

Employee Grievance---LaPorte v LRBOI/June Fletcher---Case #04023GC

Summary:

An employee grievance was brought forward after the employee was demoted for 30 days and then temporarily demoted for one year. The issues brought forward in this grievance were freedom of speech, employee rights and Tribal authority to enact laws affecting employees. Plaintiff further seeks reinstatement, back pay, actual damages in pay losses and other damages against the Tribal Officers who would be found acting outside of their scope of their authority in the wrongful retaliatory actions.

Decision and Order:

- 1) The resolution brought into questions serves an important legitimate public interest of the Tribe and is neither vague nor over broad to violate ICRA or the Tribal Constitutional rights of free speech and the free press. Court **dismisses** the allegation.
- 2) There was no protected speech involved by an employee who was acting during his official duties in an employment matter to show retaliatory action punishing or limiting the use of protected speech. Court **dismisses** the allegation.
- 3) The Defendant Ms. Fletcher and the other Tribal Officers were acting with the scope of their authority in administering the adverse employment action.
- 4) All claims of damages and Plaintiff's motion for reinstatement are **dismissed**.
(Appealed).

Court of Appeals---LaPorte v LRBOI/June Fletcher---Case #04142AP

Summary:

Mr. LaPorte filed an appeal with the Court of Appeals arguing that the Tribal Court misinterpreted the facts and erroneously applied the law and raised several arguments regarding his employment, discipline, and demotion.

Decision and Order:

The Court of Appeals **affirms** the decision of the Tribal Court and dismisses Plaintiff-Appellant's appeal.

Side Note: Motion for Reconsideration was filed by Mr. LaPorte, Plaintiff-Appellant after this order. By majority of the Court of Appeals it was ordered that the Court does not have the authority to order attorney fees. It was noted on the order that the matter of attorney fees was neither argued nor briefed for the Court's consideration but was used by attorneys in their pleadings.

Recall Election---Beccaria v LRBOI Election Board---Case# 04132GC

Summary:

Ms. Beccaria brings this matter to the Trial Court after several attempts made by her to come to a mutual decision with the Election Board. Ms. Beccaria was a co-sponsor of a recall election and was responsible for circulating petitions to gather sufficient number of signatures necessary to cause the election to take place. The Election Board reviewed these petitions and made numerous determinations that some of the signatures did not conform to the Election Board's rules. The Election Board upon their determination also issued a notice of assessment of fines for civil infractions of improper filing of recall petitions to Ms. Beccaria and others.

Decision and Order:

The Court **ordered** that the fines imposed upon Ms. Beccaria arising out of the circulation of the recall petitions **are rescinded**, unless fraud or other acts intended to deceive can be demonstrated by a preponderance of evidence.

(Appealed)

Separation of Powers---Tribal Ogema (Lee Sprague) v Tribal Council---Case # 04154GC

Summary:

In this matter the Ogema filed an ex-parte petition and motion for temporary restraining order, declaratory judgment, preliminary injunction, and writ of mandamus. The Ogema alleges that Resolution #05-0233-90 is a direct interference in the integrity of the office of the Tribal Ogema in mandating his personal appearance instead of a staff member at a Federal Court Hearing which was held on March 2, 2005.

Decision and Order:

The Court **temporarily ordered** the Tribal Council to cease interference with the Ogema's integral duties and authority to delegate his duty. The Tribal Council is

ordered by a writ of mandamus to immediately issue the required travel checks for the staff person delegated to appear in the federal case. The declaratory judgment regarding the constitution validity of the resolution is **denied** but may be resolved at a later time. The orders directed to the Tribal Council are temporary pending further hearings in this matter.

Side Note:

Other orders generated in this case: Order Granting Reconsideration of Temporary Ex-Parte Order, Order after Motion Hearing, and Order of Dismissal.

