

TURTLE MOUNTAIN TRIBAL COURT

BELCOURT NORTH DAKOTA

TURTLE MOUNTAIN JURISDICTION

COUNTY OF ROLETTE

Dakota Metal Fabrication,)
312 3rd Street, PO Box 66, Manvel, ND 58256,)
Petitioner,)

v.)

CIVIL NO. 18-1054
ORDER FOR JUDGMENT

James Parisien Individually as Director of the)
Turtle Mountain Band of Chippewa Indians)
Tribal Employment Rights Ordinance (TERO),)
And the TERO Office, and the Turtle Mountain)
Band of Chippewa Indians (Tribe),)
Respondents,)

NOW on the 11th Day of December 2018, at the hour of 10:00 A.M., this matter came on before the Court in a scheduled hearing with the Honorable Andrew Laverdure, Associate Tribal Judge, presiding for the Trial Court in and for the Turtle Mountain Band of Chippewa Indians; the Court, being fully advised in the premises and the testimony and evidence provided by the parties is well taken, issues: findings of fact; conclusions of law; and order, decree, and judgment.

FINDINGS OF FACT

THE COURT FINDS, from the record through testimony and evidence provided by the parties at the hearing, the following facts.

1. The Belcourt School District # 7 (hereinafter School Board) is constructing the Pre-K and Wrestling Facility Project (Project), located on trust property occupied by the Belcourt School District # 7 under a memorandum of agreement under federal law, and said Project is located within the exterior boundaries of the Turtle Mountain Indian Reservation (hereinafter "Reservation").



2. Initially, School Board advertised bids for the construction of the Project with requirements that the successful bidders or contractors would be required to adhere to the Turtle Mountain Band of Chippewa Indians' (Tribe or Tribal) Tribal Employment-Rights Ordinance (TERO), Turtle Mountain Tribal Code § 32.0501, et seq.
3. On information and belief, all of the bids came in over budget.
4. The School Board then advertised for bids a second time, and at the advice of the School Board's attorney, the second bid did not have the TERO requirements in the bid advertisement.
5. Upon learning that the School District had omitted TERO from its bid advertisement, TERO Director James Parisien attended a pre-construction meeting to advise potential contractors that TERO would apply to their contracts. This meeting took place before Petitioner's bid was due to the School District. A representative of Petitioner attended the pre-construction meeting.
6. Petitioner submitted a second bid, on his part of the project.
7. Petitioner did not include TERO fees in his second bid, relying on a letter issued by the School Board's attorney, indicating that TERO did not apply to the School Board, and advising contractors to consult with their attorneys to determine whether TERO applied to contractors.
8. The School Board awarded Petitioner the bid on welding and mechanical, and Petitioner began work on the project.
9. On January 16, 2018, Director Parisien assessed Petitioner a fee of \$44,640.00 consisting of 3% of the total amount of Petitioner's contract with the School District, pursuant to Section 32.0501 of TERO.

10. Petitioner refused to pay the TERO fees, and this action ensued.

CONCLUSIONS OF LAW

After receiving testimony and argument, based on the entire record presented to the Court, the Court enters to following conclusions of law:

11. The Turtle Mountain Band of Chippewa Indians has regulatory and adjudicatory authority to regulate the employment practices of non-Indians performing contract services within the exterior boundaries of the Reservation under the first and second exceptions of *Montana v. United States*, 450 U.S. 544 (1981) and the power to exclude as articulated in *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982).
12. The Tribal Employment Rights Ordinance is a valid exercise of tribal sovereignty.
13. The Tribe has regulatory and adjudicatory jurisdiction under the Tribal Employment Rights Ordinance over contractors performing work within the exterior boundaries of the Turtle Mountain Band of Chippewa Reservation, including those contractors who have entered into transactions with state entities or agencies.
14. The TERO applies to contractors performing work for the School District.
15. Although TERO substantively applies to contractors performing work for the School District, Petitioner is not required to pay the TERO fees because Petitioner reasonably relied on the School Board's representation that TERO may not apply to his contract when it submitted its bid without including TERO fees. Requiring Petitioner to pay the TERO fee in this circumstance would be manifestly unjust.

ORDER AND JUDGMENT

16. Petitioner shall comply with the Tribal Employment Rights Ordinance, Turtle Mountain

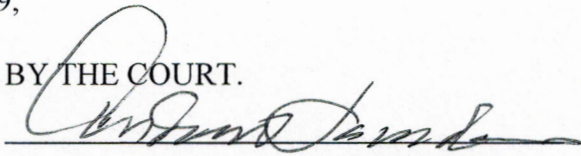
Tribal Code § 32.0501, et seq. except that Petitioner shall not be required to pay TERO fees associated with the Contract it signed with the School District dated November 22, 2017, for \$1,488,000.00.

17. The Court lifts the Preliminary Injunction entered September 11, 2018. Petitioner may recover the fee set aside in escrow.
18. The Clerk of Court shall enter this Order and Decree as a Final Judgment and give the parties Notice pursuant to the Tribal Code.
19. Enforcement of TERO fees on other contractors on the Project will be determined on a case by case basis.

IT IS SO ORDERED

This 25th Day of June 2019,

BY THE COURT.

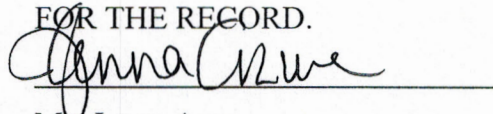

Hon. Andrew Laverdure
Associate Tribal Judge

ENTRY AND NOTICE OF ENTRY OF JUDGMENT

THE ORDER JUDGMENT OF THE COURT has been entered accordingly on the last date shown below; and Notice of Entry is given to all parties; pursuant to the Tribal Code, Title 4, Chapt., 4.01, §§ 4.0101, and 4.0102 (3).

ENTERED this 26th Day of June 2019,

FOR THE RECORD.


Ms. Jenna Azure
Clerk of Court

TURTLE MOUNTAIN TRIBAL COURT
TURTLE MOUNTAIN JURISDICTION

BELCOURT, ND
CIVIL DIVISION

Dakota Metal Fabrication)
312 3rd St. PO Box 66, Manvel, ND 58256,)
Petitioner(s),)
VS.)
James Parisien, et.al,)
Respondent(s),)

AFFIDAVIT OF
MAILING
INJ: 18-1054

I Jenna Azure, after being duly sworn under oath, deposes and says that the Affiant is more than twenty-one years of age; and on the 26th day of June, 2019 said Affiant deposited in a sealed envelope a true copy of the following:

Affidavit, Order for Judgment and Notice of Entry

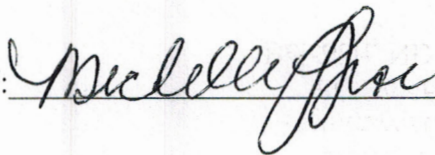
In the above entitled action, in the United States Post Office, at Belcourt, North Dakota, postage prepaid, and directed to:

Don Bruce
Attorney at Law
PO Box 674
Belcourt, ND 58316

Paige Tomaselli
Attorney at Law
PO Box 5475
Sonora, CA 95370



Jenna Azure-Civil Clerk
Turtle Mountain Tribal Court
PO Box 900
Belcourt, ND 58316

WITNESSED BY: 

DATED: June 26, 2019