

Oneida Tribal Judicial System

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APPELLATE COURT

Edward Delgado, Geraldine Danforth and,
Cristina Danforth

Appellant

Docket No. 14-AC-004

vs.

Date: November 21, 2014

Dale Wheelock,

Respondent

FINAL DECISION

This case has come before the Oneida Tribal Judicial System, Appellate Court Judicial Officers; Winnifred L. Thomas, Lois Powless, Carole Liggins (Pro-Tem) Stanley R. Webster, and James Van Stippen (Pro Tem) presiding.

I. Background

A. Jurisdiction

This case was accepted in accordance with the Oneida Administrative Act, 1.1-1. *Authority.* The Oneida Tribe of Indians of Wisconsin has the authority and jurisdiction to enforce this act as well as the responsibility as a government to protect the health, safety, welfare, and economy of the Oneida Reservation lands and all persons who either reside on the reservation or who are visitors and/or are conducting business within the exterior boundaries of the reservation. The Oneida Tribe shall ensure due process of law for the designated citizens through adoption of this act, pursuant to Article VI of the Oneida Tribal Constitution, as amended.

B. Factual Background

This is an employment related matter involving the Oneida Tribe of Indians of Wisconsin, Business Committee and the Executive Director of the Oneida Housing Authority.

A member of the Oneida Business Committee, claiming the Executive Director failed to meet with her, resulted in his being terminated from the position of Executive Director of the Oneida Housing Authority.

The grievance filed by the Executive Director was heard by the Oneida Personnel Commission. The Oneida Personnel Commission overturned the termination and reinstated the Executive Director. This matter came before the Oneida Tribal Judicial Systems Appellate Court.

The Appellate Court decision is to uphold the Oneida Personnel Commission's decision dated 02/28/2014.

This case is a combination of two (2) cases; one, Adverse Employment Action #13-ADV-002 Dale Wheelock vs. Ed Delgado and Geraldine Danforth and case two, Termination Grievance Hearings Case# 13-TER-001 Dale Wheelock vs. Cristina Danforth.

The Adverse Employment Action case # 13-ADV-002 was filed on August 3, 2012 and the Termination case # 13-TER-001 was filed on January 2, 2013. Two separate panels were appointed to hear each of these cases independent of each other.

Motion by Chairman Delgado, through counsel, to consolidate the two cases was granted by the Oneida Personnel Commission. Mr. Wheelock argued against the consolidation however, the Personnel Commission granted the consolidation of the two cases on January 15, 2013. Hearings were held for eleven (11) days over a period of nine (9) months.

Mr. Dale Wheelock was issued a termination from employment on December 17, 2012 for the following alleged infractions of the *Oneida Personnel Policies and Procedures*:

Section V.D.2.1 Work Performance Subsection G; Section V.D.2.1.III. Use of Property. Subsection E; and V.D.2.1. Work Performance Subsection E.

On August 24, 2012, Mr. Wheelock, filed an appeal to the Oneida Personnel Commission regarding an adverse employment action which occurred on August 3, 2012. The Oneida Personnel Commission denied Mr. Wheelock a hearing based on untimely filing regarding his appeal of an Investigative Leave. Mr. Wheelock appealed to the Appellate Court and the case was remanded to the Oneida Personnel Commission to commence a hearing on the merits of the case. The Oneida Personnel Commission consolidated both cases; Oneida Personnel Commission rendered their decision on February 28, 2014 in favor of Mr. Wheelock.

This case has a long history within the Judicial System and now the Appellate Court closes this case in favor of Mr. Dale Wheelock by affirming the decision of the Oneida Personnel Commission dated February 28, 2014.

Mr. Wheelock, Executive Director of the Oneida Housing Authority was terminated from employment on December 17, 2012.

This case began on August 3, 2012, Edward Delgado, Chairman of the Oneida Business Committee (OBC), and Geraldine Danforth, Manager of the Oneida Human Resources Department (HRD) placed Mr. Wheelock on Investigative leave. Attached to the Investigative Leave Form was a Memorandum, indicating the leave was issued as a result of Chairman Delgado authorizing "the investigation of the American Recovery and Reinvestment Act (ARRA) grant."

On August 2, 2012, Chairman Delgado stated he had received a preliminary report from the Internal Security Department. The report indicated there is a strong possibility that ARRA funding, of the Oneida Housing, was misappropriated and equipment misused.

The evidence submitted to the court substantiated that Chairman Delgado had received a complaint concerning Mr. Wheelock, as stated in Chairman Delgado's testimony at the hearing; "A complaint has been brought to my attention and based on the serious nature of this complaint, effective immediately; you are placed on investigative leave pending the outcome of my internal investigation. The anticipated length on my internal investigation should be no longer than thirty (30) days. During this investigative period the following will apply to you:

1. You will not be paid or have access to your benefits during the investigative period.
2. You will not report to work and must stay away from all Tribal Buildings without prior supervisory written approval...." The list goes on stating Mr. Wheelock is ineligible for insurance benefits, as of August 3, 2012.

The attached memo stated; "I Edward Delgado, Chairman of the Oneida Tribe of Indians of Wisconsin, authorized the investigation of the American Recovery and Reinvestment Act (ARRA) funding. On Thursday, August 2, 2012, I received a preliminary report from the Internal Security Department. The report indicated there is a strong possibility that ARRA funding was misappropriated and equipment misused. After reviewing the report, it has been determined that you will be placed on an Investigative Leave immediately and until further notice, as means to protect the integrity of the investigation. This decision was made to protect the records, documents and other information during the course of the investigation." This took place on August 3, 2012 was and signed by Chairman Delgado, Geraldine Danforth, and Mr. Dale Wheelock.

