

Oneida Appeals Commission

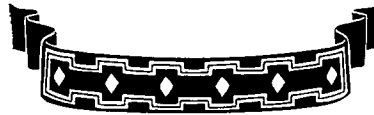
Onayote ? aka Tsi? Shakotiya? Tolé hte

Phone: 920-497-5800

Fax: 920-497-5805

Post Office Box 19

Oneida, WI 54155



Trial Court

Rick Cornelius,
Petitioner

Docket No. 06-TC-002

v.

Oneida Police Commission,
Respondent

Date: May 17, 2006

Decision on Respondent's Motion

This petition has come before the Oneida Tribal Judicial System. Judicial Officers: Mary Adams, Robert Christjohn, and Gerald Cornelius, presiding.

I Background

On January 18, 2006, Appellant, Rick Cornelius, the former Chief of Police, filed an appeal of his termination he received on December 20, 2005 from the Oneida Police Commission.

Respondent is the Oneida Police Commission acting in a supervisory role.

On February 28, 2006, a pre-trial hearing was held. The court scheduled a Motions Hearing for May 11, 2006. At the Motions Hearing, three motions were argued: 1) Motion in Limine to Preclude Testimony or Argument by Petitioner Regarding Alleged Procedural Irregularities; 2) Motion to Determine Which Party has the Burden of Proof; and 3) Motion to Dismiss. The court ruled verbally at the hearing that Petitioner carries the burden of proof. The trial shall proceed in accordance with Rules of Civil Procedure, Rule 24.

The trial is scheduled for June 1, 2006. The parties agreed to leave June 2, 2006, open if necessary to conclude the hearing.

II Issues

1. Motion to determine which party has the burden of proof.
2. Motion to dismiss.
3. Motion in limine to preclude testimony or argument by Petitioner regarding alleged procedural irregularities.

III Analysis

Motion to determine which party has the burden of proof.

Petitioner argues that the Respondent has the burden to show it had just cause to terminate the employment of Rick Cornelius as Chief of Police. Petitioner contends Wisconsin Statutes (Wis. Stat. Ch. 62.13(5)(j)) states the seven standards used in determining "just cause" for subordinate officers are applicable to police departments which are similar to the Oneida Law Enforcement Ordinance. Petitioner claims the Appeals Commission recognized that Chief Cornelius was not provided the due process hearing required prior to his termination and thus the Appeals Commission is acting as the original hearing body. Petitioner asserts the entity bringing the charges (the Oneida Police Commission) must show there is "just cause" for the termination.

Respondent argues if the party that bears the burden of proof cannot establish their case, the responding party is not required to present any evidence in support of its position. The trial court agrees, Petitioner bears the burden of proof. The trial shall proceed in accordance with Rules of Civil Procedure, Rule 24. The ruling on this motion was announced in court.

Motion to dismiss

Respondent argues since Petitioner requested his appeal be treated as a Complaint, requested monetary damages against the Police Commission, and to reinstate his employment, this case

should be dismissed based upon Chapter 14 Sovereign Immunity Ordinance. Respondent claims no waiver was provided to Petitioner. The Tribe and its entities are immune from suit. Respondent asserts the Appeals Commission has consistently affirmed the validity and applicability of the Tribe's Sovereign Immunity Ordinance in the following cases: Webster v. Oneida Tribe-Central Payroll, Docket No. 06-TC-003; Hill v. OBC, Docket No. 05-TC-033; Bain v. OPC, Docket No. 04TC-096; and finally, in Harms v. MIS, GM, and HRD, Docket No. 04-AC-028. Respondent contends the Police Commission is a "tribal entity" for purposes of the Sovereign Immunity Statute. In addition, Respondent claims the Police Commission acted within its scope of authority and in accordance with Chapter 37.6-1, which grants the power to "appoint, suspend, or remove the Police Chief..." Respondent argues since there was no waiver of the Police Commission's Sovereign Immunity and based on the above cases, this case should be dismissed.

Petitioner argues that all tribal employees have access to the same remedy that governs an employee that was wrongfully disciplined. Petitioner claims this case is not a question of contesting sovereignty, this is a just cause, due process hearing and its remedies are available within the sovereignty of the Oneida Nation. Petitioner contends in employment termination cases, tribal remedies have included reinstating the employee with back pay and benefits as if the employee had never been terminated. Petitioner asserts, as his right, his employee dispute should be heard and resolved by the Appeals Commission.

The trial court grants the motion to dismiss based on precedent and in accordance with Chapter 14, Sovereign Immunity Ordinance. On October 20, 2004, the Oneida Legislative Operating Committee passed Chapter 14: Sovereign Immunity into Oneida Law. The stated purpose is:

"to protect and preserve the sovereign immunity of the Oneida Tribe of Indians of Wisconsin, to define the entities and individuals entitled to the protection of such immunity, and to specify the manner in which such immunity may be waived.

The statute reaffirms the immunity of officers, employees or agents in tribal proceedings.

Sovereign Immunity Statute, Section 14.4-1;

No suit or other proceeding, including any tribal proceeding, may be instituted or maintained against officers, employees or agents of the Tribe for actions within the scope of their authority, unless the Tribe has specifically waived sovereign immunity for purposes of such suit or proceeding. *Adopted BC#10-20-04-C.*

Petitioner failed to prove Respondent waived its sovereign immunity for purposes of such suit or proceeding. Since there is no clear waiver of immunity by the parties, this case is dismissed.

