

COURT OF APPEALS

Oneida Human Resources Department,

Appellant,

Case #: 16-AC-010

v.

Date: April 10, 2017

Elijah G. Metoxen, and
Tsyosha^aht C. Delgado,

Respondents.

FINAL DECISION

This matter has come before the Oneida Judiciary, Court of Appeals, Judges Jennifer Hill-Kelley, Kathy Hughes, pro tempore, and Mary Adams, pro tempore, presiding.

Jurisdiction

This case is being reviewed pursuant the authority of the Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, and Chapters 801, 802, 803, and 805 of the Oneida Code of Laws.

Procedural Background

Respondents, Eli Metoxen and Tsyosha^aht C. Delgado (hereinafter, "Respondents"), were candidates for the position of Area Manager of Fitness, Parks and Recreation. On July 15, 2016, Respondents filed a preliminary injunction with Oneida Trial Court challenging the hiring selection procedure for the Area Manager position. On July 26, 2016, the Trial Court dismissed the case for lack of subject matter jurisdiction. On July 28, 2016, Respondents filed a complaint with Marianne Close, Human Resources Department (HRD) Hiring and Compensation Director, citing several irregularities were exhibited during the hiring and screening for the Area Manager

of Fitness, Parks and Recreation, position. Respondents filed a complaint citing the same irregularities with the Oneida Business Committee. In August 2016, Ms. Close found no policy or procedure violations with the hiring process. Then, on August 19, 2016, Respondents filed a complaint with Geraldine Danforth, Area Manager of HRD and on August 23, 2016, Geraldine Danforth found no policy or procedure violations. On August 22, 2016, Respondents filed a complaint/appeal with Oneida Personnel Commission (hereinafter "OPC"). The OPC granted a Fact Finding Hearing (Docket # 16-SP-001) for the appeal/complaint on August 23, 2016. The OPC also granted and issued subpoenas for accessing tribal emails.

On September 22, 2016, HRD (hereinafter "Appellant"), filed a Motion To Dismiss challenging the subject matter jurisdiction of the OPC and failure to state a claim upon which relief can be granted pursuant to the Oneida Judiciary Rules of Civil Procedure (OJRCP), §153-9-2(a)(1) & (6) (now §803-9-2(a)(1) & (6)). On September 27, 2016, the OPC denied the Appellants' Motion to Dismiss finding subject matter jurisdiction pursuant to OJRCP, Section 153.4-6 (now 803.4-6). In addition, the OPC held the cases cited by the Appellant in the Motion to Dismiss predate the OJRCP and therefore they had no precedential value.

On October 10, 2016, the Appellant filed a Petition for Permission to Appeal the interlocutory order of the OPC's decision denying the Motion to dismiss pursuant to Oneida Rules of Appellate Procedure §154.6.

On October 20, 2016, the OPC submitted a Motion to File Brief as a Party of Interest, which was improperly filed, therefore was not reviewed.

On November 2, 2016, in the Ruling on Petition for Permission to Appeal, Order Granting Stay, and Order for Briefs. This Court ruled this review will only consider whether the Oneida Personnel Commission has jurisdiction to have a fact finding hearing where the issue challenged has already been decided by the Oneida Human Resources Department. The Respondents' complaint/appeal regarding the hiring process is not being addressed with this action.

Then on December 19, 2016, the OPC filed with this Court, a Motion to Intervene, Stay, and Consolidate, in reference to their Complaint for Declaratory Ruling, filed on December 7, 2016, with the Oneida Trial Court (Oneida Personnel Commission v. Oneida Human Resources Department, Case # 16-TC-081). Their filing with the Trial Court addresses the same issues as those raised by the Respondents. The OPC claims they have subject matter jurisdiction to hear these types of disputes.

Issues

Does OPC have subject matter jurisdiction over the hiring process?

Did the Oneida Personnel Commission err in their denial of the Appellant's Motion to Dismiss for lack of subject matter jurisdiction on September 27, 2016?

I. Jurisdiction

Appellant claims the OPC has original jurisdiction over personnel grievance hearings in accordance to Resolution 4-13-90-A and that the hiring processes are reserved for the Oneida Human Resources Department through Resolution 5-12-93-J. Failure to cite a law that grants hearing authority to the OPC outside of the grievance process for disciplinary actions is an abuse of authority.

The Appellant argues that OPC hearing rights are limited to grievance hearings as a result of a disciplinary action. A "special procedure" is not recognized in the Personnel Policies and Procedure Manual (PP&P Manual), as such, the case must be dismissed where the OPC lacks jurisdiction to hear the case. Further, the Appellant argues that the OPC does not have standing to bring a Motion to Intervene on behalf of the parties where they are not a party, but are the original hearing body, advocating on behalf of the Respondents.

In their Motion to Intervene, Stay and Consolidate, the OPC claims several laws under the Oneida Judiciary, as well as, the General Tribal Council, that delegates them the authority to act

as the neutral forum to hear cases pertaining to employment issues arising out of Oneida Tribal law, including: Section 153.34-3 (now 803.34-3) of the Rules of Civil Procedure, Rule 24 of the Federal Rules of Appellate Procedure, the Oneida Administrative Procedures Act, and Article VII of the Oneida Constitution. The laws cited by the OPC pertain to *parties* of an action. The OPC is a hearing body. It is improper for the OPC to attempt to advocate for one party over the other, especially for a matter that has been brought before them.

OPC also contends Elijah G. Metoxen v. Oneida Human Resources Department, Case # 16-TC-052, supports their authority to file a Complaint for Declaratory Ruling to hold a fact finding hearing in the matter of screening and hiring.

The Appellant cites various cases, Tenielle Johnson v. Debbie Danforth, 12-AC- 011, 10/9/2012, Lois Strong v Oneida Human Resources Department, 00-AC-0011, 5/12/2000, Judy Cornelius v. Oneida Nation Community Library, Oneida Nation Human Resources Dept., 06-TC-019, 5/9/2008, and Lillian M. Wheelock v. Mari Kriescher, 11-TC-107, 7/12/2012, in support of their claim that the decision of the Screening Committee has no forum for appeal. All of the cases argued by the Appellant involve the screening and hiring process. However, we do not find that the circumstances in the cited cases support the specifics in the case at hand, that the OPC found subject matter jurisdiction to conduct grievance hearings of the screening and hiring process, including subpoena power.

We find this is a case of first impression. Black's Law Dictionary, Seventh Edition, defines a case of first impression as, "A case that presents the court with issues of law that have not previously been decided in that jurisdiction."

II. Special Procedure of the Oneida Personnel Commission

In their Motion Decision for case 16-SP-001 denying the Appellant's Motion to Dismiss, the OPC states section 153.14 of the Oneida Rules of Civil Procedure as the basis of their authority to grant the Respondents Motion for Subpoenas in a fact finding "Special Procedure." The

Appellants argues that the “Special Procedure” is not identified in the Personnel Policies and Procedures. This court agrees.

Regarding the special procedure that the OPC initiated, there is specific tribal law that describes the procedure to create rules for hearing bodies under the jurisdiction of the Rules of Civil Procedure. Under the Administrative Procedures Act, Complaints and Notice 101.4-1, whenever a claim arises under Tribal law, a hearing body shall hear the complaint in accordance with the procedures established under this Law, unless another Tribal law has established hearing procedures for that specific hearing body. The OPC is using the Rules of Civil Procedure Section 803.4 6, which states “this law shall be followed by the Court, except where other Court rules are more specific, then those laws shall supersede. This Law shall apply to proceedings conducted by the Tribe's Personnel Commission, except where the Tribe's personnel policies and procedures are more specific, then those shall supersede.”

The Respondents argue that “the Oneida Personnel Selection Committee was created by General Tribal Council in 1974 and redesigned as the Oneida Personnel Commission per (OBC RESOLUTION #4-13-90-A). The OPC was created as an autonomous forum independent of the OBC to avoid political involvements and to be directly involved on behalf of the GTC to ensure that Tribal employment hiring; management and disciplinary policies and procedures are fairly conducted and enforced.”

Pursuant to the PP&P Manual, Section III.B.2.b.1).a).i.ii.

b. Personnel Commission Role

1) The Oneida Tribe established the Personnel Commission to represent the Oneida Community-at-large in *the selection* of tribal employees (emphasis added).

a) The Personnel Commission is directed to:

i. Seek out the best-matched applicants for each available position;

- ii. Consider only job-related factors (such as education, experience, past job performance, skills and abilities, and compatibility with the position and potential co-workers) when selecting candidates.

The Respondents argue that the PP&P Manual gives the OPC the specific task to seek out the best-matched applicants for each available position and consider only job-related factors (such as education, experience, past job performance, skills and abilities, and compatibility with the position and potential co-workers) when selecting candidates. We agree that this is OPC's role, limited to screening and interviewing candidates in the hiring selection process.

The OPC's role is to represent the Oneida community in the "selection" of employees which they perform by participating in the screening of applicants against the job description, and in the interview process by scoring candidates responses to fulfill these responsibilities, under Section III.B.2.b.1. Under the subsection a).i.ii. of the PP&P Manual, the OPC's role when in the selection portion of the hiring process, is to contribute, with the hiring supervisor, to the selection of applicants and to consider only job related factors when selecting candidates. The Policy doesn't provide further direction or authority to the OPC beyond participating in the selection of candidates that will be offered the position.

Further, pursuant to the Administrative Procedures Act §101.4, nothing prevents a hearing body from establishing additional hearing body procedures, as long as those procedures do not conflict with the APA and are noticed to the public by the hearing body. The OPC, when participating in the selection of employees, must have hearing body procedures developed according to the APA and through a public process to ensure they are fulfilling their role on behalf of the community. If the selection process doesn't meet standards or procedures, there should be rules in place to address fairness concerns that would be invoked before the screening and interviewing process is completed.

The Respondents failed to prove that OPC has the subject matter jurisdiction to conduct a special procedure for a candidate seeking employment. There is no tribal law that grants authority to the

OPC to conduct special hearings to address disputes arising from the selection, screening and interview portion of the hiring process. The Appellants argue that Resolution 5-12-93-J grants the Human Resources Department the authority to interpret and enforce the employee manual, including investigation for violations of tribal laws, policies or procedures. We agree.

Decision

This Court finds there are no appeal rights of the screening committee's decisions until such time as a law is created to address such subject matter. In addition, the Respondents failed to provide a tribal law that governs the OPC's jurisdiction to hold special procedure hearings other than grievance hearings pertaining to employee disciplinary actions. All other issues raised are moot. Therefore, this case is remanded to the OPC to dismiss with prejudice pursuant to 805.13-1(b)(2).

By the authority vested in the Oneida Judiciary, Court of Appeals pursuant to Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, this Order is entered this 10th day of April, 2017, in the matter of Case # 16-AC-010, *Human Resources Department v. Elijah Metoxen, et al.*

It is so ordered.