

RESOLUTION NO. 01-87-24

RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

WHEREAS, the Tribal Council on November 14, 1986, enacted Ordinance No. 151 which is an amendment to Tribal Ordinance No. 103 after the Ordinance was duly considered and posted for the required period of time; and

WHEREAS, the Tribal Council has been advised that following its enactment the Ordinance was not forwarded to the Bureau of Indian Affairs for secretarial approval within the required time; and

WHEREAS, the Tribal Council wishes to reaffirm Resolution No. 86-357 which enacted Ordinance No. 151.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby reaffirms Resolution No. 86-357 in its entirety.

The foregoing resolution was on JANUARY 15, 1987, duly adopted by a vote of NINE for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i) of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958, and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

ACTING

Alvin Hawkins Jr.
Chairman of the Tribal Council

RECEIVED

JAN 23 1987

Fort Apache Indian Agency
Whiteriver, Arizona

Maradine J. Craig
Secretary of the Tribal Council

RESOLUTION NO. 01-87-24

RECEIVED

JAN 23 1987

ORDINANCE NO. 151

**Fort Apache Indian Agency
Whiteriver, Arizona**

ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION

BE IT ENACTED by the White Mountain Apache Tribal Council,
in council regularly assembled, that the Tribal
Employment Rights Ordinance No. 103 be amended as
follows:

BE IT ENACTED by the White Mountain Apache Tribal Council
that this Ordinance shall be known as the Labor
Relations Ordinance of the White Mountain Apache Tribe.

Section 1. Purpose and Intent

A. Like land, water, and minerals, jobs in private employment on or near the Fort Apache Indian Reservation are an important resource for Indian people, and Indians must use their rights to obtain their rightful share of such jobs as they become available.

B. Indians have unique and special employment rights and the White Mountain Apache Tribal Government has the inherent sovereign power to pass laws to implement and enforce those special rights on behalf of Indians.

C. Indians are also entitled to the protection of the laws that the Federal government has adopted to combat employment discrimination; Tribal governments can and should play a role in the enforcement of those laws.

D. The White Mountain Apache Tribe believes 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 Indians and to eradicate discrimination against the Indian people.

Section 2. Definitions

A. "Labor Relations Department" means the Labor Relations Department of the White Mountain Apache Tribe as established pursuant to Section 3 A of this Ordinance.

B. "Labor Relations Officer" means the appointed Director of the Labor Relations Department of the White Mountain Apache Tribe.

C. "Employer" or "Non-tribal Employer" means any non-tribal government employer or contractor doing business on the Fort Apache Indian Reservation including tribal

member employers but shall not include the White Mountain Apache Tribal Government, its operations, departments or enterprises.

[The following Subsection D. is derived from Ordinance No. 116, which amended Ordinance No. 103]

D. "Indian Preference" means the following priority order of preference:

- (1) Enrolled member of the White Mountain Apache Tribe.
- (2) Indian spouse of an enrolled member of the White Mountain Apache Tribe.
- (3) Other Indians

Section 3. Labor Relations Department

A. The White Mountain Apache Tribe does hereby establish the Labor Relations Department of the White Mountain Apache Tribe as an independent office of the Tribe, reporting directly to the Director of Administration and Finance.

B. The Director of the Labor Relations Office shall be appointed by the Tribal Chairman, with the concurrence of the Tribal Council. The Director shall have the authority to hire staff, expend funds appropriated by the Tribal Council, and to obtain and expend funding from Federal, state, or other sources to carry out the purposes of the Labor Relations Department. The Labor Relations Department shall have the authority to issue rules, regulations, and guidelines, subject to the approval of the Tribal Council, to implement the employment rights requirements imposed by this Ordinance, to hold hearings, to subpoena witnesses and documents, to require employers to submit reports and to take such other actions as are necessary for the fair and vigorous implementation of this Ordinance.

Section 4. Employment Requirements

A. All non-tribal employers operating within the exterior boundaries of the Fort Apache Indian Reservation are hereby required to give preference to Indians in hiring, promotion, training, and all other aspects of employment. Said employers shall comply with the rules, regulations, and guidelines of the Labor Relations Department which set forth the specific obligations of the employer in regard to Indian preference.

