

**Oneida Personnel Commission**  
**Social Services Bldg. – Third Floor**  
Telephone: 920-869-4437

**Oneida Personnel Commission**  
**Grievance Hearing Decision**

**Date:** February 28, 2014

**Docket #:** 13-TER-001 and  
13-ADV-002

**Mailed Certified to:**

Dale Wheelock  
2904 Commissioner Street  
Oneida, WI 54155

**In the Matter of:**

**Employee:** Dale Wheelock  
Petitioner

vs.

Edward Delgado, Chairman - OBC, et al  
c/o Patricia Stevens Garvey, Attorney  
Oneida Law Office

**Supervisor:** Edward Delgado  
Respondent

---

On August 24, 2012, the Petitioner, Dale Wheelock, filed an appeal with the Oneida Personnel Commission (OPC) regarding an adverse employment action which occurred on August 3, 2012.

The OPC rendered an Initial Review Decision on September 6, 2012, denying the Petitioner a hearing based on untimely filing regarding his appeal of an Investigative Leave.

This case was remanded by the Oneida Tribal Judicial System, Docket 12-AC-020, decision dated February 6, 2013. The findings in that decision required the OPC to commence a hearing on the merits of the case. Commissioners presiding on that case were Richard Moss, Clifford Danforth, and Susan G. Daniels. In the matter of Docket 13-ADV-002, one hearing was held with the presiding panel on January 15, 2013. A second hearing was scheduled before this panel on March 26, 2013. As a result of a Motion for Postponement submitted by the Respondent, Edward Delgado, that hearing did not occur. During the interim of the postponement, the cases were consolidated.

In his appeal to the OPC, the Petitioner alleged the following:

1. That his insurance was terminated a day before he received the Investigative Leave notice.
2. By being placed on an Investigative leave, there was a violation of the Oneida Personnel Policies and Procedures and his Civil Rights to due process.
3. That he continues to be harassed by Edward Delgado and Geraldine Danforth by making him use his personal and vacation days for the chaos they have created for him.
4. That he suffered pain and suffering from Edward Delgado, Oneida Tribal Chairman, and

Geraldine Danforth, HRD Manager for violations of his Civil Rights and punishing him financially, physically and mental stress without due process of law.

Additionally, the Petitioner filed an appeal with the Oneida Personnel Commission on January 2, 2013, regarding his termination with the Oneida Tribe of Indians of Wisconsin. The OPC, in their Initial Review Decision dated January 15, 2013, granted the Petitioner a hearing in this matter. On February 6, 2013, Commissioners Sandy Dennett, Carol L. Smith and Susan G. Daniels presided over the hearing regarding the Petitioner's termination.

In the termination case, the Petitioner alleged the following:

1. That he was not informed he had a new supervisor until December 18, 2012.
2. That he was not afforded the process outlined in the Oneida Personnel Policies and Procedures regarding a required meeting between himself and supervisor when issuing a disciplinary notice.
3. That there is a bigger issue of the Oneida Business Committee involvement in day-to-day activities.
4. That the issue of supervision during restructuring is clearly outlined as the Chairman of the Oneida Business Committee, and in his absence, the Vice-Chairman.

Two separate panels were appointed to hear each of these cases independent of each other. On April 8, 2013, the Oneida Personnel Commission considered a Motion to Reconsider Consolidation of Docket 13-ADV-002 and Docket 13-TER-001 submitted by the Respondent. The motion was GRANTED. A new panel was convened, with Commissioners Richard Moss, Sandy Dennett and Susan G. Daniels presiding. Once the cases were consolidated, hearings were held on May 17, 2013; July 2, 2013; July 19, 2013; September 6, 2013; October 18, 2013; November 26, 2013; November 27, 2013; December 6, 2013; December 13, 2013; January 13, 2014; and January 24, 2014.

**In the Matter of Docket #13-ADV-002**  
**Petitioner Dale Wheelock**  
**Respondent Edward Delgado**  
**Indispensable Party Geraldine Danforth**

**Synopsis**

The Petitioner maintains the position there were several procedural irregularities that occurred when placed on Investigative Leave. The Petitioner is challenging the process used when placing him on leave beginning August 3, 2012.

The Respondent maintains the Petitioner is requesting relief and back pay for work he did not perform during the period August 7 through August 11, 2012.

**Background**

The Petitioner, Dale Wheelock, was the Housing Executive Director and Housing Division Director for the Oneida Housing Authority (OHA). On August 3, 2012, Edward Delgado, Oneida Business Committee (OBC) Chairman, and Geraldine Danforth, Human Resources Department (HRD) Manager, placed the Petitioner on Investigative leave. (13-ADV-002, Exhibit A, page 21). The Investigative Leave form was signed by Edward Delgado, Geraldine Danforth and Dale Wheelock. An attachment to the Investigative Leave form was a memo, indicating the leave was issued as a result of the Respondent, Edward Delgado, authorizing, "the investigation of the American Recovery and Reinvestment Act (ARRA) funding. On Thursday, August 2, 2012, I received a preliminary report from the Internal Security Department. The report indicated there is a strong possibility that ARRA funding was misappropriated and equipment misused..."

The Investigative Leave memo indicated a return date "pending the outcome of my internal investigation. The anticipated length of my internal investigation should be no longer than thirty (30) days." The memo was authored by the Respondent, Edward Delgado.

In a letter dated August 6, 2012, from the HRD to the Petitioner, Dale Wheelock, Mr. Wheelock was informed he was "ineligible for insurance benefits, as of August 3, 2012." (13-ADV-002, Exhibit A, page 9).

On August 6, 2012, the Petitioner entered the Norbert Hill Center to get clarification on the Investigative Leave memo, specifically language which stated, "#2. You will not report to work and must stay away from all Tribal Buildings without prior supervisory written approval."

On that same day, August 6, 2012, the Petitioner was approached by the Respondent, Edward Delgado's Senior Policy Analyst, Linda Dallas, asking to speak with him. The Petitioner entered Ms. Dallas' office and was given an amended Investigative Leave memo. Said memo included an Alternative Work Assignment at the Oneida Division of Land Management with a report date effective immediately. It also eliminated the language regarding restrictions from all tribal buildings. (13-ADV-002, Exhibit A, page 26). The Petitioner refused to sign the amended Investigative Leave form because only the signature of Edward Delgado was on the form and absent the signature of the HRD Area Manager, Geraldine Danforth. (13-ADV-002, Exhibit B, page 6).

On August 9, 2012, the Respondent, Edward Delgado, authored a letter to the Petitioner, Dale Wheelock, again reiterating the stipulations of the amended Investigative Leave memo along with consequences for failure to comply on the part of the Petitioner. (13-ADV-002, Exhibit A, page 27-28).

The Petitioner received and signed for this letter on August 10, 2012, in the presence of the Oneida Tribe's Business Committee Vice-Chairman, Greg Matson. (13-ADV-002, Exhibit A, page 29).

Evidence submitted by HRD was the August 9, 2012, letter signed by Mr. Delgado (13-ADV-002, Exhibit A, pages 27-28); and an Inter-Office Certified Mail receipt indicating delivery to the Petitioner, Dale Wheelock, at the Oneida Housing Authority; an email from Linda Dallas to Geraldine Danforth indicating the Petitioner was given an Alternative Work Assignment, "The notice was signed, approved and dated by both Chairman Edward Delgado and yourself. Dale Wheelock refused to sign the notice." There was also an email from Geraldine Danforth to Linda Dallas, dated August 17, 2012, regarding Investigative Leave/Alternate Work site pay. The email was regarding Mr. Wheelock's pay for the week ending August 11, 2012, which states, "He was offered an alternate work site and did not report to the work site. Recommend zero hours of pay and allow Investigative Leave in place for one week."

The Petitioner reported to work at the Division of Land Management. Subsequently, the Petitioner was placed on a second Investigative Leave/Leave of Absence.

### **Issues and Findings of Fact**

A Grievance Hearing was scheduled before the Oneida Personnel Commission on March 26, 2013. Commissioners presiding included Susan G. Daniels, Richard Moss and Clifford Danforth.

### **Changes, Revisions and Requests**

On March 8, 2013, the Respondent, Edward Delgado, filed a Request for Postponement via his Attorney Patricia Stevens Garvey. The Respondent indicated he would be out of town on March 26, 2013. The Respondent included other dates of unavailability which were March 12, 13, 14, and 15-29; April 2, 4, 9, 10, 15, 18(P.M.), 23, 24. The attorney also indicated she was unavailable on April 3, 9, 16, 17 and 22. (13-ADV-002, Exhibit D, page 12).

On March 15, 2013, the Respondent filed a Motion to File Investigative Report Under Seal. The report in question was dated August 2, 2012. The Motion provided reasoning for the request to include an opportunity for the Petitioner to view the report at the Oneida Personnel Commission office with no copies made available. The Preliminary Investigative Report contains names of current employees of the Housing Department and is the subject of an ongoing investigation. The redacted Report was filed separate from the motion. (13-ADV-002, Exhibit C, page 19).

On March 15, 2013, the Petitioner responded to the Respondent's request for postponement with no objections. The Petitioner stipulated that, "this will be the last postponement in this case." In addition, the Petitioner, by way of this motion, requested consideration for scheduling of a new hearing after April 10, 2013, pending the outcome of a Brown County Court hearing on April 9, 2013, and April 22, 2013, for an Oneida Tribal Court hearing. (13-TER-002, Exhibit B, page 1).

