

# Oneida Appeals Commission

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## Trial Court

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Lester W. Harms III,

Petitioner,

Docket No. 04-TC-059

vs.

Oneida Police Department

and Sgt. Mark Stanchik,

Respondents

Date: October 4, 2004

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### Final Order

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This case has come before the Oneida Appeals Commission Final Court Judicial Officers Leonard Wigg-Ninham, Janice McLester, and Jennifer Webster presiding.

### I Background

On August 25, 2004, the Petitioner, Lester W. Harms III, filed a motion for a Temporary Restraining Order and Injunction against the Respondent, the Oneida Police Commission with the Oneida Appeals Commission. A deliberation was held at the Oneida Appeals Commission on August 25, 2004. As a result of that deliberation, the Petitioner's request was granted and an Injunction Hearing was scheduled for September 28, 2004 at the Oneida Appeals Commission. The Petitioner is requesting the Oneida Appeals Commission stop the Oneida Police Commission from conducting further proceedings in the above referenced case. The Petitioner raised the claim that one of the Oneida Police Commissioners should recuse himself as a hearing officer. The Petitioner alleges that the Police Commissioner in question spoke to a tribal member about the case before the Oneida Police Commission. The Petitioner further alleges that the hearing scheduled before the Oneida Police Commission was tainted due to the alleged conversation. The Petitioner claims that because the Police Commission refused to recuse themselves from

hearing the case he would not be afforded a fair and impartial hearing.

## **II Issues**

Does the Petitioner's request meet the requirements for this court to grant injunctive relief?

## **III Analysis**

An Injunction Hearing was conducted at the Oneida Appeals Commission on September 28, 2004, at 1:30 P.M. In that hearing, the Petitioner failed to convince this court that there were grounds for an Injunction according to Rule 31(E)(1-4). Since the Petitioner did not raise a claim that met the requirements for an Injunction, this court cannot grant an Injunction.

The Petitioner raised the claim that one of the Police Commissioners should recuse themselves as a hearing officer. The Petitioner alleges that the commissioner in question spoke to a tribal member about the case before the Oneida Police Commission. The Petitioner argued that the hearing before the Oneida Police Commission was tainted due to the alleged conversation and that a fair and impartial hearing could not be held. The proper hearing body, the Oneida Police Commission, has ruled on the question of whether a fair and impartial hearing could be held. The Oneida Police Commission decided to allow the hearing to proceed because there was no substantiated reason for the Police Commission, or the commissioner to recuse themselves.

The Respondents have convinced this court that this case should be heard in its entirety before the Oneida Police Commission. The Oneida Police Commission is the proper venue and has original jurisdiction to hear employment disputes arising from employees of the Oneida Police Department.

The issue of jurisdiction to hear this matter before the Oneida Police Commission is established under the Oneida Nation Law Enforcement Ordinance.

37.1-1: Purpose and Policy:

*The purpose of this ordinance is to regulate the conduct of the Oneida Tribe of Indians of*

*Wisconsin law enforcement personnel according to the highest professional standards.*

37.6-1.(h) Oneida Police Commission:

*Hear charges filed against law enforcement officers or other appointed personnel of the Police Department. (i) Hear appeals of disciplinary actions against any law enforcement personnel or non-sworn personnel.*

The Oneida Police Commission will decide the merits of this case. If the Petitioner still contends that he did not receive a fair and impartial hearing after adjudication by the Oneida Police Commission he may then appeal that decision to the Oneida Appeals Commission.

For the record, a representative from the Oneida Police Department failed to appear.

#### **IV Decision**

The motion for injunctive relief is denied and the stay on the Oneida Police Commission to hear this case is lifted. In the interests of justice and fairness the Oneida Police Commission is hereby ordered to hear this case within fifteen (15) days upon the receipt of this decision.