On August 6, 2012 Mr. Wheelock received a letter (court records Document B) from the Oneida Human Resources Department informing him that he was "ineligible for insurance benefits" as of August 3, 2012.

On August 6, 2012, the same day he received the letter from HRD, Mr. Wheelock entered the Norbert Hill Center to seek clarification on the Investigative Leave memo, specifically the language which stated "You will not report to work and must stay away from all Tribal Buildings without prior supervisory written approval."

Mr. Wheelock was approached by the Chairman's Senior Policy Analyst, Linda Dallas, asking to speak with him. When Mr. Wheelock entered Ms. Dallas's office he was given an amended Investigative Leave memo. The memo included an Alternative Work Assignment at the Oneida Division of Land Management with a report date effective immediately. This memo eliminated the language regarding restrictions from all tribal buildings. Mr. Wheelock refused to sign the amended Investigative Leave form because only Chairman Delgado had signed and absent was the signature of the HRD Area Manager, Geraldine Danforth.

The Oneida Personnel Commission met on eleven (11) separate hearing dates due to the complexity of the issues raised and the consolidation of both cases. As referenced in the documentation submitted to this court five (5) of the hearing dates were regarding the Investigative Leave and Alternative Work Assignment issued by Chairman Delgado and Geraldine Danforth.

The Investigative leave form used to place Mr. Wheelock on leave dated August 6, 2012, was signed by Chairman Delgado, HRD Manager, Geraldine Danforth and Dale Wheelock also attached to the Investigative Leave form was a memo indicating the leave was issued as a result of Chairman Delgado having received a complaint. Chairman Delgado, then authorized the investigation of the American Recovery and Reinvestment Act (ARRA) grant funding. As evidenced, the memo attachment stated the reasons Chairman Delgado called for Mr. Wheelock to be placed on leave. Chairman Delgado testified "On Thursday, August 2, 2012, I received a preliminary report from the Internal Security Department. The report indicated there is a strong possibility that ARRA funding was misappropriated and equipment misused..." The memo

attached to the Investigative Leave form also indicated a return date "pending the outcome of my internal investigation. The anticipated length of my internal investigation should be no longer than thirty (30) days." This memo was authored by Chairman Delgado.

Mr. Wheelock was placed on Investigative Leave on August 3, 2012 however he was informed in a letter from HRD dated August 6, 2012 that he was ineligible for insurance benefits, as of August 2, 2012 which is one day before he was placed on leave.

Throughout the testimonies submitted there is no clear reason for the error that removed Mr. Wheelock from insurance benefits before he had been placed on any leave.

Mr. Wheelock's insurance had been terminated a day before he received the Investigative Leave notice.

The Oneida Personnel Commission found there were several procedural irregularities that presented themselves during the Investigative Leave issue. The most glaring procedural irregularity was, the Chairman of the Tribe, authorizing an investigation based on a complaint from an employee.

The Oneida Personnel Policies and Procedures Investigative Leave Policy states;

Investigative Leave Policy

Purpose: This policy addresses investigative leave without pay for employees undergoing work related investigations.

Policy: Investigative leave is utilized only when a work-related investigation must be conducted and an employee's presence would influence the outcome. Any employee allegedly committing an act which would preclude them from meeting employment eligibility including required Licenses, the Tribal Fidelity Bond, Background Investigation requirements shall be subject to investigative leave without pay.

Scope: Investigative leave does not apply to investigations regarding appeals of disciplinary actions or to complaint investigations. (Approved by OBC 04-07-99)

Another procedural irregularity in the issuance of Investigative Leave; in the evidence submitted, Chairman Delgado and Geraldine Danforth both admitted they erred in issuing the Investigative Leave, retracting a portion of the memo that accompanied the leave form addressing the entry to tribal buildings, and then reissued an Alternative Work Assignment.

C. Procedural Background

On April 11, 2014 Appellants filed a Motion to Recuse Judicial Officers Winnifred L. Thomas; Janice McLester, Jennifer Webster.

The Appellants Motion to Recuse had no legal basis.

The Judicial Officers presiding at the Initial Review were Winnifred L. Thomas; Lois Powless and Jennifer Webster. The Judicial Officers assigned to hear the case were Winnifred L. Thomas; Lois Powless, Carole Liggins, James VanStippen and Stanley Webster

The Motion to Recuse is denied.

This case was accepted for Appellate Review according to Rules of Appellate Procedures; Rule 9 D. 5. There is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision, which if the error had not occurred, would have altered the final decision.

The first procedural irregularity occurred when Chairman Delgado placed Mr. Wheelock on Investigative Leave as a result of a complaint by a tribal employee.

Chairman Delgado testified that prior to Mr. Wheelock being placed on Investigative Leave he had been approached by an Oneida Housing Authority employee, Whitney Wheelock, who filed a complaint regarding activities at his worksite. Mr. Delgado testified the employee was fearful of losing his job for divulging information. As a result of the Oneida Personnel Commission's decision in the matter of Whitney Wheelock's Employee Protection Program (EPP) case, Mr. Delgado decided to authorize a further investigation.

As a result of the more in-depth investigation, authorized by Chairman Delgado, it was Mr. Delgado's decision to place Mr. Wheelock on Investigative Leave.

Another procedural irregularity was the restrictions, placed on Mr. Wheelock from Chairman Delgado, restricting him from all tribal buildings and then amending the original Investigative Leave to an Alternative Work Assignment.