Ex Parte Temporary Restraining Order---Tribal Council v Tribal Ogema (Lee Sprague)---Case #04157GC

Summary:

Tribal Council in this matter has requested that the Court issue an ex parte temporary restraining order against the Tribal Ogema in his capacity of Ogema. Ogema intends to exclude Legislative Counsel Jo Anne House from her office and to have the Department of Public Safety seal her office; Ogema has indicated he will attempt to declare the contract between LRBOI and Ms. House to be null and void; Tribal Council believes it will cause irreparable harm to the general welfare of the members if he seals the office of said Counsel and Tribal Council's everyday operation will come to a stop because all the Council's files are contained in that office; and the Ogema has no authority to carry out such proposed action whether the contract is valid or not.

Decision and Order:

The Court **ordered** the Tribal Ogema shall not seal the office of the Legislative Counsel. Ogema shall not attempt to interfere in the work of the Legislative Counsel in support of the work of the Tribal Council. The Ogema shall not issue any executive order compelling the Public Safety Department to seal any office or escort any Council employee off the reservation or out of the Offices. The Ogema shall not attempt to interfere with the employment of any employee of the Tribal Council.

Enrollment---James Wabsis et al v LRBOI Enrollment Commission---Case # 04185EA

Summary:

The Petitioners bring this matter to the Tribal Court on appeal after a decision by the Enrollment Commission regarding their disenrollment from the Tribe. The Petitioners allege that in the year 2000 they became enrolled members of the Tribe. In the year 2004 the Enrollment Commission notified them that they were no longer members of the Tribe due to a Mistake of Fact. The Enrollment Commission found that they do not descend from a person listed on the Durant Roll of 1908 who is listed in one of the four counties. There are two arguments the Petitioners brought forward. First, the Enrollment Commission misinterpreted the Constitution. Second, the Enrollment Commission did not notify them of their right to appeal with the Tribal Court.

Decision and Order:

The Trial Court **ordered** this matter be remanded back to the Enrollment Commission for reconsideration, as their earlier decision was invalid and that there was no Mistake of Fact. The Enrollment Commission must issue notice that the Petitioners remain Tribal members eligible for all member rights and benefits.

Side Note:

On July 28, 2005 an order clarifying the order entered on April 14, 2005 was entered. The order was entered after the Petitioners in this case filed a motion stating the Enrollment Commission failed to enroll them per the previous Court order. The order was for clarification only. Therefore, no order was needed to be ordered against the Enrollment Commission unless a new determination and a new notice of disenrollment is submitted as the earlier notice of disenrollment was found to be invalid. **Appealed.**

Court of Appeals---James Wabsis et al v Enrollment Commission---Case# 05141AP

Summary:

This matter comes to the Court of Appeals on an appeal by the Enrollment Commission. The Commission argues that the Trial Court erred when it exercised superintending control over the Enrollment Commission when it modified and extended the effect of its initial order of remand; and when the Court ordered the immediate reinstatement of membership in LRBOI in its clarifying order entered on April 14, 2006.

2004 COURT OPINIONS

The Wabsis party on the other hand argues three (3) points. First, the Trial Court did not err and that they do have the authority to schedule a hearing, upon the motion of aggrieved members in disenrollment proceedings, to enforce the Enrollment Commission's compliance with the Court's remand order. Second, the Trial Court does have the authority to stay disenrollment proceedings so as to provide for the continued payment of membership benefits to members in disenrollment proceedings. Thirdly, the Trial Court has the authority to order on remand that the enrollment commission reinstate the membership of individuals when the Court determines that the disenrollment determination against them is erroneous and without merit.

Decision and Order:

The Court of Appeals **declared** that the effect of the Trial Court's initial findings is that the disenrollment decision, which is the subject of this appeal, was null and void. Therefore, Court **orders** the instant matter is hereby dismissed for all of the foregoing.

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

JOSEPH LAPORTE,
Plaintiff,

JUDGE: RONALD G. DOUGLAS

V.

