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**Appellate Court**

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Susan Paremski,  
Appellant

Docket No. 03-AC-002

vs.

Oneida Bingo & Casino,  
Respondent

Date: May 21, 2003

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**Decision**

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This case has come before the Oneida Appeals Commission. Lead Judicial Officer, Mary Adams, Linda Cornelius, Kirby Metoxen, Marjorie Stevens and Leland Wigg-Ninham, presiding.

**I Background**

On May 3, 2002, the Appellant, Susan Paremski was laid off from her position as Assistant Director of Bingo. On that same date the Appellant delivered her appeal to the Area Manager and Oneida Personnel Commission. The Oneida Personnel Commission did not accept the appeal on May 3, 2002 because the Area Manager had not made a decision. The Appellant then appealed to the Oneida Appeals Commission on August 20, 2002. The Oneida Appeals Commission accepted the Appellant's appeal and on November 25, 2002, remanded it to the Oneida Personnel Commission to hear the merits of the case. On January 3, 2003 the Oneida Personnel Commission ruled in favor of Oneida Bingo & Casino, finding that the Appellant failed to prove that procedural irregularities were exhibited during the appeal process or layoff process.

The Appellant, Susan Paremski, is appealing the Oneida Personnel Commission decision, alleging: (a) a violation of constitutional provisions and; (b) that the decision is clearly erroneous and against the weight of the evidence; and (c) there is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision which, if the error had not occurred, would have altered the final decision.

**II Issues**

- (1) Does a violation of constitutional provisions exist?
- (2) Is the Oneida Personnel Commission's decision clearly erroneous and against the weight of the evidence?
- (3) Does the Oneida Personnel Commission's decision exhibit a procedural irregularity which would be considered a harmful error, in that it may have contributed to the final decision which, if the error had not occurred, would have altered the final decision?

**III Analysis**

The Appellant claims she appealed the decision to place her on layoff status on May 3, 2002. The Appellant claims she submitted her appeal to the Respondent, Area Manager, the Human

Resource Manager and, the Oneida Business Committee. The Appellant's request for an appeal was dated May 3, 2002 and her appeal was based on the grounds that she believed a violation of existing Personnel Policy and Procedures existed. She also stated she believed her layoff was retaliatory in nature. Finally, the Appellant claims the Respondent, Area Manager, responded to her appeal on May 16, 2002 which was beyond the time lines allotted for a response. The Appellant argues that the Respondent failed to address her appeal within the time lines set by the Tribe's Policies and Procedures, Section §V.D.6.b.2, which allows the Respondent three (3) working days for his response. By not providing a response within the three (3) days, the Appellant claims the Respondent violated her due process.

The Appellant further claims that the Bingo department was in noncompliance with the Tribe's Layoff Policy. The Appellant claims the Bingo Department should have developed and approved Standard Operating Procedures (SOP) prior to the lay off. The Appellant claims the decision to eliminate her position and post the Director's position was made on December 18, 2001 in a meeting. The Appellant claims she was informed that the Director's position would require a BA degree and, therefore she would not qualify. The Appellant claims the Layoff Policy was approved by Human Resources on January 22, 2002 which was well beyond the time of the decision to lay her off. The Appellant claims that while the date of her actual layoff was May 3, 2002, the decision to lay her off was made on December 18, 2001.

The Appellant further argues that there were acts of retaliation against her by the Area Manager, Eric McLester, and that he demonstrated this by not allowing her supervisor, Roy Skenandore, to do a title reassignment for her rather than place her in a layoff status. In a memo dated January 2, 2002, the Appellant was encouraged to apply for the Director's position by her supervisor. However, the Appellant claims, the decision to include the requirement of a Bachelor's degree was made on December 18, 2002. On December 19, 2002 the HRD Specialist advised the Respondent that he could process a title reassignment in lieu of re-posting the revised Bingo Director's position. The Appellant claims that the opportunity to do a title reassignment was ignored as the Director's position was posted on January 9, 2002. The Appellant claims the Area Manager finally gave his approval for a title reassignment on April 2, 2002, which was denied by the Human Resources Department in a memo dated April 11, 2002:

“Due to the time-frame of the request (April 3, 2002) to process a title reassignment, the interviews were to continue as normally scheduled for April 5, 2002. Also, with the position posted twice, I feel it would not be fair to the applicants or appropriate practice, because there was sufficient time prior to the interview date to request a title reassignment.”

The Appellant claims the denial of the reassignment was from the Human Resources Department, but could have been prevented if the Respondent had not interfered with her supervisor's decision. The Appellant claims the inaction of Respondent resulted in her ultimate layoff. Furthermore, the Appellant argues the interviews had not taken place at the time of her supervisor's reassignment request.