On August 3, 2012, Mr. Wheelock were issued an Investigative Leave document stating he was barred from all tribal buildings then on the same day another Investigative Leave document was issued only barring him from the Oneida Housing Authority buildings.

On August 6, 2012, Chairman Delgado rescinded the original Investigative Leave of August 3, 2012, and reissued another leave, this one, was an Alternative Work Assignment.

On August 9, 2012 Chairman Delgado authored a letter amending the Investigative Leave memo along with consequences for failure to comply on the part of Mr. Wheelock.

In the letter dated August 9, 2012, Chairman Delgado assigned Mr. Wheelock to an Alternative Work site at the Division of Land Management. Included in the letter Chairman Delgado

instructed Mr. Wheelock to report to Division of Land Management immediately. The letter stated "Please be advised that you are expected and required to report to work at the Oneida Division of Land Management on Monday, August 13, 2012, at 8:00AM. A failure to report to work as directed could be viewed as job abandonment and may result in disciplinary action."

Attached to the letter was an Inter-Office Certified Mail receipt signed by Dale Wheelock on August 10, 2012. Chairman Delgado had sent this letter to Mr. Wheelock through the Inter-office mail within the tribe's mail system; Mr. Wheelock had been terminated and no longer worked at the Oneida Housing office. Mr. Wheelock testified he received a call from the Vice-Chairman Greg Matson, to come to his office to sign for the Inter-Office certified mail. The Oneida Personnel Commission asked Mr. Delgado, in the hearing, how he expected Mr. Wheelock to receive the amended Investigative Leave with the Alternative Work Assignment dated August 6, 2012, Mr. Delgado's reply was "Not sure how they were going to notify him."

Another procedural irregularity that has not been explained is the fact Mr. Wheelock was placed on Investigative Leave on August 3, 2012 and his insurance was cancelled on August 2, 2012, the day before he was placed on Investigative Leave.

Mr. Wheelock was denied insurance benefits before he was placed on Investigative Leave and was never reinstated until the end of August. Documentation from the insurance company, (UMR), indicating the date of termination of coverage for him and his wife was August 2, 2012 one day prior to the Investigative Leave.

During the hearing, Oneida Personnel Commission questioned Geraldine Danforth Manager of HRD, why Mr. Wheelock's insurance benefits were terminated the day before he was placed on Investigative Leave and why they were not reinstated when he began work at the Division of Land Management. Geraldine Danforth testified this was not her area of expertise and suggested that it may have something to do with the insurance company entering information into their

computers, and possibly that changing information in the middle of the work week would cause problems.

No explanation was given why Mr. Wheelock's insurance was terminated, on August 2, 2013, and reinstated around the end of August, one day prior to being placed on Investigative Leave.

Another procedural irregularity; Mr. Wheelock testified, and his testimony was substantiated at the hearing, that he had never been notified that Cristina Danforth, tribal Treasurer had become his immediate supervisor. Mr. Wheelock knew Chairman Delgado was his immediate supervisor and so was Vice Chair Greg Matson in Chairman Delgado's absence. By way of an email, referenced in the documentation, the HRD Manager instructed Mr. Wheelock that any and all correspondence must go through Mr. Wheelock's Attorney of Record.

Another procedural irregularity was the fact that Mr. Wheelock's direct supervision changed, without his knowledge. Chairman Delgado had been the direct supervisor and that changed to the Treasurer, Cristina Danforth now being his direct supervisor. According to Oneida Business Committee meeting minutes dated December 12, 2012 action was taken to make Cristina Danforth Mr. Wheelock's supervisor.

Chairman Delgado testified that it was determined through the reorganization of the Tribal structure, that Chairman Delgado would be supervisor over all division directors and would address issues and make referrals to the division directors to investigate.

Oneida Personnel Commission asked Cristina Danforth, during the hearing, as Mr. Wheelock's Supervisor, if she had informed HRD of the change in supervision from Edward Delgado to Cristina Danforth; her response, on the audio recordings, was, HRD was not informed because the entire Oneida Business Committee was supervisor to all the division directors. She felt that all directors knew that all Business Committee members were their immediate supervisor; therefore there was no need to alert HRD.

Because Mr. Wheelock was not notified that Cristina was now his Supervisor, he was hesitant to respond to her request for a meeting and he did not respond to her calls. In addition, Mr. Wheelock was requested to meet at the Oneida Housing Authority office which would have created a problem based on the conditions of his Investigative Leave barring him from any and all Oneida Housing Authority offices and building.

Cristina Danforth testified; the entire Oneida Business Committee played the role of supervisor, particularly in the case of the Oneida Housing Authority in that, Oneida Housing had been identified as the Tribal Designated Housing Entity. Cristina Danforth further stated Chairman Delgado could not act in the capacity of supervisor because he had a pending case in the Brown County Court system that involved a restraining order between Mr. Wheelock and Chairman Delgado.

The supervision of Mr. Wheelock could not be passed to Vice-Chairman, Greg Matson, because he had been working at the Oneida Housing Authority during the period of time the issues of concern were being investigated.

Oneida Personnel Commission, asked Cristina Danforth, how Mr. Wheelock would have received the information that she was now his supervisor, her response was; the action to appoint her supervisor was in the December 12, 2012, Oneida Business Committee minutes. Mr. Wheelock was on a leave from his office at the time and may not have been privy to that information.

