall be set forth by the TERO Commission.

(2) The permit-filing fee shall be non-refundable.

(3) All bid documents shall reflect the type of permit(s) required by the covered employer, the cost of the permit(s) and the procedure for obtaining the permit(s).

(4) The permit filing fee shall be submitted with a copy of the bid or contract proposal to the TERO Director.

(a) Any bid, which does not include the bid permit-filing fee or an approved payment plan by the TERO Commission, shall be considered a non-responsive bid and shall be automatically rejected by the TERO Director.

(b) The TERO Director may authorize, upon receipt of a written request, the general contractor to pay the construction permit fee in installments, provided the following factors exist:

(i) The total amount of fees exceeds \$10,000.00; and

(ii) The general contractor demonstrates hardship or other good cause.

b. Ordinance/Application.

(1) Every covered employer with a contract to provide services in conjunction with work to be performed on land owned by the Ho-Chunk Nation shall be subject to a TERO fee of two percent (2%) of the total amount of the contract. To the extent that it paid such fee, the covered employer may receive a refund for actual wages paid to newly-hired Indian employees performing work on lands owned by the Ho-Chunk Nation. At the end of the contract, the covered employer may receive a refund of the fee, up to the amount of the fee paid, by providing TERO staff with a copy of Forms W-2 or W-9 covering the wages that such Indian employees received while working on lands owned by the Ho-Chunk Nation. To be eligible for the refund, such Indian employees must have been hired after the execution of the contract to provide services on land owned by the Ho-Chunk Nation.

(2) Exceptions. This fee shall not apply to Ho-Chunk government entities, Programs and enterprises, whether for profit or not, and their contractors, sub-contractors, and suppliers, except for construction and infrastructure development projects funded by State and Federal grants. Also exempt from this fee, except for construction and infrastructure development projects funded by State and Federal grants, are: non-profit employers; employers that are at least 51% owned by Ho-Chunk Nation tribal members; and utilities franchised by the Ho-Chunk Nation.

(3) It shall be the responsibility of all companies, individuals, foreign governments and non-profits, if applicable, and entities to pay the required fee.

(4) The employer, on a quarterly basis, shall pay the fee within thirty (30) days after the end of each quarter, unless the TERO Director approves an alternate payment method.

c. Collection.

(1) The TERO Director shall be responsible for collections of TERO fees.

(2) The TERO Director shall issue a formal notice by registered mail to the vendor indicating the specific amount due for payment, and the date of payment. The notice shall be mailed to the principal place of business.

d. Delinquent Fees.

If the fees are not paid within five (5) working days after receipt of the notice is mailed the TERO Director shall file a formal charge of non-compliance. The TERO Director shall negotiate a right to cure the delinquent fees in writing.

e. Expenditures of Fees.

(1) All fees shall be deposited with the Ho-Chunk Nation Department of the Treasury into the General Fund.

(2) Revenues collected from the fees/taxes may be expended to defray the cost of implementing the duties and functions of the TERO.

(3) The TERO Commission shall provide a written recommendation of possible expenditures to the Department of the Treasury prior to the transfer of fees collected.

(4) The TERO Director in consultation with the TERO Commission shall prepare an annual budget. Expenditures of all TERO permit fees, fees and funds shall be in accordance with the Ho-Chunk Nation's *Appropriation and Budget Process Act* (2 HCC § 4) and corresponding policies and procedures of the Ho-Chunk Nation.

10. Equal Pay Compensation. The amount of compensation paid to the TERO job skills bank participant shall be at least equal to that of the compensation paid to Non-TERO job skills bank participant for substantially equal work, regardless of any difference in the job classification, provided that the TERO job skills bank participant has the same skill and experience level and ability.

11. Lay-Offs.

a. An enrolled Ho-Chunk member shall not be laid-off if a Non-member Indian or Non-Indian worker remains employed in the same job position and classification or in another position for which the enrolled member qualifies.

b. A Non-Indian or Non-member Indian must be laid-off prior to the lay-off of an enrolled Ho-Chunk member who is performing the same job or who possesses the threshold qualifications and skills to perform the same job.

c. A Non-Indian must be laid-off prior to the lay-off of a Non-member Indian who possesses the threshold qualifications and skills to perform the same job.

