

JO ANNE HOUSE, PHD
CHIEF COUNSEL
JAMES R. BITTORF
DEPUTY CHIEF COUNSEL
REBECCA M. WEBSTER, PHD
SENIOR STAFF ATTORNEY

ONEIDA LAW OFFICE

N7210 SEMINARY ROAD
P.O. BOX 109
ONEIDA, WISCONSIN 54155

PATRICIA M. STEVENS GARVEY
CAROYL J. LONG
KELLY M. MCANDREWS
MICHELLE L. MAYS

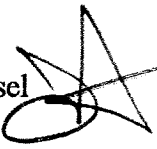
(920) 869-4327

FAX (920) 869-4065

MEMORANDUM

CONFIDENTIAL

TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel 

DATE: December 22, 2014

SUBJECT: Opinion – Delgado, et al v. Wheelock, # 14-AC-004 – Interpretation

You have requested a review of the November 21, 2014 decision of the Oneida Appeals Commission in the Delgado, et al. v. Wheelock case, docket # 14-AC-004. Specifically, you have requested an opinion regarding the impact of the opinion regarding the discussion about the 1982 action of the General Tribal Council and the position of the General Manager.

As a part of this legal opinion I have reviewed the Personnel Commission and Oneida Appeals Commission decisions, the briefs submitted in the cases, and actions of the General Tribal Council.

Personnel Case Background

This case began with a February 2012 inquiry by then Treasurer Cristina Danforth to Owen Somers, Security Director, to assign James Martin from Internal Security Department to conduct an investigation of issues arising out the Oneida Housing Authority regarding missing inventory, misappropriation of federal grant funds and inappropriate bidding processes. Mr. Somers approved the assignment to be conducted within the ability of Mr. Martin's work duties. By June of 2012, Mr. Martin was interviewing several personnel within the Oneida Housing Authority, including Dale Wheelock.¹ In August 2012, then Chairman Edward Delgado, his Sr. Policy Analyst Linda Dallas, and Mr. Martin met with Dale Wheelock, Jay Fuss, and Shane John to place them on Investigative Leave.²

The initial leave identified that Mr. Wheelock was not allowed within any Tribal building. This was amended within a week to remove that restriction and to direct him to report to the Division

¹ It appears that a significant amount of information came from Whitney Wheelock regarding ARRA grants and housing activities. Mr. W. Wheelock, at some point in this process, obtained an Employee Protection Order from the Personnel Commission. As a part of that order, the Personnel Commission also ordered an audit and directed Chairman Delgado to undertake some actions. It is not clear if any of this was part of the decision to place the three employees on investigative leave.

² Jay Fuss is no longer employed by the Tribe. The Investigative Leave for Shane John appears to have been concluded.

of Land Management for an alternative work assignment.³ This is the first grievance appeal filed by Mr. Wheelock.⁴

In the interim, as a part of the reporting requirements for health care providers, Bob Freson made a report to his supervisor regarding comments made by Mr. Wheelock. This resulted in three actions. First, Chairman Delgado filed for restraining orders in Brown County as a result of the alleged threat made by Mr. Wheelock.⁵ Second, his alternative work assignment was terminated and he was placed on an involuntary leave of absence until such time as he could obtain a return to work slip. Third, Chairman Delgado asked for another member of the Oneida Business Committee to complete the Investigative Leave investigation because of the conflict of interest. The Oneida Business Committee assigned Treasurer Danforth.⁶

Treasurer Danforth reviewed the report submitted by Mr. Martin and requested her assistant to schedule a meeting with Mr. Wheelock. Although initially scheduled, Mr. Wheelock canceled the meeting because it violated his earlier restrictions regarding the Investigative Leave. Although calls were placed by the Treasurer's assistant, no meeting was rescheduled. Treasurer Danforth, as a result of the deadline regarding finalizing the Investigative Leave, terminated Mr. Wheelock for failing to cooperate in the investigation in December 2012. This is the second grievance appeal by Mr. Wheelock.⁷

Mr. Wheelock alleged four procedural irregularities in the initial appeal and four procedural irregularities in the second appeal. The only pertinent allegation regarding this opinion, as summarized by the Personnel Commission, is as follows – “That there is a bigger issue of the Oneida Business Committee involvement in day-to-day activities.” There is no indication of what this “bigger issue” involved or what “day-to-day activities” were involved. The Personnel Commission consolidated both grievances and issued a single opinion. I reviewed the briefs and motions filed in this matter and the 38 page decision of the Personnel Commission which clearly outline all of the issues raised during the hearing process. There is no identification of any “issue of the Oneida Business Committee involvement in day-to-day activities.” The Personnel Commission decision rested solely on the issue of placing an employee on an Investigative Leave as a result of a “complaint” filed by another employee.

