
Appellate Court

Arlyce A. Paulson,

Appellant

Docket No. 03-AC-028

vs.

Oneida Housing Authority Board of Commissioners,
Respondent

Date: June 23, 2004

Final Decision

This case has come before the Oneida Appeals Commission. Judicial Officers Winnifred L. Thomas, Linda Cornelius, Janice L. McLester, Stanley R. Webster, and Leland Wigg-Ninham, presiding.

I. Background

This case is an appeal dealing with an employment dispute between Arlyce A. Paulson, who was the Executive Director for the Oneida Housing Authority, and the Oneida Housing Authority Board of Commissioners.

Appellant, Arlyce A. Paulson, was employed as the Executive Director for the Oneida Housing Authority. Respondent alleges Appellant was terminated for cause by the Oneida Housing Authority Board of Commissioners on November 3, 2003. Appellant argues she had been terminated without due process. In this case Appellant alleges she had not received a hearing before the Board of Commissioners of the Oneida Housing Authority. Appellant alleges she received no notification to appear before the Board until she arrived at work on November 3, 2003. Appellant was given the notice of a special meeting from the Oneida Housing Authority Board of Commissioners Vice Chairman Mark A. Stanchik. The subject of the notice was "Disciplinary Action of Executive Director"⁴⁸

II. Issues

1. Was Appellant terminated for cause?
2. Was Appellant terminated pursuant to the Personnel Policies and Procedures of the Oneida Housing Authority?

III. Analysis

1. Was appellant terminated for cause?

Pursuant to Oneida Housing Authority Personnel Policies and Procedures Section VIII C.1.⁴⁹ and VIII.C.2.⁵⁰ an employee may be dismissed for cause. There is no stated notice requirement when an

⁴⁸ Respondent's Brief - Exhibit M

⁴⁹ An employee of the OHA may be dismissed from employment for cause, or for other reasons such as lack of funds.

⁵⁰ An employee dismissed for cause is not required to be provided with a two (2) week notice separation.

employee is dismissed for cause. The Oneida Housing Authority Personnel Policies and Procedures do not provide for, nor do they require progressive discipline to be used when dealing with the person holding the position of the Executive Director. Nevertheless Appellant was made aware in a disciplinary notice that further violations could result in suspension. three upheld disciplines may result in termination⁵¹.

In the Job Description for the position of Executive Director it states: “

The Executive Director is responsible to and will take direction solely from the Oneida Housing Authority Board of Commissioners (OHABC), the policy-making entity of Oneida Housing Authority.”

Respondents have successfully provided this court with proof that Appellant has been disciplined or made aware of misconduct at least four times since May 2003 for failing to take direction from the Oneida Housing Authority Board of Commissioners. According to the Oneida Housing Authority Personnel Policies and Procedures Section VIII. H.c.i.:

“The Board may dismiss the Executive Director for cause at a specially called Board meeting, or a regularly scheduled Board meeting; written notice for the meeting must be hand delivered or mailed to Executive Director stating cause for dismissal and effective date.”

Termination for cause was clearly documented by Respondents through their brief and submitted exhibits. Sufficient disciplinary notices and actions were given to Appellant over a period of several months. Those disciplinary notices and actions accumulated and provided sufficient basis justifying the Appellant’s termination. The accumulations of said disciplinary notices and actions are the cause for termination in this case.

2. Was Appellant terminated pursuant to the Personnel Policies and Procedures of the Oneida Housing Authority?

Referring to the aforementioned policy:

“The Board may dismiss the Executive Director for cause at a specially called Board meeting, or a regularly scheduled Board meeting; written notice for the meeting must be hand delivered or mailed to Executive Director stating cause for dismissal and effective date.”⁵²

Appellant did receive notice of a specially called Board meeting the morning of the meeting. There is no time line outlined in the Oneida Housing Authority Personnel Policies and Procedures as to how far in advance notice must be given, it simply states that written notice must be hand

⁵¹ Respondent’s Brief - Exhibit G - “Further violation of OHA policies and procedures may result in suspension without pay... Three upheld disciplines may result in termination.”

⁵² Oneida Housing Authority Personnel Policies and Procedures: Section VIII. H.c.i.

delivered or mailed to the Executive Director. The notice must state the cause for dismissal and the notice did state that disciplinary action of the Executive Director was the agenda for the meeting. In the Oneida Housing Authority Personnel Policies and Procedures Section VIII discusses disciplinary actions and a type of disciplinary action is termination⁵³. Therefore the cause for dismissal was stated. Respondents have already established that Appellant was being terminated for cause.

Appellant argued that due process was not afforded to her. Due process is a proceeding carried out in accordance with established rules. Due process was afforded to Appellant pursuant to the Oneida Housing Authorities Personnel Policies and Procedures. Appellant was properly terminated pursuant to the Oneida Housing Authority Personnel Policies and Procedures and Appellant had utilized the opportunity to appeal the decision of the Oneida Housing Authority Board of Commissioners to the Oneida Appeals Commission.

The position of Executive Director for the Oneida Housing Authority is not afforded certain protective provisions, in the Oneida Housing Authority Personnel Policies and Procedures, that are afforded to the rest of the Oneida Housing Authority personnel. The grievance section of the Oneida Housing Authority Personnel Policies and Procedures has all the grievances brought to the Executive Director and if the employee is not satisfied with the Executive Director's decision then that decision can be appealed to the Oneida Housing Authority Board of Commissioners. There is no separate grievance procedure or policy in place for the Executive Director. This is troublesome because there is no set process in place for the Executive Director to file a grievance or appeal a grievance. While the discrepancies in the personnel policies ought to be reexamined, this gap in the law does not currently preclude Respondent's actions and the facts presented conform with the explicit requirements of the existing law.

This Appellate body had to examine whether it was proper for this case to be heard at the appellate level. Normally when a case is accepted by an appellate court, that means a case is being appealed from some other original hearing body. If it is determined that there was no hearing at the original hearing body level then this Appellate Court can remand the case back to the appropriate original hearing body or create an original hearing body at the Trial Court level in this judiciary system. It was determined by this Appellate Court that the case filed here was proper. The Oneida Housing Authority is semi-autonomous in its power to control what happens in its offices. With that said, the Oneida Housing Authority has developed its own Personnel Policies and Procedures to govern employee conduct.

The way the current Personnel Policies and Procedures for the Oneida Housing Authority is written and how this court interprets those policies, an employee can be terminated for cause⁵⁴ and the Executive Director can be terminated for cause at a specially called board meeting with written notice⁵⁵. The events that transpired at this special board meeting could be deemed a very informal

⁵³ Oneida Housing Authority Personnel Policies and Procedures Section VIII.H.c.i.

⁵⁴ Oneida Housing Authority Personnel Policies and Procedures: Section VIII. C.1.

⁵⁵ Oneida Housing Authority Personnel Policies and Procedures: Section VIII. H.c.i.

hearing. Respondent presented the cause for the termination and Appellant had a chance to ask any questions she had. At this point Appellant could have spoken up and defended herself. The minutes from that special board meeting reflect that Appellant did not do that⁵⁶.

Even though this court has determined that a hearing of some sort was held we strongly encourage the Oneida Housing Authority to set into place a formalized hearing system, pursuant to the Oneida Code of Law, Chapter 1, Section 1.10-1⁵⁷, for its employees, including the office of the Executive Director. If the Oneida Housing Authority Board of Commissioners feels it cannot administer an impartial hearing when the office of the Executive Director is involved then the Board of Commissioners is encouraged to utilize the Oneida Appeals Commission Trial Court to administer a hearing in which the Board of Commissioners for the Housing Authority can present evidence against the office of the Executive Director in an impartial venue.

IV. Decision

The decision of the Oneida Housing Authority Board of Commissioners is upheld. Appellant was terminated for cause and Appellant was terminated pursuant to the Personnel Policies and Procedures of the Oneida Housing Authority.

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Respondent's Brief - Exhibit N

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This law is the Contested Cases section of the Administrative Procedure Act