12. Re-Employment List.

a. The names of TJSBP who are laid-off or involuntarily terminated shall be placed on a re-employment list which states the position held by the enrolled member at the time of lay-off or involuntary termination.

b. The re-employment list will be maintained by the TERO for a period of the project from the date of placement on the list.

c. When a vacancy occurs in a position for which a re-employment list exists, the TJSBP whose name appears on the list will be recalled and offered re-employment in inverse of their lay-off dates, prior to consideration of Non-TJSBP for employment.

d. After all TJSBP on the re-employment list have been recalled for re-employment, an employer must offer any vacant position to a Non-TJSBP who meets the threshold qualification for the job prior to hiring a non-Indian.

13. Publication of Ordinance and Forms.

a. Duty to Publish. It shall be the duty and responsibility of the TERO Commission to publish any rules, regulations or guidelines required by this Ordinance or adopted by the Commission to enable covered employers as well as Tribal Departments and businesses to fully comply with the TERO requirements.

b. Manner of Publication, Bid Information.

(1) Copies of this Ordinance and any rules, regulations or guidelines adopted by the Commission including any required forms shall be made available upon request to all covered employers, governmental agencies, wholly owned government corporations and private individuals and entities, intending to undertake projects at sites located on land owned by the Ho-Chunk Nation.

(2) The Commission shall take whatever action is deemed appropriate and necessary to ensure that all bid announcements comply with the standard bid policy and satisfy all applicable requirements of this Ordinance, and any rules, regulations or guidelines adopted by the Commission.

(3) The Commission shall publish the provisions of the Ordinance and any rules, regulations or guidelines adopted by the Commission, in the tribal newspaper or newsletter on an annual basis.

14. Confidentiality and Reporting Requirements.

a. Upon request a covered employer shall submit to the TERO such information determined by the staff necessary to ensure compliance with TERO requirements. Report the TERO Program to all covered employers shall furnish forms. A covered employer may refuse to submit any information or documentation, which it can demonstrate, must remain confidential for valid business purposes.

b. All written materials relating to any covered employer, including Certified Indian-Owned firms, maintained by the TERO should remain strictly confidential. Such written materials shall include, but not be limited to Indian Preference Certification Applications and accompany documentation, financial records, tax records, corporate and other business organic documents, resumes and financial institution records. Only the TERO Director, TERO staff, the Director of the Department of Labor, and the TERO Commission are entitled to have access to such materials on a need-to-know basis.

15. On-Site Inspections.

a. Periodic Inspections.

(1) The TERO Director may delegate the authority to conduct inspections, examine records or contact employers to a designated staff member.

(2) The TERO shall have the right to conduct on-site inspections during the normal business hours to monitor compliance with the requirements of this Ordinance and any rules, regulations, guidelines, or orders adopted by the Commission.

(3) The TERO shall have the right to contact any contractor, sub-contractor, or employee working on the site so long as such contact does not unreasonably interfere with business operations.

(4) The TERO shall have the right to inspect all records and other written materials maintained on-site by a covered employer which are not deemed confidential. Any and all written materials shall be subject to the requirements of strict confidentiality.

b. Failure or Refusal to Allow Inspections.

(1) If a covered employer fails or unreasonably refuses to cooperate during an on-site inspection, it will be assumed that the covered employer is not in compliance with the TERO requirements.

(2) Sanctions may be imposed by the Commission against a covered employer for failure or refusal to allow periodic inspection for compliance. Written notice of non-compliance will be sent via registered mail to the covered employer's primary place of business.

16. Compliance Plan.

a. A covered employer who intends to do business at a site located on or near Ho Chunk lands shall not commence its site activities until the employer has submitted an approved Compliance Plan with TERO, unless the TERO Director determines otherwise.

b. The Compliance Plan shall include information relative to the time frame for completion of all registration forms, payroll report forms, and any other documents required by the TERO to ensure the covered employer will satisfy the requirements of the Ordinance.