The waiver provided in Chapter 37 is inapplicable in this case. Section 37.9-9 permits appeals from Oneida Police Commission rulings. However, Petitioner's action is not an appeal, it is an original action. In Cornelius v Oneida Police Commission, Docket No. 05-AC-019, the Oneida Appeals Commission Appellate Court ruled that when the Oneida Police Commission disciplines the Chief of Police, it is acting in its role as supervisor, not as an original hearing body. Therefore, any action by Petitioner is an original action, not an appeal. Chapter 14 prohibits original actions against a tribal entity unless an express waiver exists. We find none.

Chapter 37, the Law Enforcement Ordinance, specifically includes the right for all other law enforcement officers the right to appeal, but does not afford the Chief the same right. Chapter 37 specifically includes the Police Commission's right to suspend or remove the Chief. The Police Commission terminated the Chief, thereby removing him, which is within their authority.

By the court granting Respondent's Motion to Dismiss, all other issues are moot.

IV Decision

This case is dismissed.

Dissenting Opinion

In the matter of Richard Cornelius vs Oneida Police Commission, Robert L. Christjohn is offering a dissenting opinion.

Background

By granting the Respondent's motion, the majority essentially rules that out of the thousands of Oneida Tribal employees, only the Chief of Police does not have the same right to come before the Oneida Appeals Commission for review of his employment grievance. I do not agree with this overly technical reading of Oneida law, especially where a person's job hangs in the balance. Therefore, I respectfully dissent.

The matter of Rick Cornelius, Petitioner, vs Oneida Police Commission, Respondent, has been to a pre-trial hearing. The Respondent submitted three motions:

- a) The Respondent sought to place the burden of proof on the Petitioner. The trial court granted the motion.
- b) Remove all matters related to Due Process. The trial court held it would rule on the matter in written form prior to the trial date.
- c) Dismiss based on Tribal Sovereign Immunity Ordinance which protects the Tribe and/or units within the Tribe from suit.

Analysis

As a dissenting opinion in this case, I seek to express my disagreement with the majority, not advocate on behalf of the Petitioner. Let all parties be assured this opinion is to seek justice and is separate from the merits of the case. As an officer of the Oneida Appeals Commission, I took an oath of office which requires, "the Tribe's constitution and laws be protected to the best of one's ability."

The basic principle of Due Process is at question. Namely Oneida Tribal Sovereign Immunity Ordinance restricts, impairs and infringes on the complainant's Due Process Rights. These rights

include but are not limited to simple legal doctrines of **Notice, Fair Hearing and the Right to Confront Accusers**. These principles are outlined in the following:

1. Chapter 37: Oneida Nation Law Enforcement Ordinance 37.9-4 Rights of the accused law enforcement officer at hearings....
 - a) Notice of charges...as well as action that may or will be taken.....
 - b) The right to a fair hearing....
 - c) The right to representation....
 - d) The right to confront and cross examine accusers....
 - e) The right to present evidence....

The majority notes that Section 37.9-9 is only a waiver of the Tribe's immunity permitting appeals and that since the Petitioner's action is an original one, jurisdiction is lacking. I disagree with the result from this reasoning. The clear intent of the Law Enforcement Ordinance is for law enforcement officers to receive tribal judicial review of Oneida Police Commission rulings. There is no reason to exclude the Chief from such review. Petitioner is denied such review by the majority's ruling. It is an oversight in the Law Enforcement Ordinance which leads to an unfair result.

2. The Oneida Tribe of Wisconsin Standard Operating Procedures: Rules, Regulations and Department Guidelines Section 2, paragraph 3.2: This department's Standard Operating Procedures will enhance the Law Enforcement Ordinance where such language is not explicitly in the ordinance, but rather inferred by standard every day use and law enforcement agency procedures see sub paragraph 3.2.3

Officers/employees still receive compensation and benefits under the Blue Book case law and existing Oneida practice clearly allows the Oneida Police Commission to monitor the internal affairs of the department. However, the existing law and procedure would require the Police Commission to replicate specific rights and benefit. This would include the rights of Due Process.

3. The Oneida Constitution Article XVI also insures that all Tribal members are provided Due Process. The constitution does not define Due Process. However, it is a clear protection and must be followed. Absent any defining code reliance on common law, jurist

findings, scholarly work and existing acceptable state or federal law would outline this doctrine.

4. The Indian Civil Rights Act, 25 U.S.C. secs. 1301-1303, also dictates all Native Americans are protected under due process.

The majority opinion signers are aware the Oneida Tribe's Sovereign Immunity Ordinance quashes long established individual rights, yet, feel it is proper to dismiss.

Conclusion

The majority could have implemented one of several options which include but would not be limited to the following:

1. Hold the Tribal sovereignty motion in abeyance and continue the trial
2. Direct the parties to provide a written brief related to Tribal Immunity.
3. Rule that Tribal Immunity quashes a Tribal employee's long established constitutional and legal rights outlined under various laws and policies.
4. Delay the case pending the Oneida Appeals Commission Appellate Court ruling on sovereign immunity presently under consideration in the matter of Somers v. Oneida Gaming Commission et al., 06-AC-011.

The majority did not accept any of dissenter's opinions and ruled for dismissal based on the Sovereign Immunity issue. I respectfully dissent.