

Oneida Appeals Commission

Onlayote 7 aka Tsi7 Shakotiyaw Tolé hte

Phone: 920-497-5800
Fax: 920-497-5805

Post Office Box 19
Oneida, WI 54155



Trial Court

Owen Somers,

Petitioner,

Docket No. 04-TC-066

vs.

Oneida Police Department-Rick Cornelius,

Oneida Police Commission-David Webster,

Respondents

Date: September 14, 2004

Injunction Hearing

This case has come before the Oneida Appeals Commission Trial Court, Judicial Officers Leland Wigg-Ninham, Mary Adams, and Janice McLester, presiding.

I Background

On August 25, 2004, the Petitioner, Owen Somers submitted a motion for an injunction against the Respondents, Oneida Police Department-Rick Cornelius, and the Oneida Police Commission-David Webster. The Petitioner claims a hearing is scheduled with the Oneida Police Commission and that the Oneida Police Commission does not have jurisdiction to hear employment disputes of the Gaming Internal Security. In the decision, issued August 25, 2004, the Trial Court ruled that the Petitioner had not established grounds for an injunction without notice to the opposing parties, but he had established grounds for an Injunction Hearing. The court denied the motion for an immediate injunction, but scheduled the Injunction Hearing for August 31, 2004, at 1:30 P.M.

On August 25, 2004, the court requested the Oneida Business Committee to submit an amicus curiae brief on the issue of jurisdiction over Gaming Internal Security.

On August 26, 2004, the Respondent, Rick Cornelius, Oneida Police Department, submitted a Motion for an Extension of Time to the Oneida Appeals Commission Trial Court for the hearing scheduled for August 31, 2004. The Respondent, Rick Cornelius, claimed that he has not had adequate time to seek legal representation to assist him in this matter as the reason for his request. The Trial Court ruled in part; *A delay at this point would require an order of a stay of the Police Commission's scheduled action, for September 1, 2004, and it was this event that this court intended not to delay unless necessary.* That motion was denied.

On August 30, 2004, the Oneida Human Resources Department, Barbara Kolitsch, submitted an amicus curiae brief supporting jurisdiction and designation of appeal rights for employees. Ms. Kolitsch is claiming that the Gaming Internal Security Director remains under the Oneida Personnel Policies and Procedures.

A hearing was conducted at the Oneida Appeals Commission on August 31, 2004, to resolve the issue of jurisdiction. The Oneida Human Resources amicus curiae brief was accepted. For the record, the Oneida Police Commission representative did not appear for the Injunction Hearing.

II Issues

Does the Oneida Police Commission have jurisdiction to hear employment disputes of the Gaming Internal Security?

III Analysis

In the decision issued on August 25, the Trial Court scheduled a hearing to resolve the matter of jurisdiction. That decision read in part:

The Oneida Business Committee will be solicited for a position through an amicus curiae brief on the issue of jurisdiction over Internal Security and employment grievance rights and duties under the Oneida Law Enforcement Ordinance, read in conjunction with the Oneida Personnel Policies and Procedures and other applicable laws.

The Oneida Business Committee claims that all Gaming Internal Security grievance disputes must follow the Oneida Personnel Policies and Procedures and that, "All hiring training and other human resource functions continue to follow the Oneida Personnel Policies and Procedures and all relevant Oneida Laws." The Oneida Business Committee further contends that the letter from the Vice-Chair dated July 13, 2004, states that, no other official action has been taken by the Oneida Business Committee which would be contrary to the substance of the Vice-Chair's letter. It is the Oneida Business Committee's position that the Oneida Nation Gaming Ordinance, Section 21.8, "(a)ll gaming personnel are subject to the Oneida personnel policies and procedures and all employment laws, regulations and requirements that are otherwise applicable to Tribal personnel." identifies that Gaming Internal Security grievances are under the jurisdiction of the Oneida Personnel Policies and Procedures.

The Oneida Human Resources Department supports that the Gaming Internal Security department falls under the rules of Personnel Policies (Blue Book), and other Stand Alone Policies, not the Law Enforcement Ordinance.

The Petitioner claims that in terms of disciplinary actions issued to him on July 9, 2004, and August 10, 2004, by the Oneida Chief of Police, his discipline should follow the Oneida Personnel Policies and Procedures. The Petitioner further claims that employment disputes within the Internal Security Department should be heard before the Oneida Personnel Commission and not the Oneida Police Commission.

The Respondent claims that the Oneida Police Commission is the correct hearing body to hear Internal Security grievances because they are an arm of the Oneida Police Department and all Police matters are heard before the Oneida Police Commission. The Respondent claims that the Oneida Law Enforcement Ordinance gives the Oneida Police Commission jurisdiction.

The Respondent further claims that the Director of Security has performed duties for the Oneida Police Department since 1985 and has reported directly to the Chief of Police. He alleges that

since the Petitioner has been the Security Director, the reporting structure has not changed.

The Trial Court ruled that sufficient documentation supports the allegations that the Oneida Personnel Commission has jurisdiction over this matter.

IV Decision

The Petitioner proved through testimony and documentation that the Oneida Police Commission does not have jurisdiction to hear employment disputes in the Internal Security department. This court hereby transfers jurisdiction of this case to the Oneida Personnel Commission to hear the merits of the Petitioner's grievance.

This court orders that the Oneida Personnel Commission address the issue of the reporting structure of the Gaming Internal Security, particularly if the Oneida Police Chief has the authority to issue disciplinary actions to the Gaming Internal Security Director.

Include in the review the following two issues:

- 1) Is the Chief of Police the supervisor for the Director of Gaming Internal Security according to the amended Oneida Gaming Ordinance passed by the General Tribal Council on July 7, 2004?
- 2) Presuming the Chief of Police has authority to issue disciplinary actions under existing laws; Who is the appropriate Area Manager for appeals?