B. Any employer who has a collective bargaining agreement with one or more unions shall obtain written agreements from said union(s) stating that the union shall comply with the Indian preference laws, rules, regulations, and guidelines of the White Mountain Apache Tribe. Such agreement shall be subject to the approval of the Labor Relations Department.

C. Except as provided in Section 9 herein, the provisions of this Ordinance shall not apply to the White Mountain Apache Tribal Government, its departments, enterprises, or other governmental operations.

Section 5. Implementation Authority of Labor Relations Department

A. The following actions may be taken hereunder against non-tribal employers by the Labor Relations Department to implement the above Employment Requirements:

1. Impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire, by craft or skill level.

2. Require non-tribal employers to establish or participate in such training programs as the Labor Relations Department determines necessary in order to increase the pool of qualified Indians on the Fort Apache Indian Reservation as quickly as possible. Also, the Tribal Employment and Training Program (JTTPA) is hereby mandated to establish a construction worker trainee program and to obtain certification for the program from the Department of Labor.

3. Coordinate, in conjunction with the Tribal Personnel Office, the establishment of a tribal hiring hall and impose a requirement that no non-tribal employer may hire a non-Indian until the tribal hiring hall has certified that no qualified Indian is available to fill the vacancy.

4. Prohibit non-tribal employers from using qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are absolutely required by business necessity. In developing regulations to implement this requirement, the Labor Relations Department shall adopt the EEOC guidelines on these matters to the extent that they are appropriate. The Labor Relations Department shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines.

5. To enter into agreements with unions to insure union compliance with this Ordinance. Such agreements shall in no way constitute recognition or endorsement of any union.

6. Take such other actions as are necessary to achieve the purposes and objectives of this Ordinance. However, the implementation of any activities or requirements that constitute a significant new component to this program, beyond those listed in sub-paragraphs of this Section, shall be subject to the prior approval of the Tribal Council.

B. The Labor Relations Department is authorized to enter into cooperative relationships with Federal Employment Rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians on and off the Fort Apache Indian Reservation.

Section 6. Compliance Deposit; Forfeiture

A. A compliance deposit, to encourage cooperation by non-tribal employers, is hereby imposed as follows:

1. Every non-tribal construction contractor with a contract of \$100,000 or more shall make a one-time deposit of $\frac{1}{2}$ of one percent (1%) of the total amount of the contract. The deposit may be paid in installments, as follows:

50% at the project starting date.

25% at the project starting date + 30 days ***

25% at the project starting date + 60 days ***

*** or at project completion, if sooner.

2. Every non-tribal employer, other than construction contractors, with twenty or more employees or gross sales of \$100,000 or more shall make an annual deposit of $\frac{1}{2}$ of one percent (1%) of the annual payroll of that employer. This requirement shall not apply to educational, health, governmental, and non-profit employers.

B. The above required deposits shall be paid to the Tribal government and shall be placed in a special account to be used as outlined in the following sub-paragraph C. The Labor Relations Officer shall be responsible for collecting and said deposits and delivering to the Tribal Treasurer; and is authorized to establish such rules and regulations as are necessary to insure a fair and timely collection process. Any employer or contractor who fails to pay the required deposit upon demand thereof shall be subject to the sanctions provided for in Section 6, herein.

C. Forfeiture of Compliance deposits, or portions thereof, shall be required following occurrences of verified

non-compliance as defined by Labor Relations Department Guidelines for Enforcement:

1. First occurrence of verified noncompliance: Ten percent (10%) forfeiture.

2. Second occurrence of verified noncompliance: Twenty percent (20%) forfeiture.

3. Third occurrence of verified noncompliance: Forty percent (40%) forfeiture.

D. Forfeitures of Compliance Deposits as prescribed in C hereinabove shall be considered as one of seven (7) optional sanctions available to the Labor Relations Department to assure compliance with Tribal employment policies and practices. At the option of the Labor Relations Officer, any other(s) of the seven (7) sanctions may be used in addition to or in lieu of the above forfeiture(s) at any time after the first occurrence of verified non-compliance.

E. After completion of the covered project, the Tribal government shall refund to the employer any remaining balance of the compliance deposit, upon certification by the Labor Relations Officer, that such balance is due and payable.