17. Union Agreements. A covered employer who has a collective bargaining agreement with a labor union(s) or intends to enter into such agreement must include the Indian Preference requirements in this Ordinance. No union agreement shall supercede the requirements of this Ordinance and its implementing regulations. Nothing herein shall constitute official recognition by the Ho-Chunk Nation of any union or the Nation's endorsement of any union activities within the Ho-Chunk Nation.

18. Enforcement.

a. The Commission shall have the authority to take necessary legal action necessary to enforce its decisions and orders, included but not limited to, requesting assistance from federal, state and local law enforcement agencies.

b. The Commission shall not require an accompanying or affirming judicial order for its Decisions and Orders to be legally enforceable.

19. Recognition of Freedom of Religion. A covered employer shall make reasonable modifications in the operation of its business for the purpose of accommodating the religious beliefs, traditions and practices for Indian employees and Indian-owned firms including, allowing an employee leave for religious purposes.

20. Harassment.

a. If any employee(s) of a covered employer believes that he or she has been harassed, intimidated or retaliated against, they can submit a written complaint to TERO. The TERO Director shall send a formal written complaint via certified mail, to the covered employer or entity, with a full description of the alleged harassment, intimidation, and/or retaliation.

b. The covered employer will have five (5) days to respond in writing to the TERO Director addressing and resolving the issue(s). The TERO Director will mediate such issue(s) if needed. If the prohibited conduct or activities continue, the TERO Director will request in writing, a formal hearing before the TERO Commission shall be scheduled. Such hearings shall be conducted in accordance with the rules of procedure for hearings prescribed in this Ordinance.

c. The Commission may impose sanctions in accordance with Section 24 of this Ordinance if it determines that such covered employer violated the prohibition against such conduct and if any findings were found to be frivolous by the employee, sanctions can ensue.

21. Tribal Employment Rights Office.

a. Authority and Duties.

(1) The TERO shall be vested with general authority to implement the policy of Indian Preference in employment and contracting as established by this Ordinance, pursuant to the oversight and direction of the Commission.

(2) The TERO shall have specific duties and responsibilities of engaging in the daily implementation of the provisions set forth in this Ordinance and any rules, regulations or guidelines adopted by the Commission.

b. Director; Qualifications, Duties, and Responsibilities.

(1) The TERO Director shall have such administrative ability, education, and training as determined appropriate by the Executive Director of the Department of Labor, in consultation with the Commission, to carry out the duties and responsibilities of the position.

(2) In accordance with the Ho-Chunk Nation *Employment Relations Act* (6 HCC § 5), the TERO Director shall have the authority to hire, supervise, or terminate all TERO staff, including the authority to delegate to a designated member of the TERO any of the duties and responsibilities of the Director. The Executive Director of the Department of Labor, who directly reports to the President of the Ho-Chunk Nation, supervises the TERO Director.

(3) The TERO Director shall obtain funds and revenue from available sources to carry out the purposes of the Ordinance, including but not limited to, the authority to prepare line item budgets for the TERO and to approve and oversee program expenditures.

(4) The TERO Director shall prosecute before the Commission any claims of non-compliance with this Ordinance or any rules, regulations or guidelines adopted by the Commission.

(5) The Executive Director of the Department of Labor shall have final supervisory authority over the TERO Director and may hire, supervise, suspend, or terminate the TERO Director in accordance with the *Employment Relations Act*. In such authority, the Executive Director shall take into consideration the advice of the Commission.

c. TERO Staff Duties and Responsibilities. The TERO shall implement the day-to-day operations of the program, under the supervision and direction of the TERO Director. The TERO shall:

(1) Adopt a plan for dissemination of this Ordinance and any rules, regulations, and guidelines adopted by the Commission to all covered employers and to all governmental entities providing grants or entering into contracts for work to be performed at job-sites located on or near existing lands owned by the Ho-Chunk Nation.