This decision was appealed to the Oneida Appeals Commission. Both parties were directed to file briefs and the case file was transferred from the Personnel Commission. The Oneida Appeals

³ During this process it appears that Mr. Wheelock's insurance benefits were cut off prematurely. Once his alternative work assignment was identified his insurance was reinstated. There may have been a delay in the reinstating the insurance.

⁴ The Personnel Commission originally ruled that this appeal was not timely filed. The decision on appeal to the Oneida Appeals Commission remanded the case to the Personnel Commission identifying the timeline was based on the last notice received regarding the alternative work assignment and the appeal was timely.

⁵ A preliminary restraining order was issued but was not finalized after the hearing. During the period of the preliminary restraining order, Chairman Delgado had Oneida Police Department enforce the preliminary restraining order by having Mr. Wheelock escorted from the satellite meeting room during a General Tribal Council meeting.

⁶ Mr. Wheelock was not notified of this change of supervision and was still under the restriction to not enter offices of the Oneida Housing Authority.

⁷ In the intervening period Mr. Wheelock also filed a complaint directly with the Oneida Appeals Commission in October 2012.

Commission issued a decision based on the briefs and the record. A review of the briefs identified no arguments regarding supervision by the Oneida Business Committee or discussion of day-to-day activities. Both parties focused on the definition of a “complaint” and the restrictions in the Investigative Leave Policy. The decision found, consistent with the Personnel Commission, that Mr. Wheelock was placed on Investigative Leave based on a complaint in violation of the policy. However, the Oneida Appeals Commission went on to comment about the Oneida Business Committee and its involvement in day-to-day activities. There is a brief summary of the 1982 General Tribal Council resolution, the 1994 motion by the General Tribal Council, the 2000 General Tribal Council discussion and action regarding “Plan B”, the Oneida Business Committee’s 2000 response regarding that action, and the 2011 actions of the Oneida Business Committee regarding interpretation of the General Tribal Council’s action regarding “Plan B.”

In taking up this subject, which none of the parties raised in their appeal, the Oneida Appeals Commission made two broad comments.

“Now comes a case of clear violations done to Mr. Wheelock through the involvement of the Business Committee members being led by the Chairman of the Oneida Tribe involving day-to-day activities,” page 20.

“The GTC should take a long look at what has attempted to be done and has failed. The administration of 2011 violated Resolution GTC# 2-8-82 when they got rid of the General Manager and became involved in day to day activities. When the Oneida Business Committee placed themselves as the Supervisor over all Directors they violated a direct order from the General Tribal Council therefore acted outside their scope of authority. The administration of 2011 tried to find ways to implement Plan B that was introduced in the July 2000 GTC meeting. The GTC Resolution 2-25-82 is still in effect and the Oneida Business Committee continues to find themselves in the day-to-day activities acting as the supervisor to all the directors,” page 28.

General Tribal Council Action Background

In 1982, as a result of questions and concerns regarding employment and programming activities, the General Tribal Council adopted resolution # GTC-2-25-82. This resolution directed the Oneida Business Committee to focus on legislative activities and, “to hire a General Manager to be directly responsible for the programs and enterprises of the Tribe along with the Personnel Office and the Accounting Office” *Resolve #1*. In 1991, the General Tribal Council reaffirmed the Oneida Business Committee actions by adopting resolution # GTC-8-19-91-A and the Addendum. This created the Legislative Operating Committee and the Oneida Appeals Commission. The General Tribal Council has also directed the following activities to be governed by a board, committee or commission, and granted some autonomy.

- Personnel Commission – hiring and grievance decisions regarding employment.
- Trust and Enrollment Committee – Trust accounts and enrollment decisions.
- Election Board – general and special elections; also tasked by the Oneida Business Committee to count votes in General Tribal Council meetings.
- School Board – manage and operate the Tribal school.
- Gaming Commission – regulate the gaming operations.

There have been several actions by the General Tribal Council regarding the Tribal structure over the years. In the late 1980s, the General Tribal Council adopted then rescinded action to create a corporation to manage the enterprise and business activities of the Tribe. It is not clear why that action was adopted and then later rescinded. In 1994, the General Tribal Council accepted a report from the Oneida Business Committee regarding re-organization. Later that same year, the General Tribal Council adopted resolution # GTC-7-11-94-A which directed that the Chief Financial Officer and the Accounting Offices would report to the Treasurer. Finally, at the January 17, 1998, meeting, the General Tribal Council, after a series of meetings involving issues arising out of the gaming operations, adopted a motion that intended, “to make further clarification that the Oneida Business Committee’s involvement and/or activity is hereby restricted to legislative policy development and not in day to day personnel/HRD matters including restriction on their involvement in various committees related to HRD and personnel matters or activity[.]”

In late 1999 and in 2000, the General Tribal Council began a series of meetings regarding per capita and the organizational structure of the Tribe. The General Tribal Council adopted resolution # GTC-4-17-99-A at the April 1999 meeting. This resolution called for the Oneida Business Committee to bring back a per capita plan within 90 days. Although a meeting was scheduled within the directed time frame, it was canceled at least twice because of a death in the community. In the interim, a General Election was held and a new Oneida Business Committee was installed.

The meeting was eventually called to order on August 28, 1999. After significant discussion regarding the April 1999 action and the goals of the new Oneida Business Committee, the General Tribal Council adopted a motion that directed the Oneida Business Committee to, among other things, “come back with a plan of restructure to take care of the administrative problems[.]”

The Oneida Business Committee presented updated information at the July 22, 2000, General Tribal Council meeting that Draft A had been withdrawn and that Draft B had been modified as a result of additional review and information. At the conclusion of the presentations, the General Tribal Council took the items from the table. A motion to adopt “Plan B” as presented at the December 18, 1999, meeting was made. The Chair called the motion out of order for two reasons. First, that material was not presented at the current meeting; second, because the proposed re-organization had been revised as stated because additional review and information in the interim period. Notwithstanding a parliamentary ruling that a decision was based on a clear and unambiguous application of the rules is not appealable, the General Tribal Council proceeded to a vote against the Chair’s ruling. The motion was adopted.

On August 2, 2000, the Oneida Business Committee adopted resolution # BC-8-02-00-B which expressed their interpretation of the actions at the July 2000 General Tribal Council meeting. Review all of the actions and the responsibilities of the Oneida Business Committee, it was determined that the actions of the General Tribal Council were in violation of the rules and procedures and as a result could not be carried out. In addition, the Oneida Business Committee committed to an ongoing review of the Tribe’s organizational structure.

This resolution remained in place until 2011 when the Oneida Business Committee reconsidered the July 2000 General Tribal Council action and the August 2000 Oneida Business Committee action. Resolution # BC-9-28-11-D was adopted which rescinded the August 2000 resolution and recognized the validity of the General Tribal Council action.⁸ However, the resolution also recognized that “Plan B” was ten years out of date and additional review and revision was needed in order to implement any changes.

This September 2011 action of the Oneida Business Committee was reported to the General Tribal Council at the January 2012 Annual Meeting and in subsequent reports to that body. The General Tribal Council entertained minor discussion regarding this issue, but ultimately accepted the reports that were submitted. There were meetings of the 2011 Oneida Business Committee, however no formal reorganization was ever approved by that body or submitted to the General Tribal Council for approval.

Analysis

The Oneida Appeals Commission references to the 2000 and 2011 actions of the General Tribal Council and the Oneida Business Committee is not relevant to the issues raised at the Personnel Commission decision and not an opinion or directive in the appellate decision. While the supervision of the Oneida Business Committee appeared to be presented in the initial filing of the employee grievance, no arguments were made at the Personnel Commission hearing. A review of the materials does not identify that the issue was ever briefed. Further, no mention of the issue, other than a summary of the initial grievance filing, was made in the Personnel Commission decision. A review of the briefs presented on appeal does not identify any discussion regarding supervision. Further, the language in the appellate decision is merely commentary on alleged actions of the Oneida Business Committee presented without further facts. As identified in the summary of background information above, the appellate hearing body was not in possession of all of the background regarding this issue.

It would be my opinion that this language in the appellate decision is not directive in nature. It is merely commentary on actions taken by the Oneida Business Committee. However, it should be noted that the “restructuring” identified in resolution # BC-9-28-11-D has never been finalized.

Conclusion

The Oneida Business Committee is not required to take any action regarding the supervision comments in the decision in the Delgado, et al v. Wheelock case, # 14-AC-004. However, a review of the history of the 2000 and 2011 actions does identify that a final report or reorganization has never been submitted.

If you have further questions, please contact me.

⁸ This resolution was accompanied by a series of resolutions addressing the changes - # BC-8-28-11-E regarding the General Manager position; # BC-10-4-11-A regarding the grievance process; and, # BC-10-4-11-B regarding Division Director responsibilities as examples.