Oneida Personnel Commission found the weight of the evidence is in favor of Mr. Wheelock. The notice of September 30, 2011, indicating the chain-of-command and the email from Geraldine Danforth to Mr. Wheelock advising him of the need to go through his attorney confirmed, to the Oneida Personnel Commission; there was a deviation from that information on the part of Chairman Delgado, and Cristina Danforth to Mr. Wheelock. In addition, Mr.

Wheelock, believing he was on a second Investigative Leave, followed the condition of that leave wherein he was to stay away from Oneida Housing Authority offices and buildings. Mr. Wheelock testified if he had met with Cristina Danforth at the Oneida Housing Authority offices he would have been in breach of those conditions.

Cristina Danforth testified she had her assistant, Mary Graves, set up a meeting with Mr. Dale Wheelock for Friday, December 14, 2012, at 2:00pm to meet in Dale's office at the Oneida Housing Authority. On Friday December 14, 2012, at 11:36 am Mr. Wheelock left a phone message stating he would not be in attendance for the 2:00 meeting as he was meeting with his attorney first. Cristina Danforth tried to contact Mr. Wheelock with two more phone calls and e-mails to Mr. Wheelock to get him to meet her then contacted HRD, Sue Doxtator (PRO). She did not contact Mr. Wheelock's attorney however she decided to issue the termination and sent it to him via certified mail due to his refusal to talk with or meet with her. This was substantiated through the evidence presented at the hearing.

Cristina Danforth testified her intent was to discuss the concerns of the investigation and audit findings with Mr. Wheelock. It was not her intention to discipline Mr. Wheelock at the scheduled meeting of December 14, 2012. It was only as a result of Mr. Wheelock failing to meet with her that she issued the termination.

Cristina Danforth deviated from progressive discipline for the reasons, as she stated, "Due to the severity, deviation from progressive discipline is warranted and termination was determined."

Mr. Wheelock testified he had received notice on September 30, 2011, indicating a new chain-of-command, as a result of the General Tribal Council's directive to move ahead with reorganization. The notice was sent to all Division Directors and was authored by Chairman, Edward Delgado. The notice specifically states, "Your supervisor is my office as Chairman of the Oneida Business Committee, in my absence the Vice-Chair can provide you with direction".

The Oneida Personnel Commission, found in their conclusion, the Oneida Business Committee, in assuming the responsibility of supervision over all Division Directors, went beyond its scope of authority. Chairman Delgado and Cristina Danforth appear to have lacked the knowledge of the tribe's disciplinary process. As a result, Oneida Personnel Commission found they made several errors in disciplining Mr. Wheelock. This Appellate body agrees with the Oneida Personnel Commission's conclusion.

II. Issue

Were there Procedural Irregularities exhibited in this case?

Was Mr. Wheelock placed on Investigative Leave as a result of a complaint?

Did the Oneida Personnel Commission err in their decision to overturn the termination of Mr. Wheelock?

Was Mr. Wheelock informed he had a new supervisor and if so when?

III Analysis

Were there Procedural Irregularities exhibited in this case?

Yes, there were numerous procedural irregularities exhibited throughout this case from the very beginning.

Improperly placing Mr. Wheelock on an Investigative Leave due to a Complaint by an employee; barring Mr. Wheelock from all tribal buildings, violating Mr. Wheelock's constitutional rights the list goes on. Listed throughout this decision are numerous procedural irregularities that contributed to this decision.

In accordance with the Rules of Appellate Procedures, Rule 9 (5) it is stated; There is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision which, if the error had not occurred, would have altered the final decision. A procedural irregularity is an event or circumstance where a rule or other requirement was not met or followed.

Was Mr. Wheelock placed on Investigative Leave as a result of a complaint?

Yes. Mr. Wheelock was placed on Investigative Leave as a result of a complaint from a tribal employee.

In the court documentation a Memorandum dated August 3, 2012 from Chairman Delgado to Mr. Wheelock states; "A complaint has been brought to my attention and based on the serious nature of this complaint, effective immediately, you are placed on investigative leave pending the outcome of my internal investigation. The anticipated length of my internal investigation should be no longer than thirty (30) days. During this investigative period the following will apply to you."

Included in the memorandum, was a directive that stated "You will not report to work and must stay away from all Tribal Buildings without prior supervisory written approval."

Included with the memorandum was ATTACHEMENT A which stated "I Edward Delgado, Chairman of the Oneida Tribe of Indians of Wisconsin, authorized the investigation of the American Recovery and Reinvestment Act (ARRA) funding. On Thursday, August 2, 2012, I received a preliminary report from the Internal Security Department. The report indicated there is a strong possibility that ARRA funding was misappropriated and equipment misused. After reviewing the report, it has been determined that you will be placed on an Investigative Leave immediately and until further notice, as means to protect the integrity of the investigation. This

decision was made to protect the records, documents and other information during the course of the investigation, signed by Edward Delgado.”

The first Memorandum was signed by Edward Delgado, Oneida Tribal Chairman; Geraldine Danforth, HRD Manager and Dale Wheelock and dated August 3, 2012.

The second Memorandum titled “amended Investigative Leave” with new conditions was issued on August 6, 2012. However, Mr. Wheelock did not sign the new amended Investigative Leave because some of the signatures were absent.

The Oneida Personnel Policies and Procedures Investigative Leave Policy states;

Investigative Leave Policy

Purpose: This policy addresses investigative leave without pay for employees undergoing work related investigations.

Policy: Investigative leave is utilized only when a work-related investigation must be conducted and an employee’s presence would influence the outcome. Any employee allegedly committing an act which would preclude them from meeting employment eligibility including required Licenses, the Tribal Fidelity Bond, Background Investigation requirements shall be subject to investigative leave without pay.