FILE No: 04-0-023-GC

JUNE FLETCHER, and

LITTLE RIVER BAND
OF OTTAWA INDIANS,
Defendants

**ORDER GRANTING MOTION FOR
SUMMARY DISPOSITION AND DISMISSAL**

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This matter was set for a hearing on the Defendants' motion to enter Summary Disposition as a matter of law and exhibits and arguments were entered by both parties. Due to the complexity and importance of the issues of freedom of speech, employee rights and tribal authority to enact laws affecting employees, this order was delayed until this date to allow further review of the numerous exhibits and affidavits submitted.

Upon considering the record and accepting any factual statement in dispute in its light most favorable to the party opposed to the motion, it appears that the motion must be granted as a matter of law for the following reasons.

FINDINGS OF FACT AND LAW

1. This case was brought by a tribal employee who was demoted for 30 days and then temporarily demoted for one year after an article was published claiming that the employee, Joseph LaPorte, as Chief of Police for the tribe had stated on December 29, 2003, that the Little River Band of Ottawa Indians and the local government officials had reached an agreement regarding Cross-Deputization of Tribal Police with the Lake County Sheriff's Department.
2. The Complaint states that the adverse employment action was taken based upon a claimed violation of Tribal Resolution #03-0625-193, passed on June 25, 2003 that prohibited employee statements to the media regarding matters that were under negotiation by the tribe unless there was a written approval by the tribe's Spokesperson.
3. The Complaint alleges that this Resolution should be overturned as a prior restraint or as vague and over broad in its effect on employee freedom of speech issues.

4. Further, the Complaint states that the Resolution being invalid leaves no valid reason for the adverse employment action other than impermissible retaliatory action against public statements made under either the Tribal Constitution, Article III, Section 1(a), or the federal Indian Civil Rights Act, Title 25, Section 1302 as a law abridging the freedom of speech.
5. The Complaint also seeks reinstatement, back pay, actual damages in pay losses and other damages against the tribal officers who would be found acting out side of their scope of their authority in the wrongful retaliatory actions.
6. There is no dispute that this is not an appeal of the internal employment policy reviews nor a claim of a violation of the tribe's employment policies.
7. The parties agree that the Resolution was withdrawn after the date of the adverse action, but disagree on the legal effect on the action in this matter.
8. There are disputed facts over the Plaintiff's actual statements to the newspaper reporter and over his having actual knowledge of the Resolution #03-0625-193.
9. This court would accept his claim that the discussion was actually about the Plaintiff's actions to have tribal police certified rather than a mutual agreement between the tribe and the Lake County Sheriff's Department, but this does not affect the decision as there is an affidavit on the record that Mr LaPorte knew that the reporter was going to be there and knew that there were negotiations going on between the tribe and the county.
10. This tribal court follows the general rule that a tribal official is presumed to know the law, especially since the Resolution #03-0625-193 was passed six months earlier and tribal records show that copies were circulated where the Plaintiff as Director of his department had a duty to read such material. The result is that such a defense is denied as a matter of law as there was no evidence presented to show that the material was concealed or unavailable to him.
11. Even if the statement is true, the internal employment resolution process allowed this to be raised and the Ogema appears to have acted on a belief that Mr LaPorte knew about the Resolution allowing a valid basis other than Retaliation if the Resolution is valid.
12. This court also accepts the general rule that a resolution is presumed valid as long as there is some reasonable basis stated for its enactment as serving a valid government purpose and it does not violate an established restriction, the Tribal Constitution, applicable federal law or tribal traditions.
13. The Resolution #03-0625-193, states that it is enacted to protect the tribe's efforts to establish economic development, protect the general welfare of the tribe and due to problems arising from incorrect media statements during a run-off election. On its face, this appears to be a clearly valid effort to control employee actions in order to deliver government services properly.
14. The later withdrawal of the resolution does not negate its validity as a matter of law as there is no evidence stated in the revocation to overcome the presumption that the Tribal Council treated it as a valid Ordinance while it was in effect on the date that the adverse employment action was taken against the Plaintiff.
15. A telephone conference would not be needed as the later discovery of the revocation does not change any arguments brought out at the hearing and the decision can be made as a matter of law.
16. The next issue is that the statement was made by Mr LaPorte at a meeting that was

undisputed as being part of his official duties as a department head for the tribe and attended during his performance of his employment.