**(1) Does a violation of constitutional provisions exist?** The Appellant claims that her appeal to the Area Manager, Human Resources and the Oneida Business Committee on May 3, 2002

was not addressed until May 16, 2002, which is a violation of her due process. The Respondent claims that the memo entitled "Initial Request for a Hearing" was not filed with the right department. Therefore, he did not respond to the hearing request because he is not the proper person to grant or deny a hearing. The Respondent further claims he informed her to follow the proper process in her attempts to resolve her issue in a memo dated May 16, 2002, but failed to spell out what those proper processes are.

In the case, Oneida Equal Employment Office v. Jorgenson, 4 O.N.R. 3-139,141 (98-DP-0011, 10/27/98), a memo was sent to the Area Manager which was the grievance notice. In that case, the memo was ruled a grievance notice and that the Oneida Personnel Commission had an obligation to treat it as such. In addition, the court stated "*the time lines set forth in the Personnel Policies and Procedures should have been applied and this case dismissed as untimely.*" The Appellant, Mrs. Paremski, provided evidence that she filed an appeal of the decision of the Area Manager on May 3, 2002 contesting her layoff. The Oneida Personnel Commission's first responsibility is to ensure the Oneida Personnel Policies and Procedures are adhered to by either party. Since the Area Manager did not comply with the timelines set forth in the Oneida Policies and Procedures §V.D.6.b.2, the Oneida Personnel Commission had no other alternative but to rule in favor of the Appellant due to untimely response from the Area Manager.<sup>1</sup>

The Appellant argues because the Area Manager did not respond to her appeal a violation of constitutional provisions was exhibited but failed to provide the constitutional law that was violated. According to the Administrative Procedure Act §XA(2), the Appellant must cite the law that was violated.<sup>2</sup> Therefore, the court is not persuaded by the Appellant's claim that a constitutional violation occurred.

The Appellant's argument focuses on time lines within the Personnel Policies and Procedures. This issue will be discussed under issue number three (3).

**(2) Is the Oneida Personnel Commission's decision erroneous and against the weight of the evidence?** The Appellant claims several violations existed. The Appellant's first argument is that the Respondent violated §V.D.6.b.2, by not requesting an extension to respond to her grievance, and that the Bingo department was in noncompliance with the Tribe's Layoff Policy.

The Appellant claims she hand delivered her appeal to three (3) departments; Area Manager; Human Resources Department and; the Oneida Business Committee on May 3, 2002. The Appellant provided documentation from the various departments that they received her appeal. The Appellant claims she did not receive a response from the Area Manager until May 16, 2002, well beyond the time lines set forth in the Personnel Policies and Procedures.

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1 Rule 2. The Area Manager will investigate the disciplinary action within three (3) working days (unless an extension not to exceed ten (10) calendar days in requested of and granted by the HRD Manager).

2 X. Contested cases A3a. Said notice shall include statements specifying: the violation, citing the rules, regulations, policies, or laws, and

The Respondent argues that the Respondent, Eric McLester, was not the appropriate party to respond to the Appellant's request because he had no authority to grant or deny a request for a hearing. In the case cited above, Oneida Equal Employment Office v. Jorgenson, the court stated that a grievance memo must be treated as an appeal and, thereby the Personnel Policies and Procedures time lines must be adhered to. The Appellant was disputing her layoff status in her memo to the Area Manager and, therefore her appeal should have been treated as such. The Respondent further argues that the Appellant caused confusion to the parties as to whom should address the appeal. It is the contention of this court that no confusion should exist, Area Managers are trained to know the chain of command in the event an appeal is submitted. The Appellant contested her layoff to the Area Manager. Even if the grievance included requests the Area Manager cannot grant, the Area Manager's review and decision should conform to the Personnel Policies and Procedures time lines.

The Oneida Personnel Commission failed to address the time lines of the Area Manager to respond to an appeal. Rather, the Oneida Personnel Commission focuses on whether the layoff was retaliatory in nature.

According to the Appellant's background and career plan, it is without justification that this employee was placed in layoff status. According to the Respondent, the Appellant was asked if she was interested in the position of Director of Bingo and she replied she was happy in her current position as Assistant Director. She was eventually told her position would be eliminated and was encouraged to apply for the Bingo Director position. The Appellant submitted her application on January 9, 2002, she was screened out for the position due to the change in the educational requirement. The Appellant was currently performing both positions. The Appellant was currently attending college to obtain her Bachelor of Arts (BA) degree, and at the same time was performing the duties of Bingo Director. According to the Oneida Personnel Policies and Procedures III (C), the Tribe encourages transfers and promotions to create an environment to improve the employee's skills and abilities.<sup>3</sup> The decision to layoff the Appellant goes against the Tribe's mission to improve the employee's skills and abilities. Since the Appellant was attending college in a Business Management Bachelor's degree program, she should have not been eliminated from the possible candidates or the reassignment should have been offered and diligently completed.