Scope: Investigative leave does not apply to investigations regarding appeals of disciplinary actions or to complaint investigations. (Approved by OBC 04-07-99)

Did the Oneida Personnel Commission err in their decision to overturn the termination of Mr. Wheelock?

No, the Oneida Personnel did not err in their decision to overturn the termination of Mr. Wheelock.

The Oneida Personnel Commission's decision brought to light many of the procedural irregularities that had been levied against Mr. Wheelock.

The Oneida Personnel Commission determined and substantiated their decision through the facts in the case concerning Mr. Wheelock. Mr. Wheelock was put on Investigative Leave erroneously in that it was a result of a complaint filed by a tribal employee, Whitney Wheelock. The Investigative Leave Policy specifically states, a leave cannot be issued as a result of a complaint however, Mr. Wheelock was placed on Leave due to a complaint from a Tribal Employee.

The Oneida Personnel Policies and Procedures Investigative Leave Policy states;

Investigative Leave Policy

Purpose: This policy addresses investigative leave without pay for employees undergoing work related investigations.

Policy: Investigative leave is utilized only when a work-related investigation must be conducted and an employee's presence would influence the outcome. Any employee allegedly committing an act which would preclude them from meeting employment eligibility including required Licenses, the Tribal Fidelity Bond, Background Investigation requirements shall be subject to investigative leave without pay.

Scope: Investigative leave does not apply to investigations regarding appeals of disciplinary actions or to complaint investigations. (Approved by OBC 04-07-99)

The Oneida Personnel Commission uncovered many errors that had been levied against Mr. Wheelock and they are to be commended for their vigilance in this case.

Another error uncovered, as evidenced at the hearing, Mr. Wheelock had a counseling session with a licensed counselor at Oneida Behavioral Health.

The information, from that session was shared outside the counseling session which created a breach of confidentiality. The hearing records show Mr. Wheelock's counselor, Bob Fresen, reported his concerns to his supervisor, Barb Kolitsch, who then took it beyond the scope of confidentiality. As referenced in the Oneida Personnel Commission's decision on page 35 "The Fact that the Petitioner (Mr. Wheelock) had a counseling session with a licensed counselor and that information was taken outside of that session was a breach of confidentiality."

Due to this action Mr. Wheelock was placed on what was first identified as a second Investigative Leave by Chairman Delgado and later identified as an Involuntary Leave of Absence with a requirement to submit a doctor's report before returning to work. The court records substantiate the harassment and intimidation that Mr. Wheelock endured during this case more specifically from Chairman Delgado.

Mr. Wheelock was working at the Division of Land Management when he was again placed on an Investigative Leave/Involuntary Leave of Absence as a result of the information taken outside the confidential counseling session he had with his counselor.

As a result of the breach of confidentiality, the information from Counselor Bob Fresen to Barb Kolitsch to Chairman Delgado; a restraining order against Mr. Wheelock was filed in the Brown County Court, Green Bay by Chairman Delgado. Brown County Court rendered the case as an unfounded incident. As a result Mr. Wheelock was barred from a General Tribal Council meeting and was escorted out of the meeting by Oneida Tribal Police.

Mr. Wheelock was prohibited his Constitutional right to enjoin fellow members sharing in the wealth of the tribe through a meeting stipend of one hundred dollars. In January 2013, Mr. Wheelock was sitting quietly in the overflow room at the time waiting for the General Tribal Council meeting to commence when the Oneida Tribal Police escorted him out under the orders of Chairman Delgado.

On December 12, 2012 the Oneida Business Committee took action to delegate supervisory responsibility to conclude an investigation and any action necessary regarding Mr. Wheelock. Oneida Tribal Treasurer, Cristina Danforth was the delegated person.

Treasurer Danforth attempted to contact Mr. Wheelock about the results of the investigation and to meet with him at the Oneida Housing Office; however she was unable to inform him.

Was Mr. Wheelock informed he had a new supervisor and if so when?

No, Mr. Wheelock was not informed he had a new supervisor.

According to the hearing documents, Mr. Wheelock did not know the supervisor was now the Treasurer, Cristina Danforth. When he received a call from her he told her all communication had to go through his attorney. HRD did not notify Mr. Wheelock of the change in his supervision. Unknowing that Treasurer Danforth was now his Supervisor Mr. Wheelock, knew he could not go to the Oneida Housing Authority office so as a result of not knowing Cristina Danforth was assigned as his new supervisor he was suspicious about the meeting and he refused to meet at the Oneida Housing Authority office. His termination was based on failure, on his part, to meet with his Supervisor, Cristina Danforth. The questions from the investigative audit findings that Cristina Danforth had wanted Mr. Wheelock to answer concerning the investigations were answered at the Oneida Personnel Commission hearings.

Mr. Wheelock was terminated under the Oneida Personnel Policies and Procedures for *Work Performance: V.D.2.1.g; Use of Property-Negligence in the performance of assigned duties (W/S/T); and Work Performance: V.D.2.1.e-Failure to provide accurate and complete information where such information is required by an authorized person. (S/T) also V.D.2.1II.e.- Use of Property: Theft of property shall include theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling or any of these actions, or conspiracy to*

commit such actions with Tribal employees or other persons against the Tribe, its guests, employees, members, customers and/or clients while on or about Tribal premises. (S/T)

This court finds there was a conflict of interest that existed between Chairman Delgado and the members of Oneida Business Committee, and Mr. Wheelock, Oneida Housing Authority Executive Director.