17. It is undisputed that the plaintiff was aware of the mutual pact being a matter under negotiation by the tribe at the time as he was the person involved in these negotiations along with tribal attorney, William Brooks.
18. The case law submitted by both parties clearly place a greater burden to establish a violation of free speech by an employee acting in his employment status and concerning a matter of his official duties. Under all of the cases, especially Koch v. City of Hutchinson 847 F2d 1436 (10th Cir 1988) page 1441, a violation would not be found unless there is a statement made "as a public citizen" regarding a matter of great public concern.
19. Koch, and the other cases submitted, define a matter of public concern as something revealing information needed by the public such as exposing potential wrongdoing, a breach of public trust or misuse of public funds before it even becomes subject to the second step of balancing the limitation of the speech with the government's need to regulate its employees or protect its operations and delivery of resources.
20. The cases cite federal Supreme Court case of Pickering v. Board of Education, 391US 563. 88 S. CT. 1731 (1968) and other related cases. While these are not binding on the tribal court, their rulings are given strong importance and influence since this is an issue of first impression for this court and affecting important issues.
21. Youker v. Schoenenderger, 22 F3d. 163 (7th Cir 1994) speaks of the employee's burden of proof to show that retaliation was in contravention of a clearly mandated public policy and to plead in detail the specific facts rather than to merely make an allegation.
22. A recent case of Gonzalez v. City of Chicago, 239 Fed 3d. 939 (7th Cir 2001) actually dealt with a police officer alleging retaliation based on reporting police internal violations before he was fired for claimed retaliation and as a violation of free speech. This case is a persuasive legal decision discussing issues with an argument would not violate the tribal constitution, the Indian Civil Rights Act nor tribal traditions of fairness and justice.
23. Gonzalez affirmed the need to (1) find that the employee was speaking as a public citizen on a matter of public concern; (2) to balance the interest of the employee as a citizen and the interest of the government as an employer in promoting the efficiency of the public services if performs through its employees.
24. The cases presented by both parties and the tribal Constitution show this court clearly has jurisdiction over this case to enforce a claim of a violation of a member's civil rights.
25. All of the cases cited or found by this court also state that the decision whether or not a statement is an example of protected speech is a matter of law for the court to find rather than a finding of fact to be determined by a jury or to be observed from credible testimony.
26. There were also claims that this Resolution is a subject of prior restraint on the press, that are not heard since the Plaintiff lacks standing to seek damages on behalf of the media and since Resolution #03-0625-193 does not speak to restraints on the press itself.
27. The record submitted is sufficient to make a decision of law whether or not the statement made was protected speech of a concerned citizen affecting public importance and then beyond the balancing test over the tribe's interest as an employer.
28. The tribe has stated a valid purpose for its Resolution #03-0625-193 and there is no statement or evidence proving that that stated reason is false or not a valid reason to over

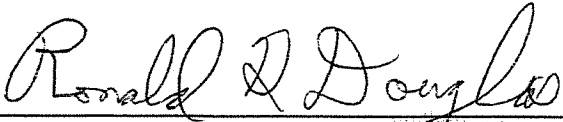
come the presumption of its validity for a valid purpose of the government to promote employee delivery of negotiations with other government agencies.

29. There was an admission that the Plaintiff did not attempt to obtain permission from the Tribal Spokesperson prior to the medial contact leading to a reasonable basis for the adverse employment action by the Defendant June Fletcher under the authority of the duties of her office, if the Resolution is a valid tribal law and no other retaliatory reason was specifically alleged.
30. This would also apply to the Little River Band of Ottawa Indians and its officers as a Defendant acting within the valid authority of their laws and offices.