On March 18, 2013, the Petitioner filed a Response to Respondent's Motion to file Investigative Report Under Seal. The Petitioner objected to the Respondent's Motion because the Respondent had the opportunity to blank out any names in the report prior to submittal of any evidence for the hearing. The Petitioner indicated he had the right to information related to his defense under the Oneida Tribal Constitution of due process of law. The Petitioner argued viewing the document at the Oneida Personnel Commission offices restricted his opportunity to review the document during weekends and evenings. The Petitioner also made reference to the sealed Internal Audit and Investigative Report for Docket 13-TER-001 under the same

conditions. (13-ADV-002, Exhibit B, page 2).

On March 21, 2013, the Oneida Personnel Commission rendered its Motion Decision to GRANT the Respondent's Motion Request for Postponement. A new grievance hearing date was scheduled for April 29, 2013, with a reserve date of April 30, 2013, in the event the hearing required additional time. The Oneida Personnel Commission, in its decision of March 21, 2013, GRANTED the Respondent's request to seal the report with the condition, "The Petitioner will be able to review the report in the offices of the Oneida Personnel Commission. No copies will be provided to the Petitioner, nor is the Petitioner to remove the report from the Oneida Personnel Commission offices. The Petitioner will need to schedule appointments with the Oneida Personnel Commission administrative staff in order to have access to the report." (13-ADV-002, Exhibit D, page 9).

On March 21, 2013, the Petitioner submitted his witness list along with relevancy of testimony in the case. (13-ADV-002, Exhibit B, page 4). The Oneida Personnel Commission, in its May 22, 2013 Pre-Trial Decision, DENIED witnesses Jay Fuss and Shane John.

Although these cases were combined, the Adverse Employment action was addressed first, with hearing dates of May 17, 2013 for a Pre-Trial Hearing; followed by grievance hearings on July 2, 2013; and July 19, 2013. Based on evidence and testimony, following are the Issues and Finding of Fact.

#### **Issues and Finding of Fact**

The Respondent, Edward Delgado, testified that prior to the Petitioner being placed on Investigative Leave, he was approached by an OHA employee, Whitney Wheelock, who filed a complaint regarding activities at his worksite. Mr. Delgado testified the employee was fearful of losing his job for divulging information. Mr. Delgado further testified he had received the OPC's decision in the matter of Whitney Wheelock's EPP case. As a result of the findings in this decision, Mr. Delgado decided to authorize a further investigation.

As a result of the more in-depth investigation authorized by Mr. Delgado, it was Mr. Delgado's decision to place the Petitioner, Dale Wheelock, on Investigative Leave. Further testimony given by the Respondent, Mr. Delgado, was as follows: When asked if the investigation was a result of the conversation with Mr. Whitney Wheelock, Mr. Delgado testified that it was not. He stated Whitney had come to his office a couple of times because he felt his job was in jeopardy. He may have been laid off and was trying to get his job back. He (Mr. W.

Wheelock) was at the OPC level trying to get EPP. The OPC ordered a limited scope audit review/investigation based on Whitney's allegations. Mr. Delgado further stated Whitney got his EPP, and based on that limited scope review, by reading it, felt he had a responsibility to get more information because it looked like a possibility of federal funds being misused.

When asked if he received the EPP and audit findings in the OPC decision regarding Whitney Wheelock, Mr. Delgado testified he either got it from internal audit, the OPC or Whitney. When asked if Whitney had spoken to him before receiving the final decision from the OPC, Mr. Delgado testified he thought he (Whitney) was trying to get EPP. Mr. Delgado didn't recall speaking to Whitney after he got EPP, and, if he got it, Mr. Delgado thought he got it based on the limited audit that OPC ordered. And finally, Mr. Delgado testified Whitney Wheelock had come to his office twice regarding his concerns and once he got his protection, he no longer came to his office. Mr. Delgado stated that was his recollection.

During testimony, it was asked of the Respondent, Edward Delgado, if he pursued any further action with tribal employee, Whitney Wheelock, as a result of the decision submitted, and Mr. Delgado testified he did not.

The decision was sent to Mr. Delgado, as supervisor to Mr. Dale Wheelock, specifically, "The Oneida Personnel Commission refers to the Office of Edward Delgado, Chairman of the Oneida Business Committee, to assign to the direct supervisor of Dale Wheelock, Director of Oneida Housing Authority, those items identified through the Internal Audit Findings that require corrective action; specifically Items #4 and #5 as described above". (13-TER-001, Exhibit B-2, page 5).

The Investigative Leave form and memo that was issued to the Petitioner, Dale Wheelock, at his office on August 3, 2012, resulted in securing his office and all documents. The Respondent, Edward Delgado, testified Internal Security Officer, James Martin, Mr. Delgado's Senior Policy Analyst, Linda Dallas, and he personally delivered the Investigative Leave memo to Dale Wheelock at his place of employment. In addition, the same Investigative Leave memo was served to Jay Fuss, who was not in his office at the time, and finally, to Shane John's office on County H.

The Respondent, Edward Delgado, testified after serving Shane John with the Investigative Leave memo, Mr. Delgado determined the conditions of the leaves were too harsh. Mr. Delgado testified he authored an amended Investigative Leave memo, dated August 6, 2012,

assigning Mr. Dale Wheelock to an Alternative Work site at the Division of Land Management. The memo also eliminated the language regarding restriction of access to all tribal buildings.

The Petitioner, Dale Wheelock, testified he had gone to the Norbert Hill Center on August 6, 2012, first to speak with the Tribal Secretary, Patti Hoeft, on the legality of banning him from all tribal buildings, and then to speak with his brother who works on the same floor. During that time, the Petitioner testified he was approached by the Respondent's Senior Policy Analyst, Linda Dallas, and was asked to come to her office. When he did so, the Petitioner testified the Respondent tried to talk to him; however, the Petitioner asked him to stay away from him. The Petitioner testified the stress of being placed on Investigative Leave, and then being in a small office with three people made him uncomfortable. Once the Respondent left, the Petitioner testified Linda Dallas gave him the amended Investigative Leave memo with new conditions. The Petitioner stated there was only one signature on the memo, that of the Respondent's. For that reason, the Petitioner testified he did not feel it was legitimate due to the lack of all necessary signatures on the form. In addition, the Petitioner took a copy; however, he did not sign it. (13-ADV-002, Exhibit B, page 6).

Evidence submitted by HRD (13-ADV-002, Exhibit A, page 26), shows an Investigative Leave memo dated August 6, 2013, with signatures of Edward Delgado and Geraldine Danforth. In the space for Mr. Wheelock's signature it states, "(Dale Wheelock Refused to Sign) 08/06/12 LSDallas. Please see 'Attachment A' and Electronic Mail." However, additional evidence submitted by HRD (13-ADV-002, Exhibit C-1, page 26), also includes a copy of the August 6, 2012 Investigative Leave memo signed only by the Tribal Chairman.

Evidence submitted by the Petitioner (13-ADV-002, Exhibit B, page 6) shows a copy of the August 6, 2012, Investigative Leave memo with only the Respondent's signature. The Petitioner testified this was the copy given to him by Linda Dallas. The Petitioner further testified he had not seen the Investigative Leave memo submitted into evidence by HRD which included Edward Delgado and Geraldine Danforth's signatures until he received documentation for this hearing.

While there is no specific language contained within the Investigative Leave Policy regarding required signatures, the original Investigative Leave memo issued to the Petitioner on August 3, 2012, had a place for the signatures of the Tribal Chairman, HRD Manager and the Petitioner. The amended Investigative Leave memo had the same signature titles; however, the

only signature was that of the Tribal Chairman.

Evidence submitted by HRD (13-ADV-002, Exhibit A, page 27) shows a copy of a letter authored by the Respondent, Edward Delgado, dated August 9, 2012, wherein the Respondent stated the original Investigative Leave of August 3, 2012, was rescinded on August 6, 2012, and an Alternative Work Assignment was named. The letter also reiterated conditions of the Investigative Leave as stated in the August 3, 2012, memo, along with specific information regarding the Petitioner's conversation with the Senior Policy Analyst. The letter also gave the date of August 13, 2012, to report to the Oneida Division of Land Management. Attached to this document is an Interoffice Certified Mail receipt signed by Dale Wheelock on August 10, 2012.

The Petitioner testified he received a call from the Vice-Chairman, Greg Matson, to come to his office to sign for an Interoffice Certified letter addressed to the Petitioner which was sent by the Tribal Chairman's office. The Petitioner further testified he signed for the letter in the office of the Vice-Chairman's office on August 10, 2012 at 4:15pm.

The Petitioner testified he wanted to be paid for the week of August 5-11, 2012, because of the lateness of receiving the Respondent's letter dated August 9. When asked how the Respondent thought the Petitioner would receive the amended Investigative Leave with the Alternative Work Assignment dated August 6, 2012, the Respondent testified, "Not sure how they were going to notify him."

In this adverse employment action, the Petitioner stated he was denied insurance benefits. The denial became effective before he was placed on Investigative Leave and was never reinstated until the end of August. Evidence submitted by the Petitioner (13-ADV-002, Exhibit A, page 13) includes documentation from the employee's insurance company, (UMR), indicating the date of termination of coverage for the Petitioner and his wife was August 2, 2012, one day prior to the Petitioner being placed on Investigative Leave. When questioned as to why the Petitioner's insurance benefits were terminated the day before he was placed on Investigative Leave and why they were not reinstated when he began work at the Division of Land Management, Geraldine Danforth, (HRD), testified this was not her area of expertise and suggested that it may have something to do with the insurance company, entering information into their computers, and possibly that changing information in the middle of the work week would cause problems.

To this, the Petitioner testified his insurance was reinstated at the end of August although

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

he began his Alternative Work Assignment at the Division of Land Management on August 13, 2012.