(2) Develop and maintain a current register with the names and addresses of TERO certified for Indian Preference by the Commission, together with an identification of the respective areas of work in which the firms are considered qualified.

(3) Develop and maintain a list for coordination and dissemination of the TERO certified employers to present and future employers.

(4) Ensure compliance by covered employers with any and all reporting requirements as prescribed by this Ordinance, and any rules, regulations or guidelines established by the Commission.

(5) Enter into informal negotiations with representatives of any employer to reach an informal voluntary resolution of any claim(s) of non-compliance with the requirements set forth in this Ordinance and any rules, regulations or guidelines established by the Commission.

(6) Inspect any and all non-privileged information set forth in any records maintained by any covered employer for the purpose of ensuring continued compliance with the requirements of this Ordinance and any rules, regulations or guidelines set by the Commission.

(7) Conduct on-site inspections at any time during the actual business activities of any covered employer for purpose of monitoring compliance with the requirements set forth in this Ordinance, or any rules, regulations, or guidelines established by the Commission and to speak with any contractor, subcontractor, employer, or employee on the job site, unless such conduct unreasonably interferes with the operation of business.

(8) Review applications for Indian Preference Certification, together with all supporting documentation and conduct whatever investigation(s) deemed necessary or required in relation to an applicant's qualifications and to submit to the Commission a written analysis and recommended disposition for each application.

(9) Initiate hearings before the Commission for the purpose of suspending or revoking Indian Preference Certification based upon a change of circumstances.

(10) Enter into negotiated agreements with labor unions for the purpose of ensuring union compliance with the requirements set forth in this Ordinance and in any rules, regulations, or guidelines established by the Commission.

(11) Implement and maintain a Job Skills Bank, which each covered employer shall select qualified JSBP in order to fill non-core crew employment positions.

(12) Require each covered employer to submit an acceptable Compliance Plan before a covered employer may commence work on or near land owned by the Nation.

(13) Establish minimum numerical hiring goals and timetables setting forth the minimum number of qualified JSBPs a covered employer must employ within its work force, during any year, by skill area or job classification.

(14) Require covered employers to establish and maintain job training or apprenticeship programs for the purpose of assisting JSBPs to become qualified in various craft/skill areas or job classifications used by such employers to engage in various employment positions on or near land owned by the Nation.

(15) Prohibit covered employers from instituting or utilizing job qualification criteria or personnel requirements which serve as barriers to employment of JSBP, unless such criteria can be demonstrated to be required by business necessity.

(16) Initiate a hearing before the Commission for a violation of any provision of the Ordinance or of any rules, regulations, or guidelines adopted by the Commission.

(17) Secure additional funding from alternative sources (e.g., federal, state, public, and private agencies), as necessary, for the continued and adequate functioning of the TERO.

(18) Work in conjunction with federal agencies, by formal cooperative agreements whenever appropriate, to implement regulations which provide for Indian Preference in employment and contracting including, but not limited to, coordinating with federal agencies to monitor and enforce the Indian Preference requirements.

(19) Take emergency action, not to exceed the scope of the Commission's authority, to prevent substantial harm resulting from the non-compliance; provided that such action taken shall be temporary pending review by the Commission within a period not to exceed thirty (30) days from the date such action was taken. At least five (5) days notice of the hearing shall be provided to any parties before the Commission can review via certified mail to any parties before the Commission can review any emergency actions taken. Such notice shall contain a statement of how the party is in non-compliance.

(20) Take such action and engage in such other activities deemed necessary and consistent with the delegation of authority from the Commission to achieve the purposes and objectives inherent in the policy of Indian Preference in employment and in contracting.

22. Tribal Employment Rights Commission.

a. Composition.

(1) The Commission shall be composed of five (5) enrolled members of the Ho-Chunk Nation.

(2) The Commissioners shall select one (1) Chairperson and one (1) Vice-Chairperson from among the members.

(3) Advisors and ex officio members of the Commission serve in a non-voting capacity at the pleasure of the Commission.

b. Term.

(1) Commissioners shall serve a maximum two (2) years, with each term from October 1 to September 30.

(2) Commission terms shall be staggered.

c. Removal.

(1) The Ho-Chunk Legislature, at the recommendation of the Commission, may remove a Commissioner for malfeasance, dereliction, or neglect of duty, by a two-thirds (2/3) majority vote at a regular meeting, provided that the member of the Commission subject to removal is informed of the charges and given an opportunity to respond.

(2) Grounds for removal of a member of the Commission shall include, but are not limited to, the following:

(a) Conviction of any felony in tribal, county, state or federal court.

(b) Willful and persistent misconduct reflecting on the dignity and integrity of the Commission.

(c) Failure to comply with the Ho-Chunk Constitution and other applicable laws.

(d) Unexcused absence from three (3) regular or special meetings of the Commission.

(e) Misappropriation of funds.

d. Vacancies.

(1) Unexpired Term.

(a) If the unexpired term is greater than one year, the notice of vacancy shall be posted for a minimum of 45 days or until the vacancy is filled and advertised in the tribal newsletter for three consecutive issues.

(b) Any interested Ho-Chunk tribal member shall submit an application to the TERO. The TERO Director shall submit the application to the Office of the President. The Office of the President places the list of qualified applicants to the Legislature for formal appointment.

(c) If the unexpired term is less than one year, the Commission shall make the appointment for the balance of the unexpired term.

(d) The remaining members may exercise all powers of the Commission until such time as the vacancy is filled.

(2) Expired Term.

(a) At least ninety (90) days prior to the expiration of the term, the notice of vacancy(s) shall be posted and advertised in the customary manner.

(b) The Commissioner whose term is expiring shall be given preferential treatment if that member seeks reappointment and is eligible to serve another term.

(c) Member shall remain in office until their successors are appointed.

(d) All appointments shall be made by the Ho-Chunk Legislature.

e. Compensation.

(1) Commissioners, advisors, and ex-officio members shall be compensated at a rate comparable to the standard rate of compensation received by Boards and Commissions of the Ho-Chunk Nation pursuant to the Section 27 of the *Finance Manual* (5 HCC § 5).

(2) Commissioners, advisors, and ex-officio members shall be reimbursed for any reasonable and documented actual expenses, such as mileage and stipends, incurred in connection with the performance of their duties and responsibilities, as determined by the Commission, in accordance with the policies of the Ho-Chunk Nation's *Finance Manual*.

f. Authority of the Commission.

(1) The Commission shall be vested with the jurisdiction and authority to carry out the provisions of this Ordinance, in accordance with the policy of Indian Preference in employment and in contracting, as established by the Ho-Chunk Nation Legislature. The Commission shall be free from interference from any branch of the Ho-Chunk Nation government in carrying out their duties under this Ordinance.

(2) The Commission shall have the authority to adopt, amend, or rescind rules and regulations and to develop and implement policies and guidelines necessary to carry out the provisions of this Ordinance.

(3) The Commission shall have the authority to adopt bylaws and internal rules to govern the activities and procedures of the Commission.

(4) The Commission shall serve in an advisory capacity to the TERO and meet the program staff for the purpose of securing information relative to its advisory duties.

(5) The Commission shall have the authority to conduct formal hearings, to issue notices, and to subpoena witnesses and documents in accordance with the hearing

procedures set forth in this Ordinance, and any rules, regulations, or guidelines adopted hereunder.

(6) The Commission shall have the authority to interpret this Ordinance and any rules, regulations, or guidelines adopted hereunder and its determination shall be final.

(7) The Commission shall have the authority to grant reasonable relief necessary including, but not limited to, the imposition of monetary sanctions, as prescribed in this Ordinance in Section 24 and any rules, regulations, or guidelines adopted by the Commission.

(8) The Commission shall have the authority to require a covered employer to take whatever corrective action deemed necessary for such employer comply with requirements in this Ordinance and any rules, regulations, or guidelines adopted by the Commission.

(9) The Commission shall have the authority to take such actions and engage in such other activities consistent with the intent and purpose of this Ordinance and any rules, regulations, or guidelines to achieve the objective in the policy of Indian Preference.

g. Quorum. Three (3) appointed Commissioners must be present to constitute a quorum for all regular or special meetings.

h. Delegation of Duties. The Commission shall delegate to the TERO Director the authority to administer the duties of the Commission, except for the following:

(1) To adopt, amend, and rescind rules, regulations or guidelines.

(2) To conduct hearings or to impose sanctions pursuant to this Ordinance and any rules, regulations, or guidelines adopted by the Commission.

i. Recusal of Commission Members.

(1) The Commission shall determine whether a conflict of interest exists between a member of the Commission and a participant in a matter pending before the Commission. Such determination shall be made according to relevant Ho-Chunk Nation law.

(2) If the Commission determines that one of its members has conflict of interest, that member shall be disqualified from participating in the matter pending before the Commission.

23. Complaint and Hearing Procedures.

a. Complaint.

(1) Any interested person including, but not limited to, employees, contractors, subcontractors, covered employers, and the TERO may file a written complaint with the TERO alleging that a covered employer has violated this Ordinance or any rules, regulations, or guidelines promulgated by the Commission.

(2) Any interested person who has been denied Indian Preference Certification under this Ordinance may file a written complaint with the Commission.

b. Notice of Complaint.

(1) Upon receipt of a written complaint, the TERO Director shall prepare a written Notice of Complaint to the person or entity against whom the complaint has been filed. The Notice shall be sent by registered mail to the last known address of the person or entity or by personal service.

(2) Within five (5) days from the date of receipt of such notice, the TERO Director shall attempt to achieve a voluntary, informal solution with the person or entity against which the complaint has been filed.

(3) If an informal solution is not reached, the TERO Director shall notify the Commission and request a formal hearing on the complaint. The Commission shall set the hearing date no less than fifteen (15) days from receipt of the hearing request.

c. Notice of Hearing.

(1) The Commission shall provide written notice of the hearing to the person against whom the allegation has been made, including the complainant, the TERO, and all other identified persons, at least seven (7) days prior to the date set for the hearing. The notice shall be sent by certified mail or personally served upon the parties if the mailing address is unknown. The notice shall state the date, time, and place of the hearing. In addition, such notice shall advise each party of the following:

- (a) The nature of the hearing.
- (b) The right to be present and participate in the hearing.
- (c) The right to present witnesses, documents, and records.
- (d) The right to cross-examine witnesses.

(2) The Commission shall post notice of any meeting or hearing in a prominent noticeable place in the Ho-Chunk Nation Executive Office no less than forty-eight (48)

hours prior to the meeting or hearing, unless an emergency requires shorten notice, and shall publish, if feasible, such notice in the Ho-Chunk Nation newspaper or newsletter, or in such other newspaper serving the relevant community. The notice shall state the date, time, and place of the hearing.

d. Public Access.

(1) All meetings and hearings of the Commission, except Executive Sessions, shall be open to all members of the Ho-Chunk Nation and non-members upon invitation by the Commission, in accordance with the Nation's *Open Meetings Act* (2 HCC § 2).

(2) The Commission may, upon a duly passed motion in accordance with the *Open Meetings Act*, go into Executive Session. At such session, all persons shall be excluded from the meeting chambers, except Commissioners. Any person(s) whose presence before the Commission is deemed necessary to the purpose of the Executive Session may be allowed to be present during the session if authorized by the Commission.

e. Hearing Guidelines.

(1) The Chairperson of the Commission or a member appointed by the Chairperson shall preside over all hearings and shall call the proceedings to order and control the presentation of evidence, the appearance of witnesses, and the order of proceedings.

(2) The Commission shall have the authority to eject from the hearing any person who is disruptive, disorderly, or who shows a lack of proper respect for the Commission or the nature of the proceedings.

f. Bonds. The Commission may require an employer to post a bond pending a hearing upon a finding that any of the following conditions exist:

(1) The employer has no permanent place of business.