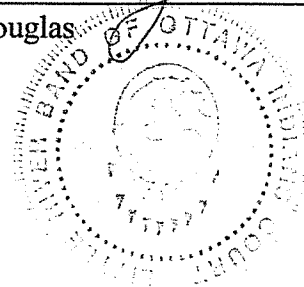
ORDER

- A. The Count One is dismissed as the Resolution #03-0625-193 serves a important, legitimate public interest of the tribe and is sufficiently narrowly drafted to avoid restrictions of freedom of speech by the public or by employees due to any vagueness as a matter of law. It is neither impermissibly vague nor over broad to violate ICRA or the Tribal Constitutional rights to free speech and the free press.
- B. Count Two is dismissed as to both defendants, since as a matter of law, there was no protected speech involved by an employee who was acting during his official duties in an employment matter not involving public concern, to allow a showing of retaliatory action punishing or limiting the Plaintiff's use of protected speech.
- C. The record shows that, as a matter of law, the Defendant June Fletcher and the other tribal officers were acting within the apparent scope of their authority in administering the adverse employment action since it was taken under Resolution #03-0625-193 and under the personnel policy as a valid employment disciplinary action in spite of a later revocation of the resolution.
- D. That all claims to damages are dismissed since the Resolution is upheld as a matter of law, and since the actions of the Defendants were acting reasonably within the scope of their apparent authority as a matter of law as the parties agreed that the claim of improper publicity release was stated as the reason for action taken and no other factual basis was claimed by the plaintiff.
- E. The Plaintiff's earlier Motion for an Immediate Hearing and Reinstatement which was dismissed pending Defendants' Motion, remains dismissed, since the Defendants' Motion has resolved all issues.

Dated: August 14, 2004



Honorable Ronald G. Douglas



TRIBAL COURT OF APPEALS
LITTLE RIVER BAND OF OTTAWA INDIANS

JOSEPH LAPORTE,

Plaintiff-Appellant,

Case No. 04142AP

v.

JUNE FLETCHER and the LITTLE
RIVER BAND OF OTTAWA INDIANS,

Defendants-Appellees.

Appearances: Michael H. Dettmer for the Plaintiff-Appellant; and
Kaighn Smith, Jr. for the Defendants-Appellees.

Before: Michael Petoskey, Chief Justice and Stella Gibson, Associate Justice.
(The third Justice position is currently vacant.)

By Michael Petoskey, Chief Justice, for a unanimous Court.

I. Introduction

This matter comes to the Tribal Court of Appeals on an appeal by Plaintiff-Appellant, Joseph LaPorte, raising several arguments regarding his employment discipline and demotion by Defendants-Appellees, Tribal Manager, June Fletcher, and the Little River Band of Ottawa Indians. The Tribal Court granted Defendants-Appellees' *Motion For Summary Disposition and Dismissal*. Plaintiff-Appellant then filed this appeal arguing that the Tribal Court misinterpreted the facts and erroneously applied the law. This Court heard the oral arguments of the parties on January 19, 2005.

II. Factual Background

Plaintiff-Appellant, Joseph LaPorte, is the Director of Public Safety for the Little River Band of Ottawa Indians. He served in that leadership position for two and one-half years without incident when he had a meeting with the Sheriff of Lake County in December 2003. A local newspaper featured an article and photographs of the meeting. Based upon the newspaper publication, Plaintiff-Appellant was disciplined and demoted for violating a previously-adopted Tribal Council Resolution. That Resolution designated a tribal Spokesperson and a Communications Coordinator, in order to avoid errors in information being disseminated regarding the Tribe's actions and positions on matters.

III. Issues

(1) Whether the Tribal Court erred in dismissing Count 1 of Plaintiff-Appellant's *First Amended Complaint*, which prayed for a declaratory judgment seeking to strike down Tribal Resolution 03-0625-193 as violative of the Tribal Constitution and the Indian Civil Rights Act?