The conflict was due to the fact the Oneida Business Committee took action that made all Business Committee Members the immediate supervisor to all Directors with no process in place for directors such as Mr. Wheelock to appeal.

In the evidence submitted at the hearing, it is documented, Mr. Wheelock petitioned for a GTC meeting on November 13, 2012 requesting a meeting to be held for violations of Code of Ethics and Civil Rights violations by Ed Delgado.

Mr. Wheelock obtained 67 valid signatures which met the requirements for calling a special meeting of the General Tribal Council as specified in the (Amended) Constitution and By-Laws of the Oneida Tribe of Indians of Wisconsin. It stated in the petition "This petition is not a removal petition but call for a GTC meeting for Code of Ethics/Oneida Constitution Civil Rights violations by Ed. Delgado and Geraldine Danforth."

In this petition under Delegated Authority it states "The Oneida Business Committee cannot determine the disposition of this petition due to the Conflict of Interest. The nature of the petition is the result of action taken by Chairman Delgado and Geraldine Danforth to deny a tribal member their civil rights without due process of law by issuance of an Investigative Leave due to a complaint. Chairman Delgado placed an article in the October 4, 2012 issue of the Kalihwisaks, Chairman's Corner indicating Early in this term concerns were brought to my office regarding possible misapplications of federal grant monies occurring at the Oneida Housing Authority."

The Oneida Business Committee, in assuming the responsibility of supervision over Division Directors, went beyond its scope of authority.

The GTC, since its beginning, has attempted to keep the Business Committee out of day-to-day activities by the passage of numerous Resolutions. The GTC has on many occasions had conversations on the GTC floor concerning this very topic. Now comes a case of clear violations done to Mr. Wheelock through the involvement of Business Committee members being led by the Chairman of the Oneida Tribe involving day-to-day activities.

The following are actions the GTC have put in place to protect the rights, integrity, and ethical behavior of Oneida Business Committee members as well as Oneida Membership.

On February 25, 1982, at a Special General Tribal Council Meeting "John Powless made a motion that the General Tribal Council direct the Business Committee that they not be involved in Personnel decisions or in enterprises or programs. Lois Powless seconded. John Powless withdrew the motion and made a motion to accept the following Resolution."

RESOLUTION NO. 2-25-82

WHEREAS: The Oneida Tribe of Wisconsin, has a duly elected Business Committee to uphold the constitution and By-Laws of the Oneida Tribe, and

WHEREAS: The Oneida Tribe of Wisconsin has grown into a large business requiring the technical skills of trained administrators, and

WHEREAS: The elected officials need to maintain a separation of the legislative and administrative responsibilities of the Tribe.

NOW THEREFORE BE IT RESOLVED that the General Tribal Council hereby directs the Business Committee to hire a General Manager to be directly responsible for the programs and enterprises of the Tribe along with the Personnel Office and the Accounting Office.

Be it further resolved that the Business Committee be directed to become actively involved in the legislative areas such as:

- a. Develop a land acquisition plan*
- b. Develop the Tribal Court System*
- c. Revision of Tribal Constitution & By-Laws*
- d. Develop Educational priorities-Tribal School*
- e. Fiscal Plan*
- f. Work on Land Claims*
- g. Update and develop Ordinances*

BE IT FURTHER RESOLVED that the Oneida Business Committee present a written report at the General Tribal Council meeting in July and that the report be made available to the General Tribal Council thirty (30) days prior to the meeting.

Lois Powless seconded. The Chairman called for a vote by hand and the vote was a tie. A recount was called and voting would be by Secret Ballot. The results were 87 yes, and 84 no. The motion carried.

On January 17, 1998, at another General Tribal Council Meeting the Chair recognized a motion made by "Motion by Debbie Powless to approve the HRD Personnel Policy Status Report and to make further clarification that the Oneida Business Committee's involvement and/or activity is hereby restricted to Legislative Policy Development and not in Day to Day Personnel/HRD matters including restriction of their involvement on various committee related to HRD and Personnel matters or activity." Seconded by Celene Elm. Five Abstentions. Motion Carried.

Motion by Bobie Webster to recess until Saturday 10:00 AM, February 28, 1998, Seconded by Don McLester.

This GTC Resolution has stood the test of time, it has directed the Oneida Business Committees to refrain from day-to-day activities however, the administration of 2011 tried for three years and put in place many Resolutions to allow them-selves to be involved in the day to day activities.

The General Tribal Council had on more than one occasion, placed Motions from the floor and Resolutions addressing the continued misuse of the of Resolution No. 2-25-82.

On July 22, 2000, the Oneida General Tribal Council directed that the Oneida Business Committee bring back "a plan of restructure to take care of the administrative problems...in 90 days.

On August 02, 2000 the Oneida Business Committee passed BC Resolution 8-02-00-B which is an interpretation of July 22, 2000 Special General Tribal Council Action Regarding Re-Structure "Plan B"

There were two plans that had been authored by two of the Oneida Business Committee persons. Plan A was authored by Council Member David Bischoff and Plan B authored by Council Member Vince Dela Rosa presented at the December 18, 1999 Special General Tribal Council meeting.