According to the Layoff Policy (Oneida Business Committee Approved 9-23-98-D), D-3,

*"Routine layoffs: All employees are subject to layoff according to departmental job needs and budgets. Routine layoffs are subject to management discretion, provided a departmental layoff SOP is approved by the Oneida Human Resources Manager."*

A Standard Operating Procedure (SOP) must be approved by the Human Resources Manager. The SOP for the Bingo department included with the Appellant's brief contains three signatures.

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<sup>3</sup> Transfers and Promotions Policy: The Oneida Tribe encourages transfers and promotions within and among units in order to make the best possible use of human resources to meet Tribal goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

The first signature is for the approval of the Gaming division, which was approved by Eric McLester, Gaming Manager. The second signature is for the Bingo department and is not signed. The third signature is for the author and is signed by Roy Skenandore, Supervisor. The last signature is for the Human Resources Manager, according to the Layoff Policy, and not the HRD Training and Development Director. According to the Layoff Policy the Human Resources Manager's signature is required. Therefore the SOP is in non-compliance.

The Appellant was told her position would be eliminated and combined into one position as Bingo Director in December 2001. Then the Bingo department developed their SOP for layoffs in January 2002. The elimination of a position and combining two positions are many times warranted due to budgetary reasons and in this case is justifiable. The issue in this case centers around changing the qualifications needed for the Director's position. According to the memo to Melinda Danforth, HRD from Roy Skenandore, AGM-Profits (12/20/01);

*"Sue Paremski will assume all duties of Director with no Assistant Director while the position is posted."*

The Appellant was assuming both positions. Essentially, the Appellant was screened out due to educational requirements which she was currently fulfilling. According to the e-mail dated 12/19/01 from Melinda Danforth, HRD, to Eric McLester,

*"You can post the re-revised Bingo Director position or process a title reassignment of the Assistant Bingo Director"*

The option to reassign the Appellant was available early in the process.

Retaliatory actions are the most difficult to prove and without concrete evidence the Oneida Personnel Commission could not justify her allegations. While it may seem very likely that due to the circumstances involved: the Appellant was given a salary increase while performing the two (2) job functions but being screened out while; currently attending college to obtain a Bachelor's degree in management and; her approval for reassignment was too late, draws suspicion as to the Area Manager's actions, no evidence was included. In addition, the Appellant's witnesses, Mr. Skenandore and Ms. Cornelius supported that her allegations of retaliatory and hostile work environment by the Area Manager could be construed as such, no tangible evidence was provided. According to the record, the Appellant was not under the Employee Protection Policy and did not provide to the Oneida Personnel Commission or the Appeals Commission clear and convincing evidence that the Area Manager acted in a retaliatory manner. Therefore, the Oneida Personnel Commission properly dismissed her claim of retaliation.

While the time lines seem to be a harmless error, the court sees otherwise. Neither Area Managers nor employees are above the Tribe's governing laws. The Area Manager did not respond to the Appellant's May 3, 2002 appeal until May 16, 2002. Therefore, the Area Manager violated the Personnel Policies and Procedures §V.D.6.b.2.

The Oneida Personnel Commission failed to issue findings and fact as to the time line issue or whether the SOP for the Bingo department was in compliance or not. The Oneida Personnel Commission's decision is erroneous and against the weight of the evidence by not addressing the

entire case as presented.

**(3) Does the Oneida Personnel Commission's decision exhibit a procedural irregularity which would be considered a harmful error that may have contributed to the final decision which, if the error had not occurred, would have altered the final decision.** Oneida Appeals Commission remanded this to the Oneida Personnel Commission on November 25, 2002. The Oneida Personnel Commission accepted the case as an adverse employment decision. Within the guidelines of the Personnel Policies and Procedures, the Area Manager has three (3) days to respond. The Area Manager did not accept the Appellant's appeal as a grievance notice, therefore his response was given on May 16, 2003 in a memo to the Appellant. If the Area Manager felt the Oneida Business Committee was the appropriate body to hear this appeal then he should have instructed the Appellant as to the procedures for an appeal within the given time lines.

Procedurally, once the merits of the time lines are evaluated by the Oneida Personnel Commission a decision is warranted then the other issues of the case are evaluated. This court rules the Oneida Personnel Commission's decision exhibited a procedural irregularity, by not addressing the issue of time lines in accordance with the Personnel Policies and Procedures §V.D.6.b.2 and by not addressing whether the Bingo department's SOP was in compliance or not. The Appellant raised both issues in her initial request for a hearing.

### **III Decision**

The Oneida Personnel Commission's decision is reversed. Appellant's requests are granted: her hire date shall be adjusted to reflect the date of original hire. In addition, the Appellant is to be awarded with back pay from that of her former position to her current position, from the date of her layoff until the date of this decision. The Respondent has thirty-days from the date of this decision to reimburse the Appellant.