(2) Whether the Tribal Court erred in dismissing Count II of Plaintiff-Appellant's *First Amended Complaint*, which prayed for position reinstatement; full back pay and benefits; and full attorney fees and costs? In addition, Count II asks for damages against Tribal Manager, June Fletcher, and Tribal Ogema, Lee Sprague, both personally and individually if it is found that either acted beyond the scope of their authority.

IV. Analysis and Discussion

A. Count 1

Plaintiff-Appellant argues that the Indian Civil Rights Act (ICRA), 25 U.S.C. 1302 (1), which states in pertinent part:

No Indian tribe in exercising powers of self-government shall -

(1) make or enforce any law ... abridging the freedom of speech....,

protects the communication involved in the instant matter. Additionally, Plaintiff-Appellant argues that Resolution #03-0625-193 is unlawful on its face because it violates the ICRA; that the Resolution is an unlawful prior restraint on speech; that the Resolution is unlawfully over-broad; that the Resolution is unlawfully vague; and that the Resolution was unlawful as applied to him. Plaintiff-Appellant further argues that the Tribal Courts should adopt the legal standards regarding the right of free speech that have developed in federal law. Additionally, Plaintiff-Appellant argues that the Constitution of the Little River Band of Ottawa Indians, which restate the free speech rights of the IRCA, protects his communication in this matter as well.

Defendants-Appellees argue that there is no free speech right involved in this case. Rather, it involves the right of tribal government to control tribal communications with the media. Defendants-Appellees further argue that every proper-functioning government must be able to control government communications.

As a threshold matter in analysis, federal Indian law recognizes that tribal courts are the appropriate forums for the development of tribal law. Tribal Courts have the sole authority to give definition to the "rights" mandated by the ICRA. This makes infinite good sense because only tribal forums can develop law based upon the unique needs of the tribal community. Tribal cultural norms, traditions and values must form

the backdrop for the development of the law which gives definition to these rights.

Plaintiff-Appellant seems to start from the proposition that free speech is an absolute right. However, this Court clearly understands that no right is absolute. The right to free speech is not absolute. Everyone is familiar with the adage: "One cannot shout 'fire' in a crowded theater". Furthermore, everyone should agree that a prohibition against such speech is clearly warranted. There must be such limitations.

It is clear that tribal government must be able to control its communications to the general public. This recently-reaffirmed Tribe is in its early formative years. Its governmental institutions are in their infancy. Governmental systems and relationships are very fragile. These relationships are both internal and external. The eye of the surrounding community is on the Tribe. It is a time of uncertainty and the chaos that is attendant to an emerging contemporary Indian tribal government. This is the context of the matter now before this Court. It is clear beyond a doubt that in this context tribal governments must be able control their communications. Government's duty and responsibility in this regard are never more critical than they are right now for this tribal community.

Plaintiff-Appellant was the Director of Public Safety. As such, he was more than an ordinary tribal employee. Plaintiff-Appellant was an official of tribal government. Plaintiff-Appellant's communication, which is at the root of this matter, was a government communication any way you look at it, although he would have this Court understand that it was as a ordinary tribal member he communicated with the media. This self-serving characterization defies reality and common sense.

It is impossible to separate oneself from one's tribal position. One, who is the Director of Public Safety, is the Director wherever he goes and whenever he speaks. He cannot simply say that he is temporarily stepping out of the role to speak as a mere

tribal member. To try to do so is being woefully oblivious of the reality of how one is perceived and understood by others. Furthermore, Plaintiff-Appellant was wearing his uniform and all of its symbols of his position when this matter took place. There is nothing in the record which establishes that the meeting was anything other than a meeting between the officials of the two separate governments. This Court dismisses Plaintiff-Appellant's argument that he was merely a private citizen speaking on a matter of public concern and that he has an absolute right of free speech. The Little River Band of Ottawa Indians has the right to control governmental communications.

In conclusion, this Court rejects Plaintiff-Appellant's arguments that the communication involved in the instