

**ONEIDA JUDICIARY**  
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**TRIAL COURT**

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**Keith Doxtator,**  
**Petitioner,**

**v.**

**CASE NO: 24-TC-012**  
**DATE: September 27, 2024**

**Oneida Nation,**  
**Larry Barton, Treasurer,**  
**Respondent.**

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**FINAL ORDER**

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This case came before the Oneida Trial Court, Honorable Layatalati Hill presiding.

**BACKGROUND**

The Petitioner filed a complaint with the Oneida Judiciary Trial Court on July 16, 2024. A pre-trial hearing was scheduled for August 28, 2024, at 9:00 a.m. On July 31, 2024, Attorney Peggy Van Gheem filed a Notice of Representation on behalf of Respondent and requested a new hearing date. On August 6, 2024, the Court granted the motion for a new hearing date and rescheduled the pre-trial hearing to September 4, 2024, at 1:30 p.m. On August 14, 2024, Respondent filed a Motion to Dismiss. On August 28, 2024, Petitioner filed a Response to Motion to Dismiss. At the pre-trial hearing held on September 4, 2024, the Court issued a scheduling order and heard arguments on Respondent's Motion to Dismiss. The written scheduling order was issued on September 20, 2024. This order addresses Respondent's Motion to Dismiss.

**ISSUES**

1. Did Petitioner's exercise of his contractual right to terminate his Employment Agreement create a basis for a civil claim?
2. Does the Oneida Personnel Policies and Procedures (OPPP) grievance processes apply to employment contract disputes?

3. Is Petitioner's civil claim barred by sovereign immunity?
4. Is Petitioner's requested relief regarding the Oneida Nation's organizational structure and legislative amendments barred by the doctrine of separation of powers?

## ANALYSIS

*Did Petitioner's exercise of his contractual right to terminate his Employment Agreement create a basis for a civil claim?*

The Respondent claims Petitioner's Employment Agreement permitted termination by either party after a 90-day notice period. The Court found that Petitioner used this method of contract termination. Petitioner admits that he served his 90-day termination notice on December 22, 2023 and his Employment Agreement terminated on March 21, 2024. The Respondent also claims, the Employment Agreement does not permit either party to rescind or appeal the termination notice. The Court agrees. The Petitioner's Employment Agreement does not state a termination notice may be rescinded or appealed. Additionally, Petitioner states in his response that, "My resignation is not the basis for my claim." Instead, Petitioner makes other claims of harassment and of being denied due process. These claims will be addressed below. Therefore, the Court finds Petitioner's exercise of his contractual right to terminate his Employment Agreement did not create a basis for a civil claim.

*Does the Oneida Personnel Policies and Procedures (OPPP) grievance processes apply to employment contract disputes?*

The Respondent claims it is well-settled law that the OPPP does not apply to disputes regarding employment contracts. In support of this claim, Respondent cites *Vir v. Oneida Comprehensive Health Division*, 22-EMP-007, (July 15, 2022) and *Powless v. Oneida Development Division*, 99-EP-0036, 5 O.N.R. 3-160, (December 21, 1999). In *Vir*, the Court said, "Oneida Case law is clear that employment contract disputes cannot be grieved through the OPPP employee grievance procedure." Additionally, in *Powless*, the Court stated, "The Oneida Personnel Policies and Procedures do not specifically apply to contractual disputes." In this case, Petitioner claims he is not disputing his contract, nor anything about his contract. Instead, Petitioner is disputing the way he was treated during his contract and the lack of due process available to him while he was employed.