Section 7. Sanctions for Non-Compliance

A. Any employer who fails to comply with the laws, rules, regulations, or guidelines on employment rights of the White Mountain Apache Tribe or who fails to obtain the necessary agreements from its signatory unions shall be subject to sanctions which shall include but are not limited to: (1) denial of the right to commence business on the Fort Apache Indian Reservation; (2) fines; (3) suspension of the employer's operation; (4) termination of the employer's operation; (5) denial of the right to conduct any further business of the Fort Apache Indian Reservation; (6) payment of back pay or other relief in order to correct any harm done to aggrieved Indians; and (7) the summary removal of employees hired in violation of the White Mountain Apache Tribe's employment rights requirements.

B. Sanctions shall be imposed by the Labor Relations Officer, after allowing the employer an opportunity to present evidence showing why it did not violate the requirements or why it should not be sanctioned. An employer shall have the right to appeal to the Tribal Court any decision by the Labor Relations Officer that imposes sanctions on him.

Section 8. Agency and Office Coordination

A. All reservation employment and training functions, including JTPA and the BIA Employment Assistance Program, shall devote such of their resources as are necessary to prepare Indians for the job opportunities to be opened by the Tribal Labor Relations Program.

B. The Labor Relations Officer shall coordinate with the Director of the Tribal Personnel Office, in the following:

1. Identification of job openings, both actual and potential, and definitions of skill levels and training requirements required to qualify Indian workers;
2. Development of current lists of available qualified workers for the various job categories.

C. The Tribal Personnel Office shall be responsible to develop and maintain a current "skills bank", or inventory of unemployed Indian workers on reservation. The Tribal Economic Development Office shall coordinate closely with the Tribal Personnel Office and the TERO in identifying actual and potential job opportunities resulting from economic development projects and activities.

Section 9. Tribal Government Compliance; Reports

A. The White Mountain Apache Tribal Governmental operations, departments and enterprises shall give preference to qualified Indians in hiring, promotion, training and all other aspects of employment in accordance with the priority order of preference set forth in Section 2(D_ of this Ordinance.

B. Upon request of the Labor Relations Officer, Tribal Department Directors, Enterprise Managers and other tribal hiring authorities shall submit a report to Labor Relations Department which shall include the total number of employees of the department or enterprise and which shall be categorized as follows:

- (1) Number of employees who are enrolled members of the White Mountain Apache Tribe.
- (2) Number of Indian employees who are spouses of enrolled members of the White Mountain Apache Tribe.
- (3) Number of Indian Employees who are neither enrolled members of the White Mountain Apache

Tribe nor spouses of enrolled members of the Tribe.

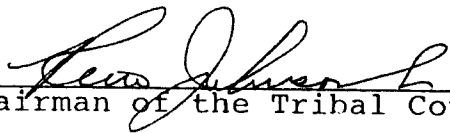
(4) Number of non-Indian employees.

C. In any case where it is alleged that a tribal hiring authority did not give preference in hiring to qualified Indian applicants, any aggrieved applicant has the right to file a grievance in accordance with the grievance procedures set forth in the Personnel Policies and Procedures of the White Mountain Apache Tribe; or, upon request of the aggrieved applicant, the Labor Relations Officer shall file a grievance on behalf of the applicant and may represent the applicant at the grievance hearings.

D. In no event shall any grievance against a tribal hiring authority be brought before the Tribal Council of the White Mountain Apache Tribe until all administrative remedies have been exhausted and a final determination has been made by the Grievance Committee in accordance with the grievance procedures set forth in the Personnel Policies and Procedures of the White Mountain Apache Tribe.

E. Nothing in this Ordinance shall be construed to empower the Labor Relations Department with any adjudicatory authority, regulatory powers, or control over tribal governmental operations or tribal employment procedures.

The foregoing Ordinance No. 151 was on November 14, 1986 duly enacted by a vote of 11 for and 0 against by the Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (q) of the Amended Constitution and By-Laws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).


Chairman of the Tribal Council


Secretary of the Tribal Council

APPROVED:

Superintendent
Fort Apache Indian Agency
Whiteriver, Arizona