CHAPTER SIX
Contracting Under the Self-Determination Act
Earl Old Person, Russell Jim, Gerald One Feather,
Joe De La Cruz

PL 638 has had a tremendous impact on our Indian community. When people have a problem with services they do not have to go to Muskogee, the service unit at Tahlequah, and the area health unit at Oklahoma City. They simply come to Okmulgee and straighten it out with their tribal officials. More people are getting services although our resources are still limited. But tribal officers are now making the choices about how to distribute those inequities instead of the Bureau of Indian Affairs. When it is time to cut a program, tribal officers decide what their priorities are and make those cuts.

We should not confuse PL 638 with the issue of self-determination. PL 638 is not really a self-determination act. All it does is to allow us to operate programs that had been run by the federal government. The goal of PL 638 is not self-sufficiency. It is to increase our management capabilities.

Robert Trepp, member of the Creek tribe of Oklahoma

Prior to the establishment of the policy of self-determination, tribes could externalize their criticism of programs administered for their benefit, but now having assumed this responsibility themselves, tribes need to internalize their criticism if programs are not properly administered. The reason for this is that the basic responsibility for service providers has shifted from the various federal agencies to the tribes...

I believe administrative management is the key to successful implementation of the self-determination policy. There is no question but that the leadership and other human resources are available, in most cases, for tribes to emerge fully capable of implementing the policy of self-determination. Some are already doing so, and others are getting their act...
together for that purpose. It must be anticipated that organizational and other changes in administrative methods will need to take place as this great transitional effort moves forward. Planning is, therefore, becoming an essential part of tribal management.

As self-determination takes root in the minds and hearts of Indian tribes, it can be expected that they will become more aggressive in asserting their sovereignty. Strong tribal leadership, buttressed by a sound administrative management system, is capable of achieving goals and objectives not contemplated even when the policy of self-determination was established by the Congress. Indian tribes will face the challenges of the future, confident in their own capabilities to make the right decisions. Self-determination as a concept, now developed into policy, is here to stay, and the Indian tribes are glad of it and will make the most of it.

Robert Lafollette Bennett, Oneida, former commissioner of Indian affairs

EARL OLD PERSON

I first became a member of the Blackfeet tribal council in 1954. I have been on the council since then, and I have watched things that have taken place. Prior to that time, I had listened to some of our elderly people. They were very cautious about new federal programs and alerted the council. They said, "You are going to be engaged in wars. But these wars will not be fought with guns, bows, and arrows. You are going to be fighting over documents."

The Blackfeet tribe has been very careful. We have not contracted for very many federal programs. In fact, when we talked about contracting for self-determination, we asked whether those programs would continue to be funded once the tribe took over. The federal government refused to guarantee funding in the future to back up the tribe. There is more to tribal self-sufficiency than merely declaring that you are self-sufficient. When self-determination was first talked about back in the early 1970s, I was president of the NCAI. Even at that time, I began to question self-determination, because we were not given the opportunity to actually get into policy making, and we were not given the chance to utilize and develop our own resources on a permanent basis.
We faced threats, time and again, that specific programs would be cut or phased out. We never had the assurance that we could rely on federal funding. I certainly agree that we have the kind of people today that can help take over and contract for programs, but they need sustained support from the government.

Two years ago, we were told that we could take over our child welfare programs. This sounded awfully good to us. We started a tribal child welfare program last fall. Six months later we were told that it would not be refunded, because the tribe supposedly failed to comply with federal requirements. The Blackfeet people are discouraged by these events. I do not think that we differ with many of the programs that have been set up by Congress, but we are concerned about how they are implemented.

Tribal leaders today are trying hard to work with contracting under PL 638, but once they set program priorities, they are told by the government that there is not enough 638 money to go around. It is an awful difficult thing to go back to your people and say, “We are going to have to cut programs.” Tribal leaders receive criticism but it is not their fault. The higher-ups are calling the shots.

On my own reservation there are a lot of needy people that are not really being provided with help. I can take you to any reservation and show you that kind of poverty. We need much more support to make 638 contracting work for these backwoods people.

The government offered to give the Blackfeet boarding school back to the tribal council, if we wanted to take it over. We agreed, if they would guarantee funding of the school. They only promised to help us a year at a time, which was not a guarantee. Contracting was used as a way of getting rid of that boarding school. It finally ended up in the public school system before it was phased out. Today, the government has it back. It is used as a place to put children who are without homes. It is no wonder that my people are very skeptical about so-called self-determination.

There are dangers within these kinds of government programs. When Community Action was first introduced to the Blackfeet people, they were skeptical. Some of the people believed that it would lead to termination. You cannot blame them. So, we ended the discussion.
Later, we showed a film of an area where a Community Action Program had already started. The same people that feared termination, after they saw this film, said, "Why cannot we have this program here on our reservation?" When they saw the actual operation of the program, they wanted it.