A process that was available to Petitioner while he was employed were those in the OPPP. Petitioner's Employment Agreement with the Oneida Nation specified in Article I that Petitioner agreed to perform his duties in conformity with all of the Nation's policies and procedures, laws, codes and ordinances... and that the Nation's employment laws, policies and procedures are, from time-to-time, subject to change and amendment and Petitioner agreed to comply and be bound by such changes or amendments. (Employment Agreement, Article I, section 2 and 3). Additionally, in Article II, Section 3, it states, "The Employee shall be subject to all provisions of the Nation's Personnel Policies and Procedures except those that are not consistent with this Agreement." And finally, in Article XIII, Section 2, the Employment Agreement provides, "Except with regard to any adverse employment actions and appeals thereof, in the event any controversy or claim arising out of or relating to this Agreement cannot be resolved between the parties, the parties hereby agree to participate in mediation in an attempt to resolve the matter." Based on these sections of the Employment Agreement, the Court finds Petitioner had the right to utilize the OPPP processes for any adverse employment actions while employed. The OPPP provides a systematic process for hearing and evaluating job related disputes. (OPPP, section V.D.). The grievance procedures serve to protect employees from inconsistent and unfair treatment. *Id.* Additionally, should an employee have a disagreement with another employee, he or she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor. (OPPP, Section V.D.1.a.). If the employee lodging the complaint is dissatisfied with the attempted resolution, he or she may ask the Area Manager to attempt a resolution. (OPPP, Section V.D.1.c.). There is no further appeal of the complaint process. (OPPP, Section V.D.1.d.). As a result, a complaint lodged, whether informal or formal, under section V.D.1., normally cannot be filed with or appealed to the Court. Petitioner, however, did not have an Area Manager level position in which to lodge a complaint against his Immediate Supervisor. Instead, Petitioner attempted to address his concerns by talking with the HRD Director, submitting a formal complaint to HRD, making a disclosure under the Whistleblower Protection Law and sharing his complaints with all members of the Oneida Business Committee (OBC). These attempts, however, according to Petitioner, did not provide him with due process because in each of his attempts with the various areas above, he was told there was nothing that can be done because Respondent, Treasurer Larry Barton, did not have a supervisor. The Court agrees with Petitioner that Respondent Barton does not have a supervisor for purposes of utilizing the OPPP

processes. For the reasons discussed below, an employee that does not have an Area Manager level position in which to lodge complaints, such as those that report directly to the OBC or a member of the OBC, may file their complaint directly with the Court. Petitioner, however, failed to file such complaint with the Court while he was employed.

The OPPP also has a process for disciplinary actions. Disciplinary actions are initiated by an immediate supervisor for the purpose of correcting unacceptable work performance. (OPPP, Section V.D.2.a.). Here, however, Petitioner, while employed, was not issued a disciplinary action by his immediate supervisor. As a result, the disciplinary action section of the OPPP is not applicable to this case.

Employees, however, may also grieve an adverse employment action through the OPPP grievance procedure. According to a Human Resource Department Interpretation (hereinafter, HRD Interpretation), dated September 8, 2015, and signed by then HR Area Manager, Geraldine R. Danforth, “an adverse employment action includes any action that affects an employee’s wage and/or status, given the employee can provide facts to support an allegation of deviation from a required process or policy that would prove the process was not followed or was inappropriately applied.” Additionally, “If the employee cannot provide facts to the Area Manager level showing an approved policy or procedure was not followed or was inappropriate, the action shall be upheld by the Area Manager and no further grievance shall be accepted.” *Id.* The HRD Interpretation further provides, “Procedural Due Process establishes basic fairness. In the simplest of terms, due process is the right to notice, right (*not guarantee*) to representation, right to be heard and the right to a timely and reasoned decision. Therefore, an employee’s due process rights are met when an employee receives an action, they believe to be adverse, and they file an appeal to the Area Manager.” Here, however, Petitioner did not have an Area Manager in which to file an appeal. Petitioner did, however, have the right to file with the Court when there is not an Area Manager level position in which to appeal. In BC Resolution 3-13-19-C, the 5<sup>th</sup> “NOW THEREFORE BE IT FURTHER RESOLVED,” it states:

**NOW THEREFORE BE IT FURTHER RESOLVED**, in recognition of the time necessary to appoint members to the Oneida Personnel Commission and allow members to obtain the necessary required training, the Judiciary – Trial Court shall continue to

hear employee grievance matters until the Oneida Personnel Commission is prepared to begin exercising hearing authority.

This resolution provides that the Oneida Judiciary Trial Court will continue to hear employee grievance matters until the Oneida Personnel Commission (OPC) is ready to hear cases. To date, the Court has not received notice the OPC is prepared to begin exercising hearing authority. As a result, this Court is still the appropriate forum for hearing employee grievances. Additionally, in *Elizabeth Somers v. Oneida Business Committee et al.*, 17-TC-040, (August 9, 2017), the Court found that an employee who reports directly to the Oneida Business Committee, meaning the employee does not have an Area Manager in their chain of command, may go straight to the OPC with an employment grievance. As noted above, the Trial Court is currently hearing employee grievances, that include complaints filed by an employee that does not have an Area Manager level position<sup>1</sup> in their chain of command allowing an appeal of a disciplinary action from an immediate supervisor straight to the Trial Court. As stated above, in this case, Petitioner was not issued a disciplinary action while employed. The OPPP processes are available for current employees and those terminated, up until the time to appeal has passed. Here, at the time of Petitioner's filing with the Court, Petitioner was no longer an employee and the time to appeal, 10 business days, passed. As a result, while Petitioner could have utilized the processes available in the OPPP while he was an employee or before the time to appeal expired, he did not do so. As a result, the OPPP is not applicable here.

