

# InterOffice Memo

Department of Workforce Development

Date: October 13, 2004

To: Job Service Supervisors/All Staff Servicing Job Orders

From: Brian Solomon, Director  
Job Service Bureau

Subject: "Preference" Language in Job Orders

File Ref: Job Orders—Preference Language

This message contains important information on a job order writing issue. All staff involved in servicing job orders, including partners, should read this memo.

## Background

Job Service Staff at a local Job Center recently received a job order posting from the Ho-Chunk Nation that included the statement "Native Americans are preferred". While recognizing the tribe's sovereignty authority, staff raised questions regarding DWD's obligation to accept the order, in light of the "preference" language, and compliance with our Job Order Policy regarding possible discrimination.

## Discussion

Upon receiving instruction from the DWD Legal Counsel and the DWD Tribal Services Coordinator, the following advice was provided to local staff:

"...The preference does not constitute "racial discrimination". Indeed it is not even a "racial preference". Rather it is an employment criterion reasonably designed to further the cause of Indian self-government...The preference is similar in kind to the constitutional requirement that a United States Senator when elected be "an Inhabitant of the State for which he shall be chosen"...or that a member of a city council reside within the city governed by the council...(it) is granted to Indians not as a discrete racial groups, but rather...because of their legal status... as members of quasi-sovereign tribal entities..." (Legal Reference: (25 U. S.C., 461, The Wheeler-Howard Act, AKA the Indian Reorganization Act.))

## Action Required

Thus, it is absolutely legal for Tribes to include such preference statements in their job openings if they desire. If they are so inclined, the following language should be used (as opposed to the "Native Americans are preferred" language used above):

"Because this position is subject to sovereign tribal authority, Native Americans may receive hiring preference, as granted by the Wheeler-Howard Act of 1934, and re-affirmed by the Supreme Court."

Staff should be alert for similar job order requests from sovereign tribes that involve the issue of "preference", and incorporate the above language.

### **Questions**

If you have any questions, please contact Phil Anderson at (608) 261-6974, or Jesus Guerrero at (608) 266-0487.