Russell Jim

I would like to give you a Yakima perspective with regard to self-determination and Public Law 638. We tried to instigate the contracting of our timber management on the Yakima nation a few years ago. We felt that the Bureau of Indian Affairs was mismanaging our timber resources. The BIA had fashioned its management policy after St. Regis, Boise Cascade, Louisiana Pacific, and Weyerhauser. It was only interested in economic efficiency which meant growing trees as fast as possible. There was a major thinning program. Trees were staged 18 feet apart. It was almost like an orchard setting. This policy harmed the animals and the environment. Furthermore, certain natural foods and medicines would not grow properly.

In 1977, the Department of Interior informed us that $5 million would be available for reforestation. Many of the timber tribes of the state of Washington went to Billings, Montana. They were told that the $5 million would be divided among them in proportion to the size of their reservations and timber stands, but they had to utilize this money for reforestation and accept Public Law 638 in its entirety. The Yakima Indian nation said, "We do not want to implement all of PL 638, just the portions we would like to use." A government spokesman said, "We brought an expert with us. What are your questions?" There were many questions that even the expert could not answer.

The Yakima proposed that this money be routed through the Bureau of Indian Affairs for forest management. We did not need reforestation. Our forests were already self-propagating to a point where we needed a thinning program. The government refused to accept our suggestion. A short time later, that money mysteriously disappeared back into the treasury. It was not utilized by anyone. I suspect that it was because we would not accept PL 638 in its entirety.
I tried to bring a lawsuit against the Indian Bureau because of the mismanagement of the Yakima’s forest and the outright giving away of our trees. We had caught them red-handed. But the old guard downstairs in the Bureau got hold of the old guard upstairs on the council and warned that “If you sue the Bureau, you are going to lose your trust responsibility and set yourself up for termination.” There was also a fear that if we instigated contracting of our timber and pushed away the Bureau we would set ourselves up for termination. I spent the next two years going to the intertribal timber conferences and picking out the highest officials in the audience at a general meeting. I asked them, “Can you contract away your trust responsibility?” The answer was always “No.” In order to justify its existence, the Bureau of Indian Affairs was playing little games.

There is another worry among all of us. It is this vicious cycle that is imposed upon us in regard to self-determination and self-sufficiency. In the past, when you were a member of a federally recognized tribe, you were deemed incompetent. You became a ward of the government, which had a trust responsibility. This incompetency prevented IRS from imposing taxes upon your land. Incompetency was a degrading term, but it seemed to protect you.

Today, if you become, in some sense, self-sufficient then you are competent. You do not need wardship anymore, and you set yourself up for termination. Many of our people do not wish termination. They want the trust responsibility and treaty rights to remain intact as long as the sun shall shine.

GERALD ONE FEATHER

I have been involved with approximately seven different tribal administrations on the Pine Ridge Reservation since 1961, and I have seen a lot of changes throughout the years. Beginning in 1968 or 1969, the tribe went through a series of confrontations in the field of education. People felt that they were not getting a quality education. They insisted that Indian culture be included in the school. Rogers Morton was secretary of the interior at the time. The tribe went to the federal court over this issue because the Sioux wanted to have a voice in their
own education and affairs at the local level. A new concept was born in the tribal government. It was called local control.

Most IRA tribes now have local units of government just like the states. On Pine Ridge, when the constitution was organized, they allowed communities to have certain authority within the tribal system. The communities were allowed to exercise a concurrent tax authority with the tribal council. They also determined who were the members of their communities, and they could set up an economic enterprise and run it without going back to the tribal council.

We have had a law and order program for many years. The tribe paid part of the budget for law enforcement, and the Indian Bureau financed the rest of it. We had a dual police system. This went on until after Wounded Knee, when the tribe decided to take over all of the police jurisdiction. At the present we have contracted for six functions in police work.

For a long time, the tribe would pass legislation and then turn right around and have the BIA enforce that particular law. Then a case arose at Rosebud where the defendant said, "Where does the Bureau of Indian Affairs get their authority to enforce tribal law? Who gave the authority to allow the BIA police to enforce the tribal code?" There was a lawsuit, and it was discovered that nothing in the tribal records gave the Bureau authority to enforce the tribal code. The defendant won his case. The tribe began to question its dependency on the federal government. When the tribe assumed more control of its police powers, it gained a lot of respect from both the state and federal agencies.

I would like to return to the issue of local units of control on the reservation. The Oglala tribe allowed different boards to act as entities of the tribal government. We have a housing authority, park and health boards, community college board, a law enforcement agency, and a public safety commissioner. All of these entities deal directly with both the federal and state authorities. The tribe has institutionalized the functions of its government. This is very important because it allows more people to make decisions in the tribal system. The tribal council is the legislative body that formulates the laws to govern the administration of those functions.

The public safety commission, which I have been involved in, sets standards for police officers. A sergeant on the police force has to have
a two-year college degree. Most of our lieutenants have four-year
degrees. We also consult with the people about what goals they want to
enforce in their local communities.

The actual operation of the law enforcement system lies with the
community. Each community selects a five man board. Local people
hire and fire their own policemen. They approve all expenditures that
are delegated to them at the local level and they set up enforcement
priorities.

In July 1983, the tribe asked the FBI to get approval from the
tribal chairman before its agents came onto the reservation. The FBI
protested this tribal law and refused to come on the reservation. In the
meantime, somebody had to investigate murders and burglaries. So our
police officers ended up doing the major crime work in conjunction with
the United States Attorney's Office. We now carry on the services that
were left vacant by the FBI.

The people at Pine Ridge are really advocates of self-determination.
They want to run their own affairs. There are several schools that are
locally controlled, and we have jurisdiction over law and order. But we
are still dependent on federal funding. This fiscal year it was decided
to eliminate $425,000 of law and order money. The Indian Bureau
set up this priority without consulting with the tribal police commission.
I had to go to Congress and ask them to restore that money. This
budget cut would have crippled the entire law and order system on the
Pine Ridge Reservation.

Because of the diversity of tribal government, the people running
programs have to fight for their own survival, but the tribe always backs
them up. So, PL 638 has changed the tribal form of government as we
know it on the Pine Ridge Reservation, but it also raises questions for
the future. At the present time we have a group of young people that
say, "You are not bona fide tribal self-government, because everytime
you take an action, the secretary of the interior has a right to veto you."
These people want to reaffirm the tribe's treaty authority.

JOE DE LA CRUZ

I would like to provide some background information before ana­
lyzing Public Law 638. Direct federal aid to tribal governments to
develop programs began under the Office of Economic Opportunity. The OEO programs evolved into economic development programs, HUD programs, and eventually PL 638. Some of these federal administrative programs are now being challenged by the states. Tribes have to go through the states for 701 planning money and other types of money. During this same time period, there was also contracting with the Bureau for Indian health services.

Tribes started to worry about the fragmentation of their relationship with the United States government. It was a horrendous responsibility to contract with the various federal agencies because each of them had their own guidelines for transferring money to tribes. Tribal leaders advocated the Indian Self-Determination Act because of the burdens that some of these programs put on tribes.

The Bureau of Indian Affairs and Indian Health Service set up task forces to develop the guidelines for PL 638. They picked tribal people with administrative knowledge to be on those task forces. Both the national Indian organizations and the tribes tried to pressure the Indian Health Service and the Bureau to develop simple guidelines. A meeting was held in Port Angeles, Washington, with the Indian Health Service and the Bureau to see if it was possible to develop satisfactory guidelines to administer 638 contracting. Regional hearings also were held in every region of the United States.

I was on the Bureau task force. Tribal program and technical people gave their input, but when the final guidelines were drafted, the tribes were under the complete control of the federal bureaucracy. The Bureau and Indian Health Service contracts were the worst to administer because they were cost-reimbursable contracts. Most tribes did not have the necessary cash flow to maintain these contracts, and they did not have adequate administrative systems to implement the terms of their contracts.

Pressure was put on the Bureau and Indian Health Service to develop a process for fund transfers other than cost reimbursement. They finally agreed to letters of credit. Even with letters of credit, many tribes got into trouble. The Reagan Administration eventually drafted guidelines to simplify the 638 process, but they are still sitting on a shelf.
The second year after 638 was in existence, there was quite a bit of money for training people because this was a new law. But the money for training never reached the tribal level where it was needed to develop administrative systems. This was unfortunate because tribes had to go through twenty-six steps in the contracting process.

Since PL 638 passed, tribes have complained to Congress and the Bureau about indirect administrative expenses. It cost tribes 34 percent of their own dollars to contract work from the Bureau, Indian Health Service, or other federal agencies. We wonder where this will lead us.

The Indian Bureau under PL 638 has made tribal governments an extension of the federal bureaucracy, but when Congress decides to cut money or programs, the Bureau is not blamed. Instead, tribal governments are criticized.

After PL 638, tribal leaders and organizations worked on two bills to better the lives of Indian people. Congress responded by passing the Health and Improvement Act and the Child Welfare Act. But there were never any appropriations that came with the Child Welfare Act. Tribal people favored this legislation because various religious institutions had taken Indian children away from their homes and raised them. Because Indian people were determined to take care of themselves, they now have child welfare responsibilities under a 638 contract.

It is amazing that some of the tribes still exist when you look at the burdens and responsibilities they took on under PL 638. They started with inadequate funding and no expertise to properly administer the technical help that they needed. When I carefully looked at the Quinault programs, I discovered that we had eighty contracts. They were all under separate bank accounts and bookkeeping procedures. Our efforts to centralize these accounts only led to further problems.

It is my feeling that tribal governments and the national Indian organizations need to take a strong position on self-determination. They should insist on direct grants in the area of federal services. Only then will the government begin to honor its various trust obligations.