Although, Petitioner did not receive a disciplinary action, his claims of workplace harassment and abusive behavior by his former supervisor, Respondent Barton, may be considered adverse employment actions. Petitioner, however, must follow the complaint process in the OPPP for such adverse employment actions. As described above, the time to file such complaints are while a person is still employed by the Nation or are still within the timeframe to appeal. This was not done. As a result, the OPPP is not applicable to this case.

*Is Petitioner's civil claim barred by sovereign immunity?*

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<sup>1</sup> Area Manager is defined as the supervisor of the supervisor, or a person properly designated as Area Manager.

The purpose of the Oneida Nation's Sovereign Immunity Law is to protect and preserve the sovereign immunity of the Oneida Nation, 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 Respondent asserts that Petitioner's claims are barred by the Nation's Sovereign Immunity Law because the Sovereign Immunity Law bars an employment claim outside the employee grievance procedures established in the OPPP and there has not been a waiver of sovereign immunity. To support this claim, Respondent cites, *Lois Strong v. Todd Vanden Heuvel, Executive Human Resource Director*, 21-AC-006, (November 19, 2021), and *Oneida Personnel Commission v. Oneida Human Resources Department (OPC v OHRD)*, 16-TC-081, (May 16, 2017). In *Strong*, the Court held, "Civil claims brought by former Oneida employees are barred by sovereign immunity." The Court agrees, employment claims brought outside of the OPPP procedures are barred by sovereign immunity and for the reasons stated above, the OPPP is not applicable in this case. Additionally, in *OPC v OHRD*, the Court found there was no waiver of sovereign immunity. Thus, sovereign immunity applied, and the case was dismissed. The sovereign immunity of the Tribe or a Tribal Entity may be waived by 1. resolution of the General Tribal Council, 2. resolution or motion of the Oneida Business Committee or 3. resolution of a Tribal Entity exercising authority expressly delegated to the Tribal Entity in its charter or by resolution of the General Tribal Council or the Oneida Business Committee, provided that such waiver shall be made in strict conformity with the provisions of the charter or the resolution governing the delegation, and shall be limited to the assets and property of the Tribal Entity. (Sovereign Immunity Law, Section 112.6-2). Here, Petitioner failed to show there was a waiver of sovereign immunity in any one of the three ways in which sovereign immunity can be waived. As a result, the Court finds, sovereign immunity was not waived by the Oneida Nation nor any Tribal Entity.

The Sovereign Immunity Law also provides, "No suit or other proceeding, including any Tribal proceeding, may be instituted or maintained against officers, employees or agents of the Nation for actions within the scope of their authority, unless the Nation has specifically waived sovereign immunity for purposes of such suit or proceeding." (1 O.C. 112.4-1). As discussed above, there has not been a waiver of sovereign immunity in this case. Therefore, the Court will next address whether Respondent was acting within the scope of his authority during Petitioner's employment. The Respondent claims he was acting within the scope of his authority as Oneida

Nation Treasurer. Petitioner claims that because Respondent violated the Nation's polices, Respondent was not acting within the scope of his authority. The Petitioner claims he experienced workplace harassment and abusive behavior from Respondent which violates Respondent's adherence to 1. the Nation's core values, 2. Code of Ethics, and 3. the OPPP. The Court will address each claim separately, below.

#### *The Nation's Core Values*

The Petitioner claims Respondent violated the following of the Nation's core values:

*Kahletsyalu'sla – The heart felt encouragement of the best in each of us*

*Kanolukhwa'sla – Compassion, caring, identity and joy of being*

*Ka?nikuhli:yo – The openness of the good spirit and mind*

*Kalihwi'yo – The use of the good words about ourselves, our Nation and our future*

Core values are fundamental principles that guide actions and decisions. Petitioner, however, failed to identify a law or policy of the Nation that makes a violation of the Nation's core values an actionable offense. As a result, the Court cannot address the allegations made by Petitioner as they relate to the Nation's core values.

#### *Code of Ethics*

The Nation's Code of Ethics, Section 103.6-1(a), states, "Government officials may be subject to removal, if elected, or termination, if appointed, for a violation of any portion of this ethics code as it applies to them." Here, Respondent is an elected government official that would be subject to removal for violations of the Code of Ethics. Removal of an elected official, however, must abide by the Nation's Removal Law. Section 104.5-1 of the Removal Law states, "Any eligible voter may file a petition with the Tribal Secretary seeking the removal of an elected official. As a result, the alleged Code of Ethics violations must be addressed using the removal process in accordance with the Removal Law. This was not done by Petitioner. As a result, the Court cannot address the allegations made by Petitioner as they relate to the Code of Ethics.

#### *The OPPP*

The Petitioner claims he was not afforded the right to use the processes identified within the OPPP. For the reasons already discussed above, the OPPP is not applicable to this case. As a result, the Court cannot address allegations made by Petitioner as they relate to the OPPP.

Because the Court found there was not a waiver of sovereign immunity, there is no actionable offense for violating the Nation's core values, the removal process was not utilized as a bases for the alleged Code of Ethics violations, and that the OPPP is not applicable to this case, the Court must dismiss this case based upon sovereign immunity. As a result, any remaining issues are moot.

*Is Petitioner's requested relief regarding the Nation's organizational structure and legislative amendments barred by the doctrine of separation of powers?*

The Respondent claims Petitioner's requested relief regarding the Nation's organizational structure and legislative amendments are barred by the doctrine of separation of powers. However, as discussed above, based on sovereign immunity applying in this case, this issue is moot.

#### **FINDINGS OF FACT**

1. The Court has subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. The Petitioner filed with the Trial Court on July 16, 2024.
4. On July 31, 2024, Attorney Peggy Van Gheem filed a Notice of Representation on behalf of Respondent and requested a new hearing date.
5. On August 6, 2024, the Court granted the motion for a new hearing date and rescheduled the pre-trial hearing to September 4, 2024, at 1:30 p.m.
6. On August 14, 2024, Respondent filed a Motion to Dismiss.
7. On August 28, 2024, Petitioner filed a Response to Motion to Dismiss.
8. At the pre-trial hearing held on September 4, 2024, the Court issued a scheduling order and heard arguments on Respondent's Motion to Dismiss. The written scheduling order was issued on September 20, 2024.
9. Petitioner was a contracted employee for the Nation.
10. Petitioner is the former Chief Financial Officer (CFO) for the Oneida Nation.
  - a. Petitioner signed his five-year Employment Agreement on June 16, 2023.
  - b. Petitioner provided his 90-day notice of intent to terminate his contract on December 22, 2023.



- c. Based upon Petitioner’s notice to terminate his contract, Petitioner’s employment contract was terminated 90 days after his notice, or on March 21, 2024.
  - d. The Employment Agreement does not permit either party to rescind or appeal the termination notice.
  - e. Petitioner’s exercise of his contractual right to terminate his Employment Agreement did not create a basis for a civil claim.
11. Respondent, Larry Barton, Oneida Nation Business Committee Treasurer, was Petitioner’s immediate supervisor.
  12. The OPPP processes were available to Petitioner while employed with the Nation.
  13. An employee that does not have an Area Manager level position in which to lodge complaints, such as those that report directly to the OBC or a member of the OBC, may file their complaint directly with the Court.
  14. Petitioner did not file a complaint with the Court while he was employed by the Nation.
  15. Petitioner did not file a complaint with the Court within the timeframe of the OPPP to appeal.
  16. Petitioner failed to identify a law or policy of the Nation that makes a violation of the Nation’s core values an actionable offense.
  17. Code of Ethics violations must be addressed using the removal process in accordance with the Removal Law.
  18. Employment claims brought outside of the OPPP procedures are barred by sovereign immunity.
  19. Neither the Oneida Nation nor any Tribal Entity waived sovereign immunity.
  20. Sovereign immunity applies to Respondent. As a result, any remaining issues are moot.

## **PRINCIPLES OF LAW**

### **Title 1. *Government and Finances* – Chapter 112 *Sovereign Immunity***

#### **112.5. Sovereign Immunity of Tribal Entity**

112.5-1. The sovereign immunity of the Tribal Entities, including sovereign immunity from suit in any state, federal or Tribal court, is hereby expressly reaffirmed. No suit or other proceeding, including any Tribal proceeding, may be instituted or maintained against a Tribal Entity unless the Tribe or the Tribal Entity has specifically waived sovereign immunity for purposes of such suit or

proceeding. No suit or other proceeding, including any Tribal proceeding, may be instituted or maintained against officers, employees or agents of a Tribal Entity for actions within the scope of their authority, unless the Tribe or the Tribal Entity has specifically waived sovereign immunity for purposes of such suit or proceeding.

### **112.6 Waiver of Sovereign Immunity**

112.6-1. All waivers of sovereign immunity shall be made in accordance with this law.

112.6-2. *Waiver by Resolution.* The sovereign immunity of the Tribe or a Tribal Entity may be waived:

- a) by resolution of the General Tribal Council;
- b) by resolution or motion of the Oneida Business Committee; or
- c) by resolution of a Tribal Entity exercising authority expressly delegated to the Tribal Entity in its charter or by resolution of the General Tribal Council or the Oneida Business Committee, provided that such waiver shall be made in strict conformity with the provisions of the charter or the resolution governing the delegation, and shall be limited to the assets and property of the Tribal Entity.

## ***Title 1. Government and Finances - Chapter 103 Code of Ethics***

### **103.6. Enforcement.**

103.6-1. This code shall be enforced according to the following:

- (a) Government officials may be subject to either removal, if elected, or termination, if appointed, for a violation of any portion of this ethics code as it applies to them.
- (b) Programs and Enterprises shall be removed according to the procedures set out in the Oneida Personnel Procedures and Policies Manual. Provided that, suspension while investigation or termination is an appropriate action, and one offense is sufficient for termination. Provided further, that any suspension shall be without pay.

***Title 1. Government and Finances - Chapter 104 Removal Law***

**104.5. Petition**

104.5-1. Any eligible voter may file a petition with the Tribal Secretary seeking the removal of an elected official. No petition shall request the removal of more than one (1) elected official. The petition shall state with particularity the facts upon which it is based and the specific grounds for removal, in not more than two hundred (200) words, and must be signed by fifty (50) or more eligible voters or a number equal to at least thirty (30) percent of the vote cast in the previous general election, whichever is greater. A petition may not be amended after it is filed with the Tribal Secretary.

***Oneida Nation Personnel Policies and Procedures Manual***

**Section V.D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES**

Disciplinary procedures provide a systematic process for handling problem employees. Disciplinary procedures serve to correct unacceptable behavior and to protect the Nation. Personnel Policies and Procedures Grievance procedures provide a systematic process for hearing and evaluating job related disputes. Grievance procedures serve to protect employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances. (HR Interpretation, 2-4-13) (HR Interpretation, 1-29-14)

**1. Complaints**

- a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.
- b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
- c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.
- d. There is no further appeal of this process.

***Section V.D.6. Grievance***

An employee who receives a disciplinary action which he/she believes is unfair may grieve the action. The Grievance process (including appeals of disciplinary action) shall be conducted with utmost consideration for due process (within the time limits set forth herein) but will allow and account for recognized Tribal holidays and unforeseen circumstances (such as illnesses, deaths in the immediate family of principals, etc.). The HRD office will make every attempt to ensure that grievance procedures are concluded within forty-five (45) working days; however, extensions granted for reasonable unforeseen circumstances (as determined by the HRD Manager) may extend the process. The Grievance process will be governed by the following guidelines:

- a. For all disciplinary actions, regardless of severity:
  - 1) The employee (petitioner) must file an appeal in writing.
    - a) The employee may seek the assistance of a spokesperson or advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.
    - b) The appeal must be filed with the Area Manager and the HRD Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action.

*Section V.D.6. b. Filing a Complaint*

- 1) An employee may appeal the Area Manager's decision to the Oneida Personnel Commission by filing a complaint with the Human Resources Department on behalf of the Oneida Personnel Commission.
  - a) The employee shall file the appeal within ten (10) working days from the employee's receipt of the Area Manager's decision.

**ORDER**

Respondent's Motion to Dismiss based upon sovereign immunity is **GRANTED with prejudice.**

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council this order was signed on September 27, 2024.



Layatalati Hill, Chief Trial Court Judge