(2) The amount of the sanctions will likely exceed \$1,000 or more.

(3) The project will likely be completed within sixty (60) days.

(4) The employer has engaged in conduct that demonstrated a blatant disregard for the authority and requirements of the Commission.

g. Burden of Proof.

(1) The party alleging violation(s) of this Ordinance, or any rule, regulation, or guideline adopted by the Commission shall carry the initial burden of establishing a

prima facie case. If the Commission finds a prima facie case has been established, the burden to rebut the charge shall shift to the charged person or entity.

(2) Any matter in dispute must be proven by a preponderance of evidence.

h. Subpoenas. The Commission shall have the power and discretion to subpoena identified person(s) and tangible documents on its own initiative or at the request of any person notified of a hearing. Subpoenas may be issued only to compel a person to appear at a hearing before the Commission to give oral testimony or to produce tangible documents or records.

i. Rules of Evidence and Testimony.

(1) The Commission shall not be bound by formal rules of evidence. The Commission shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. The Commission shall give effect to the rules of privilege unless such privilege is waived. Basic principles of relevancy, materiality, and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(2) The Commission may require any person(s) including, but not limited to, any complainant or plaintiff to appear and testify before it with regard to any matter within its jurisdiction at such time and place as it may designate. Such testimony shall be under oath and may include any matters, which the Commission deems relevant to the discharge of the Commission official duties. Failure to appear and testify fully at the time and place designated shall result in the imposition of sanctions.

(3) Any party shall have the right to present testimonial evidence on their own behalf, to call witnesses to testify, and to cross-examine witnesses called by any other party. The Commission shall exercise its discretion to limit the testimony of witnesses if such testimony is argumentative and repetitive.

(4) Any member of the Commission may ask questions of witnesses and may request or allow the presentation of additional evidence during the hearing.

(5) Documentary evidence may be received in the form of authenticated copies or excerpts, if the original document is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.

(6) Each party shall be afforded adequate opportunity to rebut or offer countervailing evidence in support of their positions.

j. Record of Hearing.

(1) All testimonial and documentary evidence offered at the hearing by any party or by the Commission shall be duly offered and made a part of the record in the case.

(2) The Commission may prepare a written transcript of the major points covered in the hearing.

k. Decision and Order.

(1) At the conclusion of the hearing, the Commission may, within its discretion, issue an immediate decision and order or take the matter under advisement. In any event, the decision of the Commission shall be issued in writing no later than thirty (30) days from the date of the hearing.

(2) The Decision and Order of the Commission shall set forth the factual findings and legal basis for the decision. The Commission shall render all factual and legal determinations by a majority vote of the Commission.

(3) A copy of the Decision and Order shall be mailed to plaintiff and defendant via certified mail.

(4) If the Commissioners find that this Ordinance or any rules, regulations, or guidelines adopted by the Commission have been violated, sanctions may be imposed against the employer, including but not limited to, requiring specific corrective actions to remedy any harm resulting from the non-compliance.

24. **Sanctions.** The Commission may impose any of the following sanctions or a combination thereof, upon determination that a covered employer has failed to comply with this Ordinance, or any rules, regulation, and guidelines adopted by the Commission.

a. Levy a civil monetary fine to a maximum of one thousand dollars (\$1,000) per violation, with each day of non-compliance as a separate violation.

b. Suspend, halt, or terminate the conduct of business on or near land owned by the Ho-Chunk Nation by a covered employer, provided that such employer have a reasonable period of time during which to remove its equipment and personal property from land owned by the Ho-Chunk Nation and to arrange with another person or business to assume any its outstanding contractual obligations.

c. Prohibit future business activities by the covered employer on or near land owned by the Ho-Chunk Nation for a definite or indefinite period of time.

d. Order monetary or other relief necessary to compensate the Ho-Chunk Nation or any worker(s) referred by the TERO for damages resulting from the non-compliance.

e. Require termination from employment of any individual(s) hired in contravention of any TERO requirements relative to Indian Preference in the selection and hiring of qualified Indian employees.

f. Require immediate rescission of any contract(s) and/or subcontracts entered into by the covered employer in contravention of any TERO requirements relative to Indian Preference in contracting and subcontracting.

g. Award back pay by the covered employer to any Indian individual(s) adversely affected by the non-compliance with the Indian Preference in employment requirements.

h. Require that a covered employer change its policies, procedures, and/or business practices to comply with any TERO requirement.

i. Order such other relief as the Commission determines is just and proper based upon the circumstance.

