

# ***Oneida Tribal Judicial System***

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## **TRIAL COURT**

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**Timothy J. Skenandore,  
Electric Experts,  
Petitioner**

v.

**Marjorie Stevens  
Indian Preference Department,  
Respondent**

**Docket No: 12-TC-051**

**Date: June 27, 2012**

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## **DECISION**

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This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Mary Adams, Jean M. Webster, and Sandra L. Skenadore, presiding.

### **Background**

This case involves the Indian Preference Department's (IPD) refusal to certify Petitioner as an Indian-owned business. The Court finds that Electric Experts meets the requirements and overrule the IPD decision.

On March 12, 2012 Petitioner filed an appeal against Respondent claiming procedural errors after IPD Director Marge Stevens denied Electric Experts' application to be certified as Indian-owned business. Petitioner argues his company is being harmed financially because without being certified, they are not afforded the opportunity of Oneida giving Indians a greater participation in self-government.

On April 19, 2012 a Pre-trial was held to aid in the simplification, clarification, settlement or disposition of the case and/or to set a scheduling order defining dates for witness information, document exchange time lines and trial dates should the case move forward. Both parties appeared; Petitioner appeared without counsel (self-represented) and Respondent appeared with counsel. A trial was held June 20, 2012 however, neither party presented witnesses beyond Mr. Timothy Skenandore.

### **Jurisdiction**

We take original jurisdiction of this case under Section 1.10-1 of the Oneida Administrative Procedures Act and Section 57.8-3 which states that the Oneida Appeals Commission shall serve as the hearing body for disputes until such time as the License Commission is empowered by the Oneida Business Committee.

### **Issue**

Did Respondent violate 57.5-4 and 57.4-3 when it denied Petitioner certification due to his alleged lack of involvement in the day-to-day operations on a full time basis?

### **Findings of Fact**

1. Electric Experts is an Indian-owned S corporation organized under the laws of the State of Wisconsin. The owners are Timothy J. Skenandore and Chad Grunwald. The business was established in December, 2011.
2. Timothy Skenandore is an Oneida tribal member and 51% owner of Electric Experts.
3. Mr. Skenandore and Mr. Grunwald are electricians and list Electric Experts corporate purpose as providing electrical contracting.
4. Mr. Skenandore is the Facilities Director at the Oneida Casino where he oversees 160+ employees and a budget of \$11-15 million. He is on call 24/7.
5. Although not established precisely by the record, sometime in early 2012, Electric Experts applied for certification as an Indian-owned business under Chapter 57 of the Oneida Tribe's laws, the Oneida Indian Preference Law.
6. It appears all of the relevant paperwork and documents were submitted as described in Section 57.5. Respondent does not allege that Electric Experts' application is incomplete.
7. On February 14, 2012, the IPD Director, Marjorie Stevens, informed Electric Experts by letter that its application for Indian Preference vendor certification was being denied.

The letter lists two reasons for the denial. First, that since Mr. Skenandore is the Director of Facilities at the Oneida Casino that he could not be involved in the day-to-day operations of the business as required in Section 57.5-4. Second, the requirements of Section 57.4-3 will not be met because Mr. Skenandore allegedly did not have the skill, abilities and experience required with the given classification, i.e., electric service company. The second reason is apparently based on the fact that Mr. Skenandore is a journeyman electrician, not a master electrician.

8. Petitioner Tim Skenandore's regular shift at the Casino is from 6:30 a.m. to 3:00 p.m. Since December 2011 he has been called for Casino issues about six times; the call took 10 to 25 minutes each.
9. The documents filed by Electric Expert with the Indian Preference Department and submitted as part of this case are hereby incorporated into these Findings of Fact by reference.

### **Conclusions of Law**

#### *Petitioner's arguments*

Petitioner claims he met IPL §57.5-3 as he has proven with documentation that he is a tribal member of the Oneida Tribe and that he owns 51% of the business. Petitioner asserts even after showing such proof he received a memo from Marjorie Stevens dated February 14, 2012 that states "Certification will not be granted to an entity where one or more of the Indian owners are not involved in the day-to-day operations of the business." Petitioner points out that he works at the Casino from 6:30 a.m. until 3:00 p.m. and is on call 24/7, since the inception of his business (December 2011) he was called six times after 3:00 p.m., which included weekends and that each call took between 10 – 25 minutes/call. Petitioner claims if his business excels to the level of 40 hours or more, he can devote full time to both jobs. Petitioner contends since December 2011 46 hours of work have been completed. Petitioner contends that Electric Experts meets the criteria for the Indian Preference Vendor Certificate, therefore Respondents should follow the Oneida Indian Preference Law at it is written.

#### *Respondent's arguments*

Respondent argue Petitioner has not met the requirements for Indian Preference Vendor Certification. Respondent claims Timothy Skenandore has not and cannot sufficiently show he is involved in the day-to-day operations of the entity on a full time basis given the Petitioner is employed full time by the Tribe as Facilities Director at the Casino and is on call 24/7.

