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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: OCT 25 2018
OCT 25 2018

ORDINANCE NO. 399(2018)

WHEREAS, Cherokee Code Sec. 95-13, which is part of the Tribe's employment preference law, creates a conflict between the Office of Human Resources and Tribal Council regarding individual personnel decisions; and

WHEREAS, Sec. 95-13(h) states that "For purposes of initial hiring by the Tribe or a program funded by the Tribe, if a local Indian meeting the minimum qualifications applies for a job, no other person shall be hired without a prior resolution approved by the Tribal Council"; and

WHEREAS, Tribal Council has for decades held that individual personnel matters are not within its legislative or budgetary authority, and has refused to consider or pass the type of resolution contemplated in Sec. 95-13(h) since the 1990s when Principal Chief Dugan was in office; and

WHEREAS, C.C. Sec. 95-13 should be amended to resolve the conflict and remove the barrier.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present, that Cherokee Code Sec. 95-13 is amended to read as follows:

Sec. 95-13. - Indian preference in employment.

(a) All covered employers for all employment occurring within the Reservation shall give preference to qualified Indians with the first preference to local Indians in all initial hiring ~~and, training, and other aspects of employment~~. Local Indians shall also receive preferential protection from layoffs.

(b) Preference shall be given to local Indians who meet the minimum qualifications for a particular job, regardless of any higher qualifications that non-Indians may have. Spouses of local Indians who meet the minimum qualifications for a particular job shall be entitled to a second preference. (Covered employers may adopt promotion policies which reward employees who perform at higher levels of performance and such employers will not be bound to promote qualified Indians who meet only the minimum requirements of the job if these employees do not also meet the higher performance requirements set out in the promotion criteria of the covered employers' personnel policy. However, once the higher promotion criteria is met, preference will be given to the Indian meeting that promotion criteria.) This chapter shall not be construed to prevent or a covered employer from selecting the most qualified Indian applicant, or from selecting a non-Indian if no qualified Indian applies for the job.

- 1 (c) No covered employer shall discriminate against any employee on the basis of gender, age,
2 disability, or religion.
- 3 (d) For purposes of hiring, a covered employer who:
- 4 (1) Utilizes the hiring hall or skills bank established by the Commission,
- 5 (2) Notifies at least three Indians of the opportunity to apply for the job (unless fewer are
6 listed for the available job), and
- 7 (3) Complies with subsections (b) and (c) of this section,
8 shall be considered in compliance with this preference law.
- 9 (e) All covered employers shall comply with the rules, regulations, guidelines, and orders of the
10 Tribal Employment Rights Commission which set forth the specific obligations of employers
11 in regard to Indian preference.
- 12 (f) The requirements of this law shall not apply to any direct employment by federal, state or
13 other governments or their subdivisions. It shall apply to all contractors or grantees of such
14 governments and to all commercial enterprises operated by such governments.
- 15 (g) This law shall apply to the Tribe, except that section 95-23, 95-24, and 95-25 shall not. Any
16 complaint against the Tribe for violation of this law shall be filed with the Director prior to a
17 hearing and appeal under any applicable personnel policies and procedures of the Tribe and
18 shall not be heard by the Commission. Nothing in this law shall be construed as a waiver of
19 the Tribe's sovereign immunity.
- 20
- 21 (h) For purposes of initial hiring by the Tribe or a program funded by the Tribe, of persons subject
22 to the Tribe's Personnel Policies and Procedures, if a local Indian meeting the minimum
23 qualifications applies for a job, no other person shall be hired without a ~~prior resolution~~
24 ~~approved by the Tribal Council.~~ written justification satisfactory to the Office of Human
25 Resources. Tribal entities that are not subject to the Tribe's Personnel Policies and Procedures
26 shall adopt a similar process.

27

28 BE IT FINALLY RESOLVED that all resolutions that are inconsistent with this resolution are
29 rescinded, and that this resolution shall become effective when ratified by the
30 Principal Chief.

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33 *Submitted by the Office of Human Resources*