

Oneida Tribal Judicial System

Onʌyote ʔ a·ka Tsiʔ Shakotiyaʔ Tolé hte

TRIAL COURT

**ONEIDA PERSONNEL COMMISSION,
Petitioner,**

Docket No: 14-TC-103

v.

**ONEIDA BUSINESS COMMITTEE,
Respondent**

DECLARATORY RULING

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

Background

On May 22, 2014 Petitioner, Gina Buenrostro, Advocate for the Oneida Personnel Commission (OPC), requested the Oneida Trial Court to render a Declaratory Ruling on the question of whether the Oneida Business Committee (OBC) correctly followed the Oneida Tribe's Personnel Policies and Procedures (Blue Book) when it approved the reassignment of two employees with the Oneida Human Resources Department (HRD). The matter names the Oneida Business Committee as Respondent.

Petitioner asserted the history as the following:

1. On January 16, 2014 a panel of three (3) OPC members attended the Human Resources Department (hereinafter, HRD) Reassignment meeting. The reassignments were for two (2) positions as Workforce Development Specialists.

2. After discussions with HRD it was discovered the two (2) positions were newly created positions that were grant funded. These two positions were posted internally, which means only within the HRD.
3. The two (2) positions were advertised to HRD personnel only and not to any other department. Since the positions were not posted throughout the Tribe they were not open to all Oneida tribal members.

Therefore, based on the above, Petitioner contended the following:

1. HRD has acted outside their scope of authority by changing the process of how newly created positions are posted.
2. HRD has acted outside their scope of authority by involving the OBC in the approval of reassignments.
3. The OBC has acted outside of their scope of authority by involving themselves in the reassignment process when the Blue Book does not provide the OBC with any oversight of the hiring process.

On June 17, 2014 Respondents filed a Motion to Dismiss on the following grounds:

1. Failure of the adverse party to pursue prosecution of the claim;
2. Failure of the adverse party to establish a right to relief based on the facts and law presented;
3. Failure of the adverse party to prove a claim, for which dismissal is the proper relief afforded to the moving party.

Respondent contended Petitioner has failed to establish a right to relief, that Laches and Equitable Estoppel provide an affirmative defense and that Petitioner lacks standing to bring a claim where there is not a claim of harm by Petitioner. Respondent claimed the only harm would be to the employees hired for this position. Respondent further asserted that OBC is protected by sovereign immunity.

On June 23, 2014 a pre-trial hearing was held. Both Petitioner and Respondent appeared, however, HRD did not appear.

At the hearing, Petitioner explained this is not a request for punitive or monetary damages or orders against the Tribe but rather for the Court to identify the fair and correct process that should have been utilized in all hiring and reassignment matters. This is the nature of a declaratory action: it seeks a declaration from the Court but no orders for anyone or any party to do anything or pay any money. Petitioner claimed this request is not seeking that these employees are punished or placed back into their former positions. Petitioner asserted the Blue Book is the guiding law that dictates how newly created positions are filled and these procedures were not followed in this instance.

Respondent claimed she was prepared to address her Motion to Dismiss. Respondent agreed that in order to discuss the Blue Book and Petitioner's assertions that HRD's presence was necessary in order for this matter to proceed.

The Court agreed that a request for a Declaratory Ruling is not a civil action in the usual sense. Petitioner is not seeking monetary damages or sanctions. Declaratory Rulings do not require standing. Petitioner requested that the Court interpret the proper procedures for advertising, hiring, screening, reassignment and interviews for all departments within the tribe based on the Blue Book. The Motion to Dismiss is misapplied and thereby denied.

There was an agreement between the parties that this hearing cannot proceed today without HRD's participation. The parties agreed to meet on their own and to include HRD to resolve this matter. Therefore, a hearing was scheduled for July 11, 2014 and then rescheduled for July 16, 2014.

At the July 16, 2014 hearing Petitioner, Yvonne Jourdan – Chairperson of Personnel Commission, Advocate Gina Buenostro – representing Petitioner; Respondents, Patti Hoeft – Tribal Secretary, Attorney Patricia Garvey – representing OBC, Geraldine Danforth – HRD Manager, and Marianne Close – Compensation and Employment Director, appeared.

The parties were unable to meet prior to this hearing.

Petitioner's arguments

Petitioner claimed according to the Blue Book, Section III, 3. e. Advertising, 1). *Position vacancies will be advertised as widely as possible including . . .*" Petitioner alleged HRD failed to adhere to this law because these two positions were not posted widely; rather they were posted within HRD only. According to the Blue Book, Section III, 3.e. 2) *Positions requiring a post-secondary degree and/or a special certificate or license shall be posted for a period of not less than thirty (30) calendar days; all other positions shall be posted for a minimum of ten (10) calendar days.* Again, HRD allegedly failed to follow this law because these were post-secondary degree positions and should have been posted for thirty calendar days. According to the Blue Book, Section III, C. Transfers and Promotions Policy 1.a.1)a. *Positions will be posted in prominent locations in each Tribal building.* Again, HRD allegedly failed to follow this law because they did not post these positions in prominent locations in each Tribal building, they posted only within HRD and hired from within.

Petitioner asserted OBC acted in the manner of an Area Manager. If this is true the Area Manager does not supersede the Oneida Personnel Commission. The reason the OPC was created is to keep the OBC out of employment related issues. There is no rule within the Blue Book that allows HRD to circumvent the hiring process. Furthermore, GTC Resolution 05-23-11A has to do with strengthening Indian Preference hiring not job reassignments.