Respondent argues Petitioner's business is a service business and requires a Master Electrician to oversee the operation. Respondent cites to the Indian Preference Law which states an Indian owner must be directly involved in the applicant's management:

It is not required that the Indian owner(s) be the chief operating officer of the entity, however, at least one of the Indian owner(s) will have to be involved in the day-to-day operations of the entity on a full time basis and in a senior level position. Certification will not be granted to an entity where one or more of the Indian owners are not involved in the day-to-day operations of the business in the manner described above. IPL §57.5-4.

Respondent asserts Petitioner has failed to show his ability as a full time employee of the Oneida Tribe and a journeyman electrician to manage and be involved in the day-to-day operation of the entity on a full time basis and in a senior level position. Respondent states Petitioner's position as Facilities Director, overseeing 160+ employees and an \$11 to \$15 million budget, directly conflicts with his full time, day-to-day participation in the operations of Electric Experts.

#### *Analysis*

Petitioner's request to receive an Indian Preference vendor certificate is granted. The Court disagrees with Respondent's arguments. Electric Experts meets the requirements for the Indian-owned vendor certification. Timothy Skenandore is an Oneida Tribal member and owns 51% of Electric Experts. Petitioner's failed to prove otherwise.

The two reasons for Respondents' denial do not hold up under closer scrutiny. First, Respondent denies the certification because Timothy Skenandore already has a full-time job. From this fact Respondent reasons that Mr. Skenandore cannot fulfill the full-time, day-to-day involvement required by Sec. 57.5-4. Breaking down the language, there are two requirements: 1) that Mr. Skenandore be involved day-to-day operations and 2) on a full-time basis. Electric Experts consists of two people: Mr. Skenandore and Mr. Grunwald. Given the nature of small business it is difficult to see how Mr. Skenandore could not be involved in the day-to-day operations. Day-to-day operations do not require a certain amount of time; it just means being involved in the details of running the business. Mr. Skenandore asserts in his February 21, 2012 appeal and it is uncontested that he and Mr. Grunwald have equal responsibilities for financial decisions, check

signing, credit acquisitions, purchasing, scheduling of field operations, hiring/firing, marketing and sales. Those list of duties sound like day-to-day operations.

According to §57.5-4, Petitioner testified he is directly involved in the “day-to-day” operations on a full time basis in a senior level position. Petitioner testified that Electric Experts does not operate at a 40 hour/week and if it does he is able to two work full jobs. The law does not specifically say an owner must be at a business when there is no work. Respondent based their denial on their premise that it takes all businesses 24/7 to, in their initial startup, make it successful. Petitioner pointed out, his business is small and is currently at a part time level. The meaning of “day-to-day” is subjective; it could mean on the days the business is in operation Petitioner must be involved. What if the business operates in the evenings and on weekends? One full time job does not preclude a person from doing a full time second job.

In addition, Respondent failed to show what law prevents awarding Indian Preference Certificate to a vendor who holds two full time jobs. Petitioner states he is on call 24/7 for his Casino position. Since the inception of his business (December 2011) Petitioner was called six times after 3:00 p.m., which included weekends and that each call took between 10 – 25 minutes/call. At this time, Petitioner testified he is not holding two full time jobs because he has not had enough work to require him to work two full time jobs, but says he could hold two full time jobs if necessary. Again, no Oneida law prevents a person from holding two full time jobs.

Furthermore, the phrase “full-time” is subject to interpretation. In many work places, 32 hours per week counts as full time. At a small business, there may not always be enough work for an owner or employee to work 32 or 40 hours per week. Nevertheless, they are working as fully as possible to keep the business going. In addition, just because Mr. Skenandore already works full-time at the Casino doesn't mean he can't be devoting time to Electric Experts during his lunch hour, evenings and off days.

According to §57.4-3., certification for Indian preference *shall be granted to Indian-owned businesses who qualify in accordance with the criteria, which includes all persons and entities*

*with a given employment or business field, taking into account the skill, abilities and experience required within a given classification.* Petitioner testified that his expertise lies within the management portion of the business and his partner oversees the electrical component. Many business owners manage their business without actually doing the labor, while some people own several businesses. Even so, Mr. Skenandore has about eight years of electrician experience which certainly suggests that he is well beyond a removed owner of Electric Experts. Respondent's arguments were not persuasive to uphold a denial for certification for Indian preference.

While we understand the IPD's vigilance to watch for individuals who may simply be removed owners in order to take advantage of the benefit of Oneida preference, such vigilance should not exclude companies like Electric Experts and individuals like Mr. Skenandore. One of the purposes of the Indian Preference Law is to "maximize economic benefits" for Indian-owned business and to provide "maximum opportunity," Sec. 57.1-5, to them to supply materials and services.

#### **Decision**

Petitioner's request to be certified as an Indian-owned vendor is hereby granted.

IT IS SO ORDERED.