In BC Resolution 8-02-00-B beginning with the sixth "*WHEREAS, there was submitted a petition to review the actions taken on December 8, 1999, which included the tabled restructuring plans; and*

The BC Resolution 8-02-00-B continued;

WHEREAS, there was submitted a petition to review the actions taken on December 18, 1999, which included the tabled restructuring plans; and

WHEREAS, the Oneida Business Committee had continued to review and revise the restructuring plans in order to bring back a structure that would meet current and long term needs

of the Oneida Tribe such that Plan B as presented was revised and Plan A as presented was withdrawn by the author; and

WHEREAS, the Oneida Business Committee presented the revisions to Plan B and the notice that the author had withdrawn Plan A in the July 22, 2000 Special General Tribal Council information package which was mailed to the membership; and

WHEREAS, the membership, at the July 22, 2000, meeting, was not noticed of the December version of Plan B as identified under the Ten Day Notice Policy to allow for informed discussion and comparison in regards to adoption of the December version of Plan B; and

WHEREAS, the General Tribal Council took action to take a tabled item off a previous meeting's agenda and allow action at the July 22, 2000, meeting which was not noticed or presented to the membership through the information package for the July meeting in accordance with the Ten Day Notice Policy; and

WHEREAS, the Chair ruled that the motion to act upon December's Plan B was out of order as it was not noticed to the membership or the members present at the current meeting; and

WHEREAS the Parliamentarian opinion indicated that the motion to adopt Plan B as taken from the December meeting was out of order as a result of modifications presented by the Oneida Business Committee and lack of notice regarding the prior plan; and

WHEREAS, an Appeal of the Decision of the Chair is in order only when the ruling is in regards to a decision that can have two reasonable opinions about interpretation or applications; and

WHEREAS, the opinion of the Parliamentarian and as accepted and further explained by the Chair that the motion was out of order was clear, within the laws of the Oneida Tribe applicable to General Tribal Council actions, and not subject to any other reasonable interpretation, and as a result was not subject to an appeal of the ruling by the body; and

WHEREAS, the actions of the body to Appeal the Decision of the Chair was out of order and an illegal action under the rules applicable to General Tribal Council meetings as adopted and approved by that body; and

WHEREAS, it is always the responsibility and authority of the Oneida Business Committee to carry out and fully implement all lawful actions of the General Tribal Council; and

WHEREAS, it is the opinion of the Oneida Business Committee that the action of July 22, 2000 regarding the restructure Plan B was out of order and therefore not lawful and as a result cannot be carried out; and

NOW THEREFORE BE IT RESOLVED, that the Oneida Business Committee, as a result of a review of the actions at the July 22, 2000 Special General Tribal Council meeting, has determined that the General Tribal Council has attempted to take an unlawful action, and

NOW THEREFORE BE IT FURTHER RESOLVED, that the Oneida Business Committee also recognizes a need, expressed by the General Tribal Council, that the Oneida Tribe should and must be restructured to meet the needs of the membership today and on a long term basis, and

NOW THEREFORE BE IT FURTHER RESOLVED, that the Oneida Business Committee shall continue its efforts to bring back a restructuring plan that meets those needs and shall schedule a meeting during which restructuring plans, including the December 18, 1999 restructuring plan, can be properly introduced and lawfully adopted by the General Tribal Council.

On September 28, 2011 the newly elected Chairman Delgado and the Oneida Business Committee developed and passed BC Resolution 09-28-11-D Rescinding Resolution BC 8-2-00-B.

This court takes issue with the fact Resolution BC 8-2-00-B had not been adopted so it cannot be rescinded; however the Business Committee of 2011 took action with this Resolution 09-28-11-B.

Starting with the fourth

WHEREAS, the 2000 Oneida Business Committee, acting in its fiduciary responsibility and believing that the General Tribal Council action was in violation of the Tribe's laws and rules, adopted resolution #BC-8-2-00-B which questioned the action of the General Tribal Council and rejected "Plan B" and

WHEREAS, this Oneida Business Committee believes that the action of the General Tribal Council in July 2000 was in order and has determined that resolution #BC-8-2-00-B should be rescinded, and

WHEREAS, this Oneida Business Committee believes that simply adopting and implementing "Plan B," ignoring the changes that have occurred in the past ten years, would be imprudent, and

WHEREAS, the Oneida Business Committee is in the process of reviewing and clarifying the concepts presented in "Plan B" and developing a structure that meets the needs of the Tribe now and into the future to be presented to the General Tribal Council for ratification.

NOW THEREFORE BE IT RESOLVED, that the Oneida Business Committee hereby rescinds resolution #BC-8-2-00-B.

In that 2000 GTC meeting, the Oneida Business Committee was directed to continue its efforts to bring back a restructuring plan that meets those needs and shall schedule a meeting during which restructuring plans, include the December 18, 1999 restructuring plan, can be properly introduced and lawfully adopted by the GTC.

Now comes BC Resolution 09-28-11-E

Interim Removal of the Position of General Manager and Permanent Removal of the Position of Assistant General Manager, and beginning with the third

WHEREAS, the General Tribal Council Adopted Resolution #GTC-2-25-82 which directed the Oneida Business Committee to hire a General Manager to manage the operations of the Tribe and for the Oneida Business Committee to focus on legislative activities, and

WHEREAS, the General Tribal Council adopted resolution#GTC-8-19-91-A which adopted the Administrative Procedures Act and formally created the Legislative Operating Committee delegating legislative responsibilities to the Council members of the Oneida Business Committee, and

WHEREAS, the General Tribal Council adopted resolution # GTC-7-11-94-A which directed the Chief Financial Officer to report to the Treasurer, and

WHEREAS, the General Tribal Council adopted a motion in 1998 which re-affirmed the 1982 action directing the Oneida Business Committee to be "restricted to legislative policy development" and to refrain from "day to day action", and

WHEREAS, the General Tribal Council adopted "Plan B" in July 2000 which directed a reorganization of the Tribe, and

WHEREAS, the Oneida Business Committee in 2000, acting in its fiduciary responsibility and believing that the General Tribal action was in violation of the Tribe's laws and rules, adopted resolution #BC-8-2-00-B which questioned the action of the General Tribal Council and rejected "Plan B", and

WHEREAS, this Oneida Business Committee does not agree with that action and believes the actions of the General Tribal Council were in order and has subsequently taken action to rescind resolution #BC-8-2-00-B

WHEREAS, this Oneida Business Committee believes that since 2000, the organization has changed as a result of new programs, modification of existing programs and removal of other programs which requires the Oneida Business Committee to review the organization to restructure based on the concepts presented on "Plan B", and

WHEREAS, the Tribe is faced with challenges arising out of the fiscal crises and rising needs of the membership that require the organization to be re-aligned to meet those challenges in a manner that focuses on meeting membership needs for housing, health care, and development of employment opportunities outside of the Tribe through small business development and diversification opportunities, and

WHEREAS, the position of General Manager is currently vacant, and

WHEREAS, the position of Assistant General Manager is vacant but held by an interim appointment.

NOW THEREFORE BE IT RESOLVED, that the Oneida Business Committee hereby removes the position of General Manager from the organization structure on an interim basis until such time as a final re-organization can be presented to the General Tribal Council for action.

NOW THEREFORE BE IT FINALLY RESOLVED, that the position of Assistant General Manager is hereby removed from the organization structure.

The administration of 2011 tried to have Resolution GTC# 2-25-82 rescinded however that resolution stands in place. The GTC should take a long look at what has attempted to be done

and has failed. The administration of 2011 violated Resolution GTC# 2-8-82 when they got rid of the General Managers and became involved in the day to day activities. When the Oneida Business Committee placed themselves as the Supervisor over all Directors they violated a direct order from the General Tribal Council therefore acted outside their scope of authority. The administration of 2011 tried to find ways to implement Plan B that was introduced in the July 2000 GTC meeting. The GTC Resolution 2-25-82 is still in effect and the Oneida Business Committee continues to find themselves in the day- to- day activities acting as the supervisor to all the directors.

This court questions the supervision that Mr. Wheelock was faced with. Who was his supervisor?

As Mr. Wheelock's supervisor, Cristina Danforth issued disciplinary action for the following violations. Oneida Personnel Policies and Procedures V.D.2.1.g Work Performance; V.D.2.III.e. Use of Property and V.D.2.1.e. Work Performance.

On the Disciplinary Action Form it is stated; "Three (3) attempts were made (12/13, 12/14, 12/17) to schedule a meeting with Dale Wheelock.

According to the Oneida Personnel Policies and Procedures V.D.2.b. A supervisor shall initiate disciplinary actions commensurate with the seriousness of the unsatisfactory performance. A supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression. Ms. Danforth, after consulting with HRD, as documented in Exhibit E, decided, due to the severity deviation from progressive discipline is warranted and termination was determined.

Mr. Jim Martin, Internal Security, was asked by Cristina Danforth Treasurer, to investigate the Oneida Housing allegations.

Mr. Martin began by reviewing the ARRA (American Recovery and Reinvestment Act Grant)

and the Housing and Urban Development website.

Upon completion of the investigation Mr. Martin submitted his report to Owen Somers, Security Director.

The Internal Security Director, Owen Somers, submitted the report of the Oneida Housing Investigation to Chairman Delgado. The Investigation revealed a lack of internal controls when it came to accountability of employees and inventory tracking. The main suspect associated with any thefts in the Housing area had resigned on April 23, 2012 shortly after the investigation began.

In the report to Chairman Delgado, from the Internal Security Director, was the statement "As far as the Housing Director goes, there was no evidence of theft on his part."

The Oneida Personnel Commission took into consideration the investigation evidence presented by Mr. James Martin. Mr. Martin stated through documented evidence that his scope of investigating was limited to finding things missing; it was not his job to find them.

The Oneida Personnel Commission pointed out there is a vast difference between the political arm of the Oneida Tribe and the departmental functions of the Tribe. There are employee rights that have been outlined in various laws of the Tribe which were violated.

The Oneida Personnel Commission found Mr. Wheelock was wrongly placed on investigative leave as the leave was a result of a "complaint."

In the decision of the Oneida Personnel Commission it is stated The Oneida Personnel Commission ORDERS the termination of the Mr. Dale Wheelock, OVERTURNED. Any back pay and benefits are to be reinstated to Mr. Wheelock beginning with the week of August 5,

2012, through his Reinstatement to his former position as Executive Director of the Oneida Housing Authority. Mr. Dale Wheelock's employee record is to be expunged of this discipline.

Mr. Wheelock is seeking damages for insurance bills totaling nearly \$2000 for emergency treatment during the period the insurance coverage was denied.

IV. Decision

It is the decision of this Appellate Court to AFFIRM the Oneida Personnel Commission's decision dated 2/28/2014 in case No.14-AC-004.

This Appellate Court awards to Mr. Wheelock any and all back pay and benefits (including vacation and personal time accrued) beginning with the week of August 5, 2012, to the date of reinstatement to his former position as Executive Director of the Oneida Housing Authority on or before December 1, 2014.

This Court Further awards Mr. Wheelock reimbursement for the insurance bills totaling nearly \$2000 for emergency treatment.

Mr. Wheelock's termination from employment shall be removed from his record.

IT IS SO ORDERED.