Petitioner's May 22nd brief included the entire GTC packet from the May 23, 2011 meeting. Petitioner explained that the only item discussing the Blue Book on the agenda was under number 5. *Tabled Items; a. Personnel Policy and Procedure Amendment to Strengthen Indian Preference in Hiring, b. Personnel Policy and Procedure Amendment to Vacation and Personal Day Accumulation and, c. Personnel Policy and Procedure Amendment to Trade Back for Cash of Vacation and Personal Time,* and there's no mention of an amendment to change job reassignments in the Resolution or the minutes.

Petitioner claimed the OBC formulated a Standard Operating Procedure (hereinafter, SOP) titled Conducting E-Polls. Petitioner claims the OBC approved the form and then used the form to

approve job reassignments. The Blue Book has a process for job reassignments under C. Transfers and Promotions Policy 2. Reassignments, b(3), *Job Reassignments may be made at any time with the approval of the Area Manager and after a review of each affected job by the Personnel Evaluation Committee.* This was allegedly not adhered to. Instead, HRD went straight to OBC and requested an E-Poll, even though both OBC and HRD knew the process.

Respondent's arguments

Respondent, HRD, received a SEEDs grant in October 2013. The OBC instituted the Cost Containment Resolution that required all departments seeking to fill new positions to obtain OBC approval before hiring. The HRD representative stated that several attempts have been made to meet with OPC to discuss this issue of job reassignments but OPC as a committee failed to attend the meetings. Since OPC was unwilling to meet and review the internal posting and hiring, HRD acted without OPC and requested that OBC conduct an E-Poll in order to be placed on the OBC agenda. The OBC approved the request to be placed on the agenda. The OBC then approved the posting internally only and reassignment for the two positions. Shortly after OBC's approval the posting and interviews were held internally.

Respondent contended the May 23, 2011 GTC meeting packet within Petitioner's Exhibit #1 contains the amendments to the Blue Book – Job Reassignment both the original copy and a scratched out copy. When the GTC motioned to accept the Blue Book (number 5 of the agenda) all the amendments were approved including Resolution 05-23-11-A.

HRD pointed out that Petitioner's copy of the Blue Book is outdated and that the current Blue Book is posted on the tribe's web page and within Respondent's Exhibit #F. Under the update language, HRD asserts job reassignments (1-3) no longer require OPC's approval but instead a review of each affected job by the Personnel Evaluation Committee.

Findings of Fact

At the May 23, 2011 GTC meeting the General Tribal Council took action to approve the amendments to the Blue Book. The amendments included the original version and the scratch out

version, which was included within Petitioner's brief exhibit 3, page 15 of 142 shows Section III, B, e.2.

According to the GTC Resolution 05-23-11-A, *Personnel Policies and Procedures Amendments to Strengthen Indian Preference in Hiring*, in the NOW THEREFORE BE IT RESOLVED, indicates that the attached amendments to the Blue Book were adopted. The amendments included changes to the hiring process.

The current hiring process in the Blue Book, Section III – Section Policy, B. Hiring Procedure, e. Advertising, 2) requires that position vacancy must first be available to tribal members: “Unless otherwise prohibited by external grant source or federal law, the first posting for a position vacancy shall be limited to enrolled Oneida members and shall be posted for minimum of seven (7) calendar days”

The job reassignment policy only requires Area Manager approval and review by the Personnel Evaluation Committee. See Sec. 3.C.2.b. of the Blue Book.

There was no dispute that the OBC approved the request to post and hire the two positions. However, Respondents failed to prove that the OBC approved that these positions be posted internally. Even if the OBC gave HRD the approval to post internally the law doesn't support circumventing the process.

Analysis

The crux of this matter is whether the positions were new hires or reassignments. It appears the OPC is concerned that HRD has found a loophole in the hiring process. We read Sec. III.B.e.2 to require that the posting be available to enrolled Oneida members and posted for at least seven calendar days. This language does not permit posting within a department. Sec. III.C.2.b. addresses reassignments and only requires Area Manager approval and review by the Personnel Evaluation Committee. The parties are not litigating what happened in the case of the two recently assigned employees; rather the OPC seeks guidance on HRD's obligations going forward.

The Oneida Tribe is a large organization that is managed, for the most part, by our elected officials namely the OBC. The OBC, our government, has the responsibility to ensure compliance for our various areas including, gaming, most contracts, and grants. In addition, the OBC is the Area Manager for several departments within the tribe since the passage of BC Resolution 09-28-11-E and in this case, for HRD and OPC. When these two departments cannot agree the OBC must assume the duties as Area Manager and find a solution. This Court agrees it is vitally important that our departments are following the same set of rules and laws.

A January 23, 2014 memo from HRD shows Geraldine R. Danforth, HR Manager, requested E-Polling to approve the wage and reassignment for two employees' jobs with OBC approval. The letter also states, that OPC was invited to at least two meetings and that OPC met once and that at the next meeting only one OPC member showed. These meetings were held to discuss filling the two grant positions. The grant was approved prior to the tribe implementing the cost containment. Under Sec. III.C.2.b., HRD needed approval from OBC (in the role of the Area Manager) in order to reassign two employees and take advantage of grant funding. HRD attempted to obtain review from Personnel Evaluation Committee but apparently OPC members did not show up at meetings where this may have occurred.

Conclusions of law

The Blue Book is clear. Reassignments and new hires are subject to different processes. Reassignments must be approved by the Area Manager and reviewed by the Personnel Evaluation Committee under Sec. III.C.2.b. New hires are governed by Sec. III.B. The difference between reassignments and new hires may be blurry at times, but presumably the requirements of Area Manager's approval and Personnel Evaluation Committee review will be sufficient checks on the issue.

The Court declares that Sec. III.B.e.2 requires that the job posting be available to enrolled Oneida members and posted for at least seven calendar days. This language does not permit posting only within a department.