25. Appeals Procedure.

a. Right of Appeal.

(1) Any party aggrieved by a decision of the Commission has a right to appeal the decision.

(2) All appeals shall be brought in the Trial Court of the Ho-Chunk Nation, pursuant to the Ho-Chunk Nation Rules of Civil Procedure.

b. Procedures for Appeal.

(1) Notice of Appeal shall be filed within thirty (30) days after the issuance of decision and order of the Commission. The Notice of Appeal shall contain a short and concise statement of the reason for the appeal.

(2) Upon receiving the Notice of Appeal, the Commission shall have ten (10) days to prepare and transmit a record of its hearing and decision to the Trial Court.

(3) All decisions and orders of the Commission shall be in full force and effect during the pendency of an appeal, absent injunctive relief from the Court.

26. Rules and Regulations.

a. All rules and regulations implementing any of the provisions set forth in this Ordinance adopted by the Commission subsequent to the effective date of this Ordinance shall be subject to review and comments by all interested enrolled Ho-Chunk members.

b. The proposed rules and regulations shall be published in the tribal newsletter or in a special mailing which is regularly sent to a majority of members residing on or near land owed by the Ho-Chunk Nation.

c. Within twenty (20) days from the date of publication of such newsletter, all interested enrolled Ho-Chunk members may submit written comments to the TERO.

d. The proposed rules and regulations, including a summary of all written comments, received shall be submitted to the Ho-Chunk Legislature for review.

e. The Ho-Chunk Legislature, upon final review of the proposed rules and regulations, shall formally enact the proposed rules and regulations by resolution.

27. Severability. Should any provisions of this Ordinance be determined invalid by a court of competent jurisdiction, the invalidated provision shall be severed and the remainder of this Ordinance shall not be affected.

28. Coverage and Effective Date.

a. This Ordinance shall be in full force and effect as of the date of the formal approval and enactment by the Ho-Chunk Legislature.

b. This Ordinance shall apply to all contracts entered into after this Ordinance is passed by the Ho-Chunk Legislature. All contracts entered into prior to the effective date of this Ordinance shall continue to be governed by the previous TERO Ordinance until such time as the contract is up for renewal, at which time the contract shall be governed under this current Ordinance.

Legislative History:

10/7/97	Initially adopted by Ho-Chunk Nation Legislature Resolution 10/7/97A. The Ordinance repealed WWBC Resolution 7-26-86-F.
2/9/99	Section 2, Article VIII amended by Legislative Resolution 2/9/99A.
11/24/04	Ho-Chunk Nation Tribal Employment Rights Ordinance reformatted IAW Legislative Resolution 11/16/04A as a Proposed Bill (6 HCC § 3) and submitted to the Office of the President for Executive Review and Coordination.
2/21/05	Edited draft of Ordinance submitted to Legislative Office by TERO.
8/16/05	Final Proposed Bill submitted to the Legislature by Department of Labor.
07/ /08	Administration Committee tabled until November to allow comment by TERO.
11/6/08	Administration Committee recommended amending by adding clause of where TERO will be applicable.
12/5/08	Administration Committee requested research on comments and revisions put forward by TERO Director.
1/08/09	Administration Committee recommended referral to full Legislature.
1/20/09	Legislature approves release for a 45 day comment period.
3/7/09	Legislature approves offsite regarding comments received.
5/21/09	Offsite held on proposed TERO ordinance at HCC.
6/10/09	Legislature passed Resolution adopting and approving ordinance.
11/03/09	Legislature amends Section 9.b.(1) and (2) by Resolution 11-03-09A.