In his original appeal to the Oneida Personnel Commission, the Petitioner requested relief in the form of salary, all benefits, vacation and personal time accruals for the week of August 5-11, 2012. In addition, the Petitioner requested punitive damages in the amount \$25,000 “for pain and suffering from Edward Delgado, Oneida Tribal Chairman and Geraldine Danforth, HRD Manager for violations of my Civil Rights and punishing me financially, physically and mental [sic] stress without due process.”

During testimony, the Petitioner stated he was seeking relief in the form of salary, all benefits, vacation and personal time accruals for the week of August 5 – 11, 2012. No further mention was made of punitive damages in the amount of \$25,000.

In a Motion to Dismiss for Lack of Subject-Matter Jurisdiction, submitted by the Respondent on June 27, 2013, (13-ADV-002, Exhibit C-2, page 2, #'s 9 – 13), “The Respondents, through their attorney, proposed a settlement offer to the Petitioner, via telephone, offering his full wages for the week ending August 11, 2012. The Petitioner refused the offer.” “On June 25, 2013, the Respondents, through their attorney, confirmed the offer and refusal via certified mail to the Petitioner. Attachment 1.” The Respondent’s attorney argued the Genesis Healthcare Corp. et al. v. Symczyk case wherein “Genesis offered Symczk a full settlement of her claim which she ignored. The District court found no individual had joined her suit and that the offer fully satisfied her claim and concluded that the respondent’s suit was moot and dismissed it for lack of subject-matter jurisdiction.”

The Petitioner testified he refused the offer because it did not include benefits, vacation or personal time.

The Oneida Personnel Commission found the merits of the Genesis case and that of the Wheelock case were not on point. The Petitioner, Dale Wheelock, was not offered a full settlement, and unlike the Genesis case, this is not a class action suit.

#### **Rule of Law**

According to the Oneida Tribe’s Personnel Policies and Procedures, Investigative Leave Policy (OBC Approved 4-07-99-A)

Scope: Investigative leave does not apply to investigations regarding appeals of *disciplinary actions or to complaint investigations.*

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

## **Conclusion**

The Oneida Personnel Commission holds Employee Protection cases in the highest of confidence. Because evidence and testimony was presented in this case regarding an EPP, the Commission will address its concerns. The original Investigative Leave memo, dated August 3, 2012, authored by the Respondent, Edward Delgado, states, "A complaint has been brought to my attention based on the serious nature of this complaint, effective immediately, you are placed on investigative leave pending the outcome of my internal investigation..." The amended Investigative Leave also included the term, "complaint." The first procedural irregularity that occurred was placing the Petitioner on Investigative Leave as a result of a complaint.

In the matter of Whitney Wheelock, a settlement was reached during a retaliation hearing before the Oneida Personnel Commission. A copy of that decision was sent to the Oneida Business Committee Chairman, bringing to his attention not only the results of the preliminary internal audit ordered by the Oneida Personnel Commission, but also recommending further action to be taken by the Chairman regarding Whitney Wheelock's involvement in misappropriation of funds and personal benefits he received as a result.

The Oneida Personnel Commission, in forwarding its decision to the Tribal Chairman, Edward Delgado, recognized him as supervisor to Dale Wheelock. While separate from this case, the Oneida Personnel Commission urges the Tribal Chairman to determine if Whitney Wheelock benefited in any way, thus creating the possibility of a conflict of interest. Please note this matter was settled before the Oneida Personnel Commission. Pursuit of any additional compensation beyond that settlement on the part of Whitney Wheelock would result in such a conflict.

The Oneida Personnel Commission finds there were several procedural irregularities that presented themselves during the Investigative Leave of the Petitioner. The principal error was that of authorizing an investigation based on a complaint by a tribal employee. Subsequent actions created more complications, including restrictions from all tribal buildings, and amending the original Investigative Leave to include an Alternative Work Assignment with no specific means of contacting the Petitioner in terms of him reporting to work. In addition, the Petitioner's insurance was terminated one day prior to being placed on Investigative Leave and not reinstated until the end of August, although the Petitioner reported to the Alternative Work Assignment on August 13, 2012. It is the finding of the Oneida Personnel Commission to

OVERTURN the adverse employment action issued to the Petitioner, Dale Wheelock, and ORDERS the Petitioner receive back pay and all entitled benefits related to the week of August 5-11, 2012.

It was determined through evidence and testimony, the Petitioner's insurance was retroactively reinstated at the end of August. As a result, the Petitioner was made whole in terms of insurance coverage. If there are/were pending bills as a result of referrals from the Oneida Community Health Center, and these bills were not paid timely, the Oneida Personnel Commission finds this process does not set the Petitioner apart from other tribal members who experience backlogs in payments to providers. While it is an inconvenience, Mr. Wheelock's situation in this matter is the norm, rather than the exception.

This decision is based on the settlement offer presented by the Respondents which was void of benefits, vacation and personal time. Confusion created by issuing the first Investigative Leave on August 3, 2012, including no access to all tribal buildings, and the amended Investigative Leave of August 6, 2012, offering an Alternative Work Assignment and deleted language regarding access to all tribal buildings. The Petitioner did not receive the amended Investigative Leave until August 10, 2012; therefore, it would have been unlikely the Petitioner would have been able to report to the Alternative Work Assignment "immediately" as proscribed in the amended Investigative Leave. Once the Petitioner received the amended Investigative Report with an Alternative Work Assignment, he reported to work at the Division of Land Management on August 13, 2012.

It is also the recommendation of the Oneida Personnel Commission that the Respondent, Edward Delgado, follow up on actions involving the informant, Whitney Wheelock: to the extent to which he may have been involved in benefits derived from unapproved grant expenditures. And also to investigate, if indeed, Mr. Whitney Wheelock benefitted in any way beyond the settlement agreement included in the EPP case and ultimate dismissal of the case based on that settlement.

**In the Matter of Docket 13-TER-001**

**Petitioner Dale Wheelock**

**Respondents Edward Delgado, Geraldine Danforth and Cristina Danforth**

**Synopsis**

The Petitioner maintains his known supervisor was Edward Delgado, and in his absence it was Greg Matson. The Petitioner maintains he was never informed Cristina Danforth became his supervisor. By way of an email, the HRD Manager instructed the Petitioner that any and all correspondence must go through the Petitioner's Attorney of Record.

The Respondent, Cristina Danforth, maintains the Petitioner, had he attended the meeting scheduled between them, would have become aware at that time supervision had been passed on to the Respondent, Cristina Danforth. In addition, the Respondent maintains had the Petitioner kept his appointment with her, this would have been the opportunity to discuss the concerns brought forth through the Internal Audit and Investigative findings. The Respondent maintains the Petitioner's failure to meet with her left her no other alternative than to issue a termination.

**Background**

The Petitioner, Dale Wheelock, was the Oneida Housing Authority Executive Director for the Oneida Tribe. The Petitioner was issued a termination on December 17, 2012, for the following infractions as stated in the Oneida Tribe's Personnel Policies and Procedures:

Section V.D.2.1 Work Performance. Subsection G; Section V.D.2.1.III. Use of Property. Subsection E; and V.D.2.1. Work Performance. Subsection E

The Petitioner appealed his termination to the Oneida Personnel Commission on January 2, 2013, as indicated by the date stamp. The Petitioner's supervisor is the Oneida Business Committee Chairperson, Edward Delgado. According to meeting minutes of the Oneida Business Committee, the Committee took action to delegate supervisory responsibility to the Oneida Business Committee Treasurer, Cristina Danforth, to conclude an investigation and any action necessary regarding the Petitioner. The Petitioner received his Termination Notice by certified mail on December 18, 2012. Without evidence to the contrary, the appeal was considered timely.

The Petitioner alleged that the supervisor's decision was against the weight of the evidence and believed the following procedural irregularities were made:

1. That he was not informed he had a new supervisor until December 18, 2012, via certified

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

mail.

2. That the supervisor did not discuss the action with him. That the Oneida Tribe's Personnel Policies and Procedures state:
  - a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of correcting unacceptable work performance. The supervisor will always discuss the action with the employee being disciplined to ensure the employee:
    1. Understands the reason for the disciplinary action;
    2. Understands the expected work performance in light of the disciplinary action;
    3. Understands the consequences of continued unacceptable behavior.
3. That the procedure to do a proper discipline was not adhered to.
4. That the GTC in a 1998 motion restricted the Oneida Business Committee from involvement in the day-to-day activities of the Tribe. This was not adhered to.
5. That the Petitioner questions the irregularity of not following the established chain-of-command as stated in the September 30, 2011, memorandum regarding termination of employment.

By way of a decision dated January 15, 2013, the Oneida Personnel Commission GRANTED the Petitioner's request for a grievance hearing. (13-TER-001, Exhibit D, page 9). The OBC Resolution 03-28-12-C, Division Directors and the Grievance Process states, "That the Division Directors shall continue to be identified as the final point in any grievance appeal process and any further appeals shall go directly to the Personnel Commission as if all grievance appeals have been conducted." Further, this Commission is accepting the Petitioner's appeal "De novo".

On January 29, 2013, the Respondents filed an Entry of Appearance. (13-TER-001, Exhibit C, page 1).

Also on January 29, 2013, the Respondent submitted their Witness Endorsement. (13-TER-001, Exhibit C, page 2).

On January 29, 2013, the Respondent filed a Motion to File Investigative Report Under Seal. (13-TER-001, Exhibit C, page 3).

A Grievance Hearing date was scheduled for February 6, 2013. The Petitioner, Dale Wheelock, appeared and represented himself. The Respondent, Cristina Danforth, appeared and was represented by her attorney, Patricia Stevens Garvey. Also in attendance was Attorney Jim

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

Bittorf from the Oneida law Office. Attorney Bittorf was present in the event he needed to assume the position of lead attorney in the absence of Attorney Garvey. OPC Commissioners presiding were Richard Moss, Clifford Danforth and Susan G. Daniels.

### **Changes, Revisions and Requests**

The Petitioner requested admission of additional information identified as Exhibit B-2, which included:

#1. Memorandum dated November 13, 2013; Subject: Dale Wheelock, Petition for GTC meeting to be held for violations of Code of Ethics and Civil Rights violations by Edward Delgado and Geraldine Danforth. The Respondent objected to submission of this evidence based on untimely filing, that it was not new evidence and also that there was no relevancy to the case. The Oneida Personnel Commission GRANTED admission of this document as evidence.

#2. Irregularities of Termination. The Petitioner justified entering this evidence as an elaboration of the material identified in Exhibit A, page 001, with finer detail and in chronological order. The Respondent objected to submission of this evidence based on untimely filing and suggested it appeared to be an amendment of his appeal. The Oneida Personnel Commission DENIED admission of this document as evidence based on it being a duplication of information already contained in this case.

#3. Disciplinary procedure - Irregularity of action taken by Oneida Business Committee. The Petitioner justified entering this evidence as an elaboration of material identified in Exhibit A, page 001, #4. The Respondent objected to submission of this evidence based on untimely filing and suggested it appeared to be an amendment of his appeal. The Oneida Personnel Commission DENIED submission of this document as evidence based on it being a duplication of information already contained in this case.

#4. Petitioner's Motion of Objection to Respondent's Motion to File Investigative Report Under Seal. The Petitioner justified entering this motion referring to a KaliWisaks article which invited tribal members to view the audit findings if they so chose (KaliWisaks, October 4, 2012, pg. 6A). The Respondent objected to the motion based on the audit referred to in the KaliWisaks was different than the audit referred to in the motion. The Oneida Personnel Commission DENIED the motion and provided instructions on access to the investigative report by the Petitioner.

#5. Petitioner's Motion to File a Continuance of Hearing. (13-TER-001, Exhibit B-2,

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

page 8). The Petitioner requested a continuance in the event the investigative report referred to in #4 was made available. The Petitioner requested time to review the report. The Respondent objected to the motion based on untimely filing. The Oneida Personnel Commission GRANTED a postponement of the hearing with the following stipulations:

- A. The Respondent would be responsible for numbering the pages in the report.
- B. The Respondent would be responsible for redacting the names and titles of witnesses named in the report.
- C. The Petitioner would be able to review the report in the offices of the Oneida Personnel Commission. No copies would be provided to the Petitioner, nor was the Petitioner to remove the report from the Oneida Personnel Commission offices. The Petitioner would need to schedule appointments with the Oneida Personnel Commission administrative staff in order to access the report.

#6. Special General Tribal Council Meeting Minutes, February 1982, page 2, Resolution No. 2-15-83. The Petitioner justified entering this evidence as support for information referred to in his appeal to the Oneida Personnel Commission, namely Exhibit A, page 15. The Respondent had no objection to the submission of this evidence. The Oneida Personnel Commission GRANTED admission of this document as evidence. (13-TER-001, Exhibit B-2 in its entirety).

The Respondent objected to submission of new information by the Petitioner, citing an OPC ruling and untimely filing. The Respondent objected to the Petitioner's submission of the petition for a GTC meeting, arguing this was not new evidence and it had no relevancy to this case. The Respondent indicated #2 and #3 were untimely filed, and it indicated an amendment of the PETITIONER'S original appeal. The Respondent objected to the Petitioner's motion for continuance, arguing the Petitioner did not comply with required timelines. The Respondent had no objection to the #6 listed above.

The Respondent filed a Motion to File Investigative Report Under Seal on January 29, 2013. (13-TER-001, Exhibit C, page 3). "The audit and investigative report were relied on by Ms. Danforth in her decision to terminate the Petitioner." The Respondent requested the Petitioner be allowed to review the documents in the Oneida Personnel Commission offices. No copies to be made available to the Petitioner. The Petitioner agreed to the conditions set forth. The Oneida Personnel Commission GRANTED the motion with the stipulations outlined in #5

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

above.

The Oneida Personnel Commission, in granting the Petitioner's Motion for Continuance, scheduled two dates to hear this case. February 22, 2013, was reserved for a continued hearing. February 25, 2013, was the second date scheduled in the event more time was needed to continue the hearing. (OPC Motion Decision dated February 6, 2013, 13-TER-001, Exhibit D-1, page 61-64).

On February 19, 2013, the Petitioner filed a Motion to Waive the 45-Day Grievance Timeline to Obtain Witness and Documents. (13-TER-001, Exhibit B, page 1). The Oneida Personnel Commission GRANTED this motion.

On February 19, 2013, the Petitioner also filed a Motion Request for Subpoena of Oneida Tribal Documents and Witnesses. (13-TER-001, Exhibit B, page 3). The Oneida Personnel Commission DENIED this motion.

On February 19, 2013, the Petitioner filed a Motion for Contempt Consideration, Copy of Sealed Internal Audit and Investigative Report, Subpoena of Oneida Tribe's OHA Internal Audit-Confidential Redacted 8/2/12. (13-TER-001, Exhibit B, page 5).

On February 21, 2013, the Respondent filed an Answer to Petitioner's Request for Continuance with no objections (13-TER-001, Exhibit C-1, page 1). As part of this motion, the Respondent requested Docket 13-ADV-002, Dale Wheelock vs. Edward Delgado be joined. The Respondent's reasoning was that both cases involved Mr. Wheelock's investigative leave. A note indicating the grievance hearing for Docket 13-ADV-002 was scheduled for March 26, 2013. (13-TER-001, Exhibit C-1, page 1). The Oneida Personnel Commission DENIED this motion.

On February 27, 2013, the Respondent filed an Answer to Petitioner's Motion for Contempt Consideration; Copy of Sealed Internal Audit and Investigative Report; and Subpoena of Oneida Tribes [sic] OHA Internal Audit - Confidential Redacted 8/2/12. (13-TER-001, Exhibit C-2, page 1).

On March 12, 2013, the Petitioner filed a Motion Request for Additional Subpoena Documents and Witnesses for the Hearing (13-TER-001, Exhibit B-1, Section 1, page 1). The Petitioner indicated as a result of reviewing the Internal Audit of March 23, 2012, and the Investigative Report, a number of issues had come to light involving the Oneida Business Committee actions in day-to-day operations through the Community Development Planning

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

Committee and internal audit reviews. The Petitioner requested the following documents subpoenaed from the Audit Committee Chairman, Brandon Stevens, because of the unusual number of internal audits conducted on the Oneida Housing Authority since August 15, 2011, through January 31, 2013.

**Documents Requested from the Audit Committee included:**

1. A copy of the Audit Committee policy spelling out the process to create and obtain an internal audit.
2. A copy of the Audit Committee Forms used for requesting each of the internal audits completed involving the Oneida Housing Authority from August 15, 2011, through January 31, 2013.
3. A compiled summary report of all audits taken by Internal Audit from August 15, 2011, through January 31, 13 [sic]. The summary report will indicting [sic] audit title and department division, audit start and completion dates. These documents should be readily accessible from the GTC annual reports in 2011, 2012 and 2013 data.

The Petitioner also requested several witnesses “because of their direct involvement in the termination of Dale Wheelock on December 18, 2012.” The Petitioner claims “their testimony will show a pattern of harassment, intimidation and bullying [sic] of Dale Wheelock, Housing Executive Director since August 15, 2011, by select members of the Oneida Business Committee.” The Petitioner further stated he “had filed complaints to his supervisor, Edward Delgado since January 2012, and nothing was resolved except the escalation of harassment including the filing of a Petition for a Temporary Restraining Order by Edward Delgado in Brown County Court in September 2012, and the Oneida Business Committee waiving sovereign immunity for Case No. 12CV1865.” The subpoenas were requested for:

Edward Delgado, Chairman  
Greg Matson, Vice-Chairman  
Christina [sic] Danforth, Treasurer  
Patricia Hoeft, Secretary  
Paul Ninham, Council Member  
David Jordan, Council Member  
Melinda Danforth, Council Member  
Brandon Stevens, Council Member

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

Vince DelaRosa, Council Member  
(13-TER-001, Exhibit B-1, Section 1, page 2).

On March 12, 2013, the Oneida Personnel Commission rendered its decision GRANTING the Motion to Waive the 45-Day Grievance Timelines - Request for Continuance of hearing to Obtain Witnesses and Documents. (13-TER-001, Exhibit D-1, page 13).

On March 13, 2013, the Oneida Personnel Commission issued a subpoena to Donna Christensen for the OHA Internal Audit-Confidential Redacted dated March 23, 2012 - Operation Audit Report, Oneida Housing Authority, OREEP program, ARRA Grant Fiscal years 2012-2012, report date March 23, 2012. (Docket 13-TER-001, Exhibit D-1, page 32).

On March 19, 2013, the Respondent filed an Answer to Petitioner's Request for Additional Subpoena of Oneida Tribal Documents and Witnesses. The Respondent argued these documents were not relevant to the termination of the Petitioner. In response to the Petitioner's request to subpoena the entire Oneida Business Committee, the Respondent argued the Petitioner did not follow the guidelines provided in the Personnel Commission's Hearing Notice, specifically:

If your witnesses will not come forward, you can make a Motion to Subpoena. In order to do this you must provide the following documentation: 1) proof that he/she will not come forward voluntarily; 2) witness relevance - documentation that states what they will testify to and why their testimony is necessary for presentation of your case. A copy must be supplied to the opposing party and a receipt must be obtained. (13-TER-001, Exhibit C-3, Section 1, page 1).

On March 25, 2013, the Respondent filed a Motion to Reconsider Consolidation. The Respondent provided a chronological listing of events which involved both the investigative leave and termination. The Oneida Personnel Commission had originally denied this request in its decision dated March 12, 2013, due to a conflict of interest with one of the commissioners. The Respondent suggested the cases be consolidated based on the Oneida Rules of Civil Procedure, Rule 13, which allows consolidation "when there is a common issue of fact or law relating to actions or if such order will tend to avoid unnecessary cost or delay." The Respondent further suggested the conflicted Commissioner recuse him/herself from the case

and replace with another Commissioner. (13-TER-001, Exhibit C-3, Section 2, page 1).

On March 26, 2013, the Petitioner submitted a Response to the Motion to Reconsider Consolidation with objections. The Petitioner argued that Docket 13-ADV-002 and Docket 13-TER-001 involved actions that were months apart. The Petitioner also argued the reasons for consolidating, that of “avoiding unnecessary cost and delays, is without merit.” The Petitioner requested “the Oneida Personnel Commission consider the need to balance the Petitioners [sic] rights of due process of law verses the Respondents [sic] request to avoid unnecessary cost and delays.” The Petitioner finally argued consolidating the two cases would cause confusion of documents of the Internal Audit and Investigative reports. (13-TER-001, Exhibit B-1, Section 2, page 1).

On March 27, 2013, the Oneida Personnel Commission rendered its decision in response to the March 12, 2013, Petitioner’s Request for Additional Subpoena Documents and Witnesses. The OPC DENIED the Petitioner’s motion. (13-TER-001, Exhibit D-1, page 24).

Two separate panels were appointed to hear each of these cases independent of each other. On April 8, 2013, the Oneida Personnel Commission considered a Motion to Reconsider Consolidation of Docket 13-ADV-002 and Docket 13-TER-001 submitted by the Respondent. The Oneida Personnel Commission GRANTED the motion to consolidate. (Docket 13-TER-001, Exhibit D-1, page 16).

A new panel was convened, with Commissioners Richard Moss, Sandy Dennett and Susan G. Daniels presiding.

On April 10, 2013, the Petitioner submitted a Motion Request for Subpoena of Witnesses. The Petitioner indicated the witnesses requested “in disproving the alleged allegations presented in the sealed Internal Audit and Investigative Report that are the basis for the termination taken by the Oneida Business Committee and Christina [sic] Danforth.” The Petitioner stated these witnesses would need to be subpoenaed so as not to have to use their personal or vacation time to appear at the hearing. Witnesses included Edward Delgado, Jay Fuss, Shane John, Jennifer Anderson, Dana McLester, Yadi Jordan, Whitney Wheelock, Sara Skenandore, Lillian Wheelock, Scott Denny, and Erwin Danforth. The motion also included statements from several of these witnesses indicating their willingness to testify if subpoenaed. (13-TER-001, Exhibit B-1, Section 3, page 1).

On April 11, 2013, the Petitioner filed a Motion Request for Approval of new Evidence

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

Documentation Submittal to include:

NE-1	ARRA Stimulus Grant correspondence	Pages 1-2
NE-2	Phase 3 3 PO for Oneida Housing Authority	Page 3
NE-3	Rehabilitation Trainee Agreement	Page 4
NE-4	Tools	Page 5
NE-5	Tool Use Agreement	Page 6
NE-6	Labor Charges per OHA Address	Page 7-8
NE-7	Durashot 8MP Digital Camera	Page 9
NE-8	Statement regarding Samsung Digital Camera	Page 10
NE-9	09-CT-55-49100: Quarterly Status Report	Page 11-12
NE-10	Procedural Exception for ARRA Employees	Page 13
NE-11	OBC Form of October 4, 2012	Page 14
NE-12	Letter of Appreciation for ARRA work	Page 15-16

The Petitioner indicated he just became aware of this new documentation “from a former employee of OHA who had employee protection documents under an OPC protective order that has expired.” (13-TER-001, Exhibit B-1, Section 4, page 1).

Also, on April 11, 2013, the Petitioner filed a Motion request for Approval of new Evidence Documentation Submittal to include:

JD	Oneida Housing Authority Organization Chart	Page 1
JD	Rehabilitation Project Manager Job Description	Page 2-3
JD	Administrative Assistant II Job Description	Page 4-5
JD	Employee Performance Evaluation/OBC	Page 6-15
JD	Employee Performance Evaluation/Jennifer Hill-Kelly	Page 16-4

The Petitioner indicated he just became aware of this new documentation “from a former employee of OHA who had employee protection documents under an OPC protective order that has expired.” Also enclosed in the document were Employee Performance Evaluations for 2011 and 2012 for Dale Wheelock. (13-TER-001, Exhibit B-1, Section 5, page 1).

On April 16, 2013, the Petitioner filed a confirmation of receipt of the Oneida Personnel Commission’s decision dated April 8, 2013, for the Motion Decision to Consolidate cases, Dockets 13-ADV-002 and 13-TER-001 mailed certified on April 12, 2013. The notice provided dates of availability for the Petitioner being after May 15, 2013, due to a Brown County court

hearing regarding Edward Delgado's restraining order which will be held on May 7, 2013. The Petitioner indicated the results of that hearing could have a direct impact on case 13-TER-001 and its influence upon his supervisors, the Oneida Business Committee that was provided by Edward Delgado. (13-TER-001, Exhibit B-1, Section 6, page 1).

On April 18, 2013, the Respondent filed a Motion Objecting to Petitioner's Request to Subpoena Witnesses. This is in response to the Petitioner's filing of April 10, 2013. The Respondent objected to "witnesses 2-10 as the witnesses are not relevant to the case." (13-TER-001, Exhibit C-3, Section 4, page 1). The Oneida Personnel Commission GRANTED this objection.

On April 19, 2013, the Respondent filed an Answer to Petitioner's Motion Requesting Approval of New Evidence Documentation Submittal. This is in response to the Petitioner's filing of April 11, 2013. The Respondent argues the documents requested are not relevant to the Petitioner's termination. In addition, the Respondent argues "the Petitioner had an opportunity to refute the results of the Investigation by meeting with the Respondent prior to his termination. Petitioner failed to meet with the Respondent." (13-TER-001, Exhibit C-3, Section 3, page 1).

On May 17, 2013, a Pre-Trial hearing was held regarding the consolidated cases, Dockets 13-ADV-002 and 13-TER-001. The Petitioner, Dale Wheelock, appeared and represented himself. The Respondents, Edward Delgado, Geraldine Danforth and Cristina Danforth appeared and were represented by Attorney Patricia Stevens Garvey.

### **Changes, Revisions and Requests**

The Oneida Personnel Commission rendered its decision on several motions previously submitted by the Petitioner.

In Exhibit B-1, Section 6, the document submitted by the Petitioner regarding a hearing in Brown County Court and its outcome impacting this case was dismissed. No action was necessary.

In Exhibit B-1, Section 3, the Petitioner submitted a Motion Request Subpoena of Witnesses which was received by the Oneida Personnel Commission on April 10, 2013. In Exhibit C-3, Section 4, the Respondent submitted the Respondent's Motion Objecting to Petitioner's Request to Subpoena Witnesses, which was received by the Oneida Personnel Commission on April 18, 2013, objecting to witnesses identified as #'s 2-10 based on the witnesses being irrelevant to the case. The Oneida Personnel Commission DENIED the

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

Petitioner's Motion to Subpoena Witnesses based on relevancy to the case. Witnesses Jay Fuss and Shane John were requested by the Petitioner to appear in both cases. They were denied for Docket 13-TER-001; the same holds true for Docket 13-ADV-002.

In Exhibit B-1, Section 4, the Petitioner submitted a Motion Request for Approval of New Evidence Documentation Submittal. This was received by the Oneida Personnel Commission on April 11, 2013. In Exhibit C-3, Section 4, the Respondent submitted the Respondent's Answer to Petitioner's Motion Requesting Approval of New Evidence Documentation Submittal, which was received by the Oneida Personnel Commission on April 19, 2013, objecting to the additional documentation based on lack of relevancy to the case. In addition, the Respondent stated, "The Petitioner had an opportunity to refute the results of the Investigation by meeting with the Respondent prior to his termination. Petitioner failed to meet with the Respondent." The Oneida Personnel Commission reserved the right to render a decision at the hearing and ORDERED both parties to provide legal briefs that either justify or do not justify the admission of documents that were obtained via a separate Employee Protection case. The deadline date for submission of this information was set for June 5, 2013, no later than 4:30 P.M.

The Respondent requested Exhibit G, "Sealed Report Investigative Report" (13-TER-001), Exhibit G-1, "Sealed Report, Audit Report" (13-TER-001), and Exhibit G, "Sealed Investigative Report" (13-ADV-002), be made available to all parties during the hearing(s) for the purpose of referencing. In addition, the Respondent requested these documents be maintained under seal with the OPC at all other times. The Petitioner objected to not having access to the documents other than at the hearings. The Oneida Personnel Commission GRANTED the Respondent's request to have the documents available during the hearing(s). The Oneida Personnel Commission ruled and rendered its decision regarding the Petitioner's access to the Investigative Reports and Audit Findings on March 21, 2013 for Docket 13-ADV-002 and February 6, 2013 for Docket 13-TER-001.

The Oneida Personnel Commission also determined the deadline for submission of additional evidence would be May 17, 2013 at 4:30 p.m. Dates scheduled to begin the Grievance Hearing(s) were set at July 2, 2013, with an additional date of July 19, 2013, if necessary.

And finally, the Oneida Personnel Commission outlined its scope of authority and jurisdiction as that of personnel issues. The Oneida Personnel Commission emphasized the

importance of staying within the scope of this authority. (See Oneida Personnel Commission Pre-Trial Decision dated May 22, 2013, Stand Alone Document).

On June 5, 2013, the Respondents, by way of their attorney, Patricia Stevens Garvey, submitted a legal brief objecting to the submission of the above-named documents on the grounds the evidence was irrelevant to the case. There was no argument one way or the other in terms of access to evidence made available through an Employee Protection case. (13-TER-001, Exhibit C-4, page 1).

The Petitioner, Dale Wheelock, failed to comply with the order, and no legal brief was submitted by this party.

It was the decision of the Oneida Personnel Commission to DENY the Motion Request for Approval of new Evidence Documentation Submittal filed by the Petitioner identified as 13-TER-001, Exhibit B-1, Section 4, page 1.

In its decision, the Oneida Personnel Commission reminded all parties to begin the Grievance Hearing(s), that being July 2, 2013 and July 19, 2013.

On June 7, 2013, the Oneida Personnel Commission rendered its decision regarding the May 17, 2013, Pre-Trial hearing based on its ORDER for both parties to provide legal briefs that either justified or did not justify the admission of documents that were obtained via a separate Employee Protection case. The deadline date for submission was June 5, 2013. (See Oneida Personnel Commission decision dated June 7, 2013, Stand Alone Document).

On June 27, 2013, the Respondent filed a Motion to Dismiss for Lack of Subject-Matter Jurisdiction. (Docket 13-ADV-002, Exhibit C-2, page 1). It was noted for the record, this submission was erroneously identified as Exhibit C-5 in the matter of Docket 12-ADV-002. All parties accepted the document as Exhibit C-2, Docket 13-ADV-002.

On July 2, 2013, a Grievance Hearing was held on consolidated cases Docket 13-ADV-002 and Docket 13-TER-001. Dale Wheelock appeared and represented himself. Edward Delgado, Geraldine Danforth, and Cristina Danforth appeared and were represented by their attorney, Patricia Stevens Garvey.

#### **Changes, Revisions and Requests**

The Petitioner submitted a Motion of Objection to Dismiss for Lack of Subject-Matter Jurisdiction. The Oneida Personnel Commission GRANTED the motion. (Stand Alone Document).

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

The Petitioner submitted a request into the record for the Oneida Personnel Commission to fully reinstate him to the position of OHA Housing Executive Director effective immediately. He asked to be made whole for all salary lost from August 3, 2012, through his return to work date, including benefits, insurance, retirement contributions, unemployment payments, accrual of sick and vacation days and holiday pay and all vacation and sick pay used by the Petitioner and returned to his account.

The Petitioner outlined the process taken in his disciplinary action and further argued the Oneida Personnel Commission, acting in the capacity of the Area Manager, did not follow the procedures for discipline or appeal as outlined in the Oneida Tribe's Personnel Policies and Procedures.

The Respondent objected.

The Oneida Personnel Commission DENIED the Petitioner's request, by majority vote, to reinstate him as Executive Director of the Oneida Housing Authority. Because of the Oneida Business Committee's resolution sending Division Directors directly to the Oneida Personnel Commission as a final level of appeal, the Oneida Personnel Commission is not in the business of an Area Manager's function to investigate. The Petitioner has a misunderstanding of the function of the Oneida Personnel Commission. In that resolution it is stated the Oneida Personnel Commission will follow its usual process of hearings. Reference was made to OBC Emergency Resolution 3/28/12-C and the Human Resources Department interpretation of 2/4/13, which specifically states, "the Division Directors shall continue to be identified as the final point in any grievance appeal process and any further appeals shall go directly to the Personnel Commission as if all grievance appeals had been conducted." Additionally, "The Oneida Personnel Commission's timelines and process will apply."

The Oneida Personnel Commission GRANTED the Petitioner's motion objecting to the dismissal for lack of subject matter jurisdiction.

On July 19, 2013, a Grievance hearing was held in this case. The Petitioner, Dale Wheelock, appeared and represented himself. Respondents, Edward Delgado, Cristina Danforth and Geraldine Danforth appeared and were represented by their attorney, Patricia Stevens Garvey. There were no changes, revisions or requests by either party. A majority of the evidence presented was given at previous hearings with the exception of further details on testimony previously given.

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

When asked for clarification on the chain-of-command for the Petitioner, the Respondent, Edward Delgado, testified that Mr. Wheelock works for the OBC. Mr. Delgado is the immediate supervisor for Kronos, leaves, etc.

A Grievance hearing was held scheduled for September 6, 2013. The Petitioner, Dale Wheelock, appeared and represented himself. The Respondents, Cristina Danforth and Geraldine Danforth appeared and were represented by their attorney, Patricia Stevens Garvey. The Respondent, Edward Delgado, was not in attendance.

### **Changes, Revisions and Requests**

The Respondent requested a postponement due to the absence of Edward Delgado. The Petitioner objected to the postponement and asked the hearing not proceed in his absence. The Respondent indicated either she, Patricia Garvey, or Cristina Danforth could answer for Mr. Delgado. The Oneida Personnel Commission POSTPONED the hearing. The next hearing was scheduled for October 18, 2013.

On October 14, 2013, the Respondent, Edward Delgado, submitted a request for postponement based on, "Current conditions of the Oneida Tribe and the U.S. government have required the Business Committee to devote time to the emergency situation that exists with the U.S. government shut-down and its effect on grant funding to the Oneida Tribe."

On October 15, 2013, the Petitioner submitted an Objection to Ed Delgado's Request for Postponement. The Petitioner, in his objection, addressed the request for postponement as "nothing more than another delay tactic to drag out the hearing process by wearing the petitioner down financially and create mental distress to force the petitioner to give up the case or settle before the hearing process is completed." (13-TER-001, Exhibit B-3, page 1).

On October 15, 2013, the Petitioner submitted a Motion to Submit New Evidence of Unemployment Insurance Decision Finding Employee was Not Fired for Misconduct. (13-TER-001, Exhibit B-4, page 1).

A Grievance hearing was held on October 18, 2013. The Petitioner, Dale Wheelock, appeared and represented himself. The Respondents, Geraldine Danforth, Cristina Danforth and Edward Delgado appeared and were represented by their attorney, Patricia Stevens Garvey.

### **Changes, Revisions and Requests**

On October 18, 2013, the Respondent submitted their Objection to Petitioner's Request to Submit New Evidence of UI Decision. The Respondent argues the decision with the Labor and Industry Review Commission had not been finalized and that "the Findings of Fact identify the burden of proof is on the employer to establish that the employee's discharge for misconduct connected with employment." (Stand Alone Document)

On October 18, 2013, the Petitioner submitted a Motion Request to Oneida Personnel Commission to Find in Favor of Petitioner, Dale Wheelock, and Be Reinstated to Position of Oneida Housing Executive Director. The Petitioner argues as a result of the Respondent, Edward Delgado, not appearing at the hearing scheduled for September 6, 2013, is cause alone to grant the motion. (Stand Alone Document).

The Oneida Personnel Commission DENIED the motion.

The Petitioner also made a motion to enter into evidence information regarding Unemployment Insurance. The Respondent stated a UC hearing was held on October 8, 2013, and a decision was issued. The Petitioner was found not to be at fault; however, it was not the final decision. The Respondent referenced Finding of Fact V in the UC hearing decision. The OPC accepted the submission.

The Respondent filed a motion to recess at noon. The Petitioner objected stating there is a five (5) day written notification prior to hearings to request a postponement.

The Oneida Personnel Commission DENIED the request to close at noon, and further stated if the Respondent, Edward Delgado, chose to leave the hearing, he may be found in contempt. In addition, the Petitioner was referencing the Oneida Personnel Commission's hearing instructions, which were of a lesser degree than other Tribal law requirements for postponement.

The Respondent testified that it was determined through the reorganization of the Tribe's structure, that Mr. Delgado would be supervisor over all division directors and would address issues and make referrals to the division directors to investigate. When asked how many times Mr. Delgado met with Mr. Wheelock, Mr. Delgado testified once or more per month. During questioning, the Respondent, Cristina Danforth provided the following information:

When asked if HRD was informed of the change of supervision from Edward Delgado to Cristina Danforth, Ms. Danforth stated they were not because the entire OBC was supervisor to

the division directors. When asked if HRD was notified via the OBC minutes as supporting documentation, Ms. Danforth stated she had referenced the action in a phone call with HRD. When asked if Ms. Danforth notified Mr. Wheelock regarding new supervision, Ms. Danforth stated that she had not; however, the three attempts made to meet with Mr. Wheelock was the vehicle she had intended to use to inform him.

A Grievance Hearing was held on November 27, 2013. The Petitioner, Dale Wheelock, appeared and represented himself. The Respondents, Geraldine Danforth, Cristina Danforth and Edward Delgado appeared and were represented by their attorney, Patricia Stevens Garvey.

### **Changes, revisions and Requests**

Neither party submitted any changes, revisions or requests.

When asked about the infraction identified as V.D.2.1.e, and how the Petitioner failed, Ms. Danforth testified Mr. Jonathan Foster, Staff Auditor, had asked about the use of funds to purchase a trailer and jackets. When asked if the issue was resolved, Ms. Danforth stated she was not aware if it had been.

When asked if funding monies were combined and how this constituted co-mingling of funds, Ms. Danforth testified Indian Housing Block Grant funds are long standing funds. The ARRA funds were Obama grants. Using funds from both grants for the same purposes was a violation of internal policies. When asked if grants were stopped due to bad reports, Ms. Danforth stated she was not sure. Ms. Danforth also testified there had been ongoing issues with grant compliance.

The Oneida Personnel Commission, in granting hearings and entertaining submission of new evidence and motions, did so to determine if indeed there was a pattern of harassment that existed and continued throughout the duration of what was identified as the first Investigative leave beginning on August 3, 2012, through the Petitioner's termination on December 17, 2012.

The Oneida Personnel Commission focused its findings based primarily on the evidence and testimony relating to the Petitioner's allegations in his appeal before this hearing body. The following issues and findings of fact capture those allegations along with evidence and testimony presented.

### **Issues and Finding of Fact**

#### **1. Was the Petitioner informed he had a new supervisor and if so when?**

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

The Petitioner testified he had received notice on September 30, 2011, indicating a new chain-of-command, as a result of the General Tribal Council's directive to move ahead with reorganization. The notice was sent to all Division Directors and was authored by Chairman, Edward Delgado. The notice specifically states, "Your supervisor is my office as Chairman of the Oneida Business Committee, in my absence the Vice-Chair can provide you with direction." (13-TER-001, Exhibit A, page 17). The Petitioner further testified he never received notice he had a new supervisor other than the ones indicated in the notice. The Petitioner stated in his appeal to the Oneida Personnel Commission he did not become aware of his new supervisor until December 18, 2012, the date of his termination. Mr. Wheelock testified because he was never informed the Respondent, Cristina Danforth, had assumed the role of supervisor, it was for that reason he was hesitant to respond to her request for a meeting. In addition, the Petitioner stated the meeting was to be held at the Oneida Housing Authority offices which would create a problem based on the conditions of his Investigative Leave barring him from any and all Oneida Housing Authority offices and buildings.

The Respondent, Cristina Danforth, testified the entire Oneida Business Committee played the role of supervisor, particularly in the case of the Oneida Housing Authority in that it had been identified as the Tribal Designated Housing Entity. Ms. Danforth further stated Mr. Delgado could not act in the capacity of supervisor in that he had a pending case in the Brown County Court system that involved a restraining order and the Petitioner, Dale Wheelock. Ms. Danforth further testified supervision could not be appointed to the Vice-Chairman, Greg Matson, because he was out of town.

The Respondent, Edward Delgado, testified because of the pending case in Brown County Court, it would create a conflict of interest if he were to act in the capacity of supervisor over the Petitioner, Dale Wheelock. Mr. Delgado further testified the responsibility of supervision was not passed on to the Vice-Chairman, Greg Matson, because he had been working at the Oneida Housing Authority during the period of time the issues of concern were being investigated.

Evidence provided by the Petitioner included an email from Geraldine Danforth, Area Manager of HRD, dated Tuesday, December 11, 2012, at 1:50 pm. The email sent to Dale Wheelock stated, "Good Afternoon Dale: Your advocate/legal representative has

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

been in contact with me as of last Friday. Since we are at the point of having a hearing regarding your situation and you have an advocate, you will need to have requests sent through your advocate/legal representative. Any other documentation requests will require a subpoena at this point.”

The Petitioner provided additional evidence which included an email from him dated December 17, 2012, at 9:35 am to the Oneida Business Committee wherein it stated, “Please be advised that my legal represented [sic] is Aron Schenk, Law Firm, 1002 S. Fisk, Green Bay, WI. Phone number 499-2006. Any and all communication needs to be sent to my attorney. Dale Wheelock, Housing Executive Director.”

When questioned as to whether or not the Respondent, Cristina Danforth, contacted the Petitioner’s attorney, she testified she had not because she had no reason to; there was no authority requiring her to do so. When asked if she contacted HRD to let them know she would be the Petitioner’s new supervisor, Ms. Danforth testified she had a phone conversation with Sue Doxtator, Personnel Relations Officer (PRO).

When asked how the Petitioner might have access to this information, Ms. Danforth testified the action to appoint her supervisor was in the December 12, 2012, Oneida Business Committee minutes.

The Oneida Personnel Commission finds the weight of the evidence is in favor of the Petitioner. The notice of September 10, 2011, indicating the chain-of-command, and the email from Geraldine Danforth to the Petitioner advising him of the need to go through his attorney confirms to the Oneida Personnel Commission there was a deviation from that information on the part of the Respondent, Cristina Danforth. In addition, the Petitioner, thinking he was on a second Investigative Leave, followed the conditions of that leave wherein he was to stay away from Oneida Housing Authority offices and buildings. To meet with the Respondent, Cristina Danforth, at the Oneida Housing Authority offices would be a breach of those conditions.

2. **Did the Petitioner receive calls for setting up a meeting and did he respond stating he needed to meet with his attorney?**

The Respondent, Cristina Danforth testified she had her assistant, Mary Graves, set up a meeting with the Petitioner, Dale Wheelock, for Friday, December 14, 2012, at 2:00 in Dale’s office at OHA. On Friday, December 14, 2012, at 11:36 A.M., the Respondent

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

received a phone message from Dale stating he would not be in attendance of the 2:00 P.M. meeting as he needed to meet with his attorney first. On Friday, December 14, 2012, the Respondent returned Dale's phone call at 1:04 pm. Dale stated he was unavailable and was running out the door right now. The Respondent told him it was a requirement of his job to meet with her no later than Monday. Dale said he was heading out the door, good-bye and hung up. On Monday, December 17, 2012, the Respondent received an email from Dale stating all communication needed to go through his attorney. At 10:43 A.M. the Respondent called Dale and he said I sent you an email, good-bye and hung up. After consulting with Sue Doxtator, (PRO), HRD, the Respondent decided to issue the termination to Dale and send it to him via certified mail due to his refusal to talk with or meet with the Respondent. (13-TER-001, Exhibit A, page 30-31).

The Petitioner confirmed the testimony provided by the Respondent.

The Oneida Personnel Commission finds the question has been answered by the Respondent's testimony and the Petitioner's confirmation.

3. **Did the immediate supervisor initiate a discussion of the disciplinary action with the employee?**

The Respondent, by way of testimony and evidence presented in Exhibit A, pages 30-31, did indeed make efforts to meet with the Petitioner, Dale Wheelock. However, based on the Petitioner's initial appeal to the Oneida Personnel Commission, this allegation refers to the supervisor's requirement to meet with an employee to discuss disciplinary action. The Respondent, Cristina Danforth, testified her intent was to discuss the concerns of the investigation and audit findings with the Petitioner. It was not her intention to discipline the Petitioner at the scheduled meeting of December 14, 2012. The Respondent testified it was only as a result of the Petitioner failing to meet with her that she issued the termination. The Respondent also deviated from progressive discipline "Due to the severity deviation from progressive discipline is warranted and termination was determined." (13-TER-001, Exhibit A, pages 30-31).

The Petitioner, while confirming the information contained in Question #2, maintained the position he did not know the Respondent, Cristina Danforth, was his supervisor, and was hesitant to meet with her at the Oneida Housing Authority office.

The Oneida Personnel Commission finds a greater concern in answering this

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

question. It is not that the Respondent, Cristina Danforth, failed to initiate a meeting with the Petitioner. It is because it was not clear to the Petitioner that the Respondent was his supervisor. The Petitioner, in quoting this section of the Oneida Tribe's Personnel Policies and Procedures is in relation to a supervisor meeting with an employee during a disciplinary process. Based on the evidence and testimony given, this allegation is not germane to the situation attested to here.

4. **Were the procedures outlined in Exhibit G. Section V-Employee Relations, Page 5, Disciplinary Procedures followed?**

The Respondent, Cristina Danforth, testified her initial meeting with the Petitioner, Dale Wheelock, was not for the purpose of discussing a discipline, but rather for the purpose of discussing the content of the Investigation and Audit Findings. Because of the Petitioner's refusal to meet with her, Ms. Danforth then issued a termination to Mr. Wheelock.

Mr. Wheelock testified he was informed of his termination via a letter he received from the HRD and not as a result of meeting with his supervisor. (13-TER-001, Exhibit A, page 3). During testimony, the Petitioner cited another procedural irregularity in his discipline in that while there were specific infractions listed on the Disciplinary form, under Date and Description, the termination was based on failure on the part of the Petitioner to meet with the Respondent, Cristina Danforth.

The Oneida Personnel Commission finds there were procedural irregularities in following the requirements outlined in the Oneida Tribe's Personnel Policies and Procedures Disciplinary process. Evidence provided indicates no such meeting took place. Because the Petitioner did not know Cristina Danforth was assigned as his new supervisor, he was suspicious about the meeting, particularly since it was scheduled in his office at the Oneida Housing Authority.

On December 12, 2013, the Respondent, Geraldine Danforth, submitted a packet of information with a cover memo titled, "Dale Wheelock-Unemployment." This submission contained a chronological listing of Unemployment Decisions and submission of dates regarding the Petitioner's employment. Documents also included the State of Wisconsin, Department of Workforce Development hearings and outcomes. (Stand Alone Document).

On December 12, 2013, the Respondent, Geraldine Danforth, also submitted documents regarding the Petitioner's hire date and disciplines issued to the Petitioner. The packet also included a copy of the Investigative Leave memo from August 3, 2012, notes, the disciplinary action for termination and memorandums regarding the Petitioner's release from the Department of Land Management, placing the Petitioner back under the supervision of the Respondent, Edward Delgado. (Stand Alone Document).

On December 13, 2013, the Petitioner submitted a synopsis of actions taken against him beginning with the August 3, 2012, Investigative Leave through August 6, 2012. (Stand Alone Document).

On December 13, 2013, the Petitioner submitted a chronological order of events beginning with January 2012, through May, 2013.

On December 16, 2013, the Petitioner submitted a Motion to Submit New Evidence Regarding the Sealed Investigative Report submitted by James "Sonny" Martin. The Petitioner argues the incident leading up to the Respondent, Edward Delgado, filing for a Temporary Restraining Order which ultimately "resulted in Cristina Danforth's decision to terminate Dale Wheelock's employment with the Oneida Tribe..."

On January 16, 2014, the witness, James Martin, submitted documentation during his testimony. The information contained a signed agreement by Edward Delgado and Dale Wheelock, to cooperate in the investigation. It also contained Mr. Martin's interview notes with the Petitioner, Dale Wheelock; a memorandum from Dale Wheelock to Lloyd Powless dated March 8, 2012, regarding a wage increase for Shane John, and a memorandum from Jonathan Foster, Staff Auditor, to Dale Wheelock, dated February 6, 2012. The witness, Mr. Martin, testified this information was provided to him by the Petitioner, Dale Wheelock. There is a date notation of June 6, on the cover of the packet. (Stand Alone Documents).

On January 16, 2014, the witness, James Martin, had a second packet of documents which he testified was given to him by the Petitioner, Dale Wheelock. This packet included the BC Resolution 10-04-11 Emergency Amendments to the Grievance Process; BC Resolution 10-04-11B Setting Interim Division Director Authority; and a memo from the Petitioner to the Respondent, Geraldine Danforth, dated August 21, 2013,

D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

regarding wages and benefits; the letter from HRD to Dale Wheelock, regarding his insurance termination as a result of being placed on Investigative Leave; the August 9, 2012, letter written by Edward Delgado to Dale Wheelock regarding the Alternative Work Assignment; a copy of the Petitioner's wages for the week ending 8/11/2012; the August 3, 2012 Investigative Leave memorandum; the August 6, 2012, amended Investigative Leave memorandum; an email from Fred Muscavitch to Dale Wheelock, dated 8/23/12 regarding "Pay for Dale Wheelock for the week ending August 11, 2012;" a printout from the Oneida-Nsn.gov website; and a copy of the Employee Protection Decision for Whitney A. Wheelock, vs. Dale Frissel Hill, dated September 30, 2011.

A Motion to Submit New Evidence Regarding Dale Wheelock Filing Formal Complaints against Councilmembers David Jordan and Vince Delarosa for Violations of Code of Ethics and Personnel Policies and Procedures that Resulted in the Termination of Dale Wheelock, was submitted by the Petitioner at the January 16, 2014 grievance hearing. This motion was DENIED by the Oneida Personnel Commission.

### **RULE OF LAW**

In accordance with the Oneida Tribe's Personnel Policies and Procedures:

Section V.D. Complaints, Disciplinary Actions, and Grievances:

Subsection 2. Disciplinary Action, Part a: Disciplinary actions will be initiated by an immediate supervisor for the purpose of correcting unacceptable work performance. The supervisor will always discuss the action with the employee being disciplined to ensure that the employee:

1. Understands the reason for the disciplinary action;
2. Understands the expected work performance in light of the disciplinary action;
3. Understands the consequences of continued unacceptable behavior.

### **CONCLUSION**

The Oneida Personnel Commission finds in favor of the Petitioner, Dale Wheelock, and D. Wheelock vs. E. Delgado, C. Danforth, and G. Danforth Grievance Decision

OVERTURNS the Disciplinary Action of Termination and further ORDERS Mr. Wheelock be made whole in terms of back pay and benefits due him.

The Oneida Personnel Commission, in understanding the Respondent's reasoning for deviation from progressive discipline, allowed additional evidence. The Oneida Personnel Commission determined there was a course of action that took place that was harassing and intimidating to the Petitioner, Mr. Wheelock. The means by which the Petitioner was first put on Investigative Leave in August, 2012, was in compliance with the Oneida Tribe's process; however, the issuance of that leave was erroneous in that it was as a result of a complaint filed by Mr. Whitney Wheelock. The Investigative Leave Policy specifically states a leave cannot be issued as a result of a complaint. Further, the Petitioner suffered harm in the case of the Temporary Restraining Order filed by the Respondent, Edward Delgado. While the Oneida Personnel Commission did not go into details about the case, there were events that occurred while that case was pending in Brown County Court that was also harassing and intimidating.

The fact that the Petitioner had a counseling session with a licensed counselor, and that information was taken outside of that session was a breach of confidentiality. The counselor, Bob Fresen, reported his concerns to his supervisor, Barb Kolitsch, who then took it beyond the scope of confidentiality. This action ultimately resulted in the Petitioner being placed on what was first identified as a second Investigative Leave by the Respondent, Edward Delgado, and later identified as an Involuntary Leave of Absence with a requirement to submit a doctor's report before returning to work.

In reviewing the length of time from the initial Investigative Leave up to the Petitioner's termination, harassment and intimidation clearly took place on the part of the Respondents, more specifically, Edward Delgado. Evidence shows the Petitioner was placed on Investigative Leave on August 3, 2012, and was then issued an amended Investigative Leave with an Alternate Work Assignment on August 6, 2012. While the Petitioner received a hand-delivered, hard copy of the amended Investigative Leave, it was absent the required signatures. The Petitioner then received a letter dated August 9, 2012, in which the Respondent cited failure to report to the Division of Land Management could result in job abandonment.

While working at the Division of Land Management, the Petitioner was again placed on an Investigative Leave/Involuntary Leave of Absence as a result of information taken outside the confines of a counseling session the Petitioner had with his counselor. During this time, the

Respondent, Edward Delgado, filed a Temporary Restraining Order, for an unfounded incident that occurred in which the Petitioner, Dale Wheelock, was barred from a General Tribal Council meeting and was escorted out of the meeting by the Oneida Tribal Police.

There was a series of events that created a great deal of confusion including termination of insurance and unemployment benefits, change of supervision contrary to information the Petitioner had received by way of memorandum identifying the chain-of-command, and refusal on the part of the Treasurer, Cristina Danforth, to contact the Petitioner's attorney although such information was provided to the Oneida Business Committee. In addition, the Petitioner was requested to meet with the Treasurer, Cristina Danforth, at his place of employment, the Oneida Housing Authority, when he had received instructions from his supervisor, Edward Delgado, to stay away from all Oneida Housing Authority buildings and projects.

The Oneida Business Committee, in assuming the responsibility of supervision over Division Directors, went beyond its scope of authority. Furthermore, the Oneida Business Committee, specifically, the Chairman, Edward Delgado, and the Treasurer, Cristina Danforth, lacked knowledge of the tribe's disciplinary process. As a result, they made several errors in disciplining the Petitioner. It was evident there was a lack of communication between Edward Delgado, Cristina Danforth and Geraldine Danforth. There was conflicting testimony given by the Respondents which resulted in confusion for the Petitioner.

The Internal Security Report, conducted by Officer James Martin, Jr., was biased. Information gathered by the Officer was one-sided and opinionated. The report included information that supported the Internal Audit, but nothing further in terms of follow-up regarding missing equipment. Dollar amounts quoted in the report were a result of internet searches for average amounts of equipment. During testimony, Officer Martin stated his scope of investigation was limited to finding things missing; it was not his job to find them.

There is a vast difference between the political arm of the Oneida Tribe, and the departmental functions of the Tribe. There are employee rights that have been outlined in various laws of the Tribe, which were violated by the Respondents, Edward Delgado and Cristina Danforth.

This case was arduous. There was lengthy testimony given by witnesses which resulted in multiple hearings. There were volumes of evidence presented that all parties combed to verify validity. The Oneida Personnel Commission, in rendering its decision, focused primarily on the

allegations provided by the Petitioner, Dale Wheelock, in his appeal to the Oneida Personnel Commission. By adhering to those basic allegations, procedural irregularities were found to have occurred. If taking into consideration the remainder of the testimony and evidence, there were numerous procedural irregularities as well, some of which were addressed in this conclusion.

Rendering its decision based solely on the allegations of the appeal submitted by the Petitioner, Dale Wheelock, to this hearing body, there were numerous procedural irregularities that caused harm to the Petitioner. Allowing additional testimony to both determine if there was harassment taking place, and to better understand the Respondent, Cristina Danforth's, justification for deviation from progressive discipline, added to the procedural irregularities and contradictory information that was against the weight of the evidence.

The Oneida Personnel commission ORDERS the termination of the Petitioner, Dale Wheelock, OVERTURNED. Any back pay and benefits are to be reinstated to the Petitioner beginning with the week of August 5, 2012, through his reinstatement to his former position as Executive Director of the Oneida Housing Authority. Furthermore, the Petitioner, Dale Wheelock, as a result of overturning the termination, will be reinstated to his former position as Executive Director of the Oneida Housing Authority. Mr. Dale Wheelock's employee record is to be expunged of this discipline.

By authority of the Oneida Personnel Policies and Procedures and the Oneida Administrative Procedures Act, Section 1.10-1, Contested Cases; It Is So Ordered.

Sandy Dennett 2-28-14  
Sandy Dennett, OPC Commissioner Date

Richard Moss 2/28/14  
Richard Moss, OPC Commissioner Date

Susan A. Daniels 2/28/14  
Susan G. Daniels, OCP Commissioner Date

**Appeal Notice**

You do have the right to appeal to the Oneida Appeals Commission, 3759 West Mason Street, Ridgeview Plaza, within ten (10) working days from the day you receive this notice. An appeal is commenced with the completion and filing of the Notice of Intent to Appeal (Notice of Appeal) form. This notice can be obtained from the Oneida Appeals Commission.

Copy of notice also mailed to:

- Opposing Parties
- Oneida Business Committee
- Oneida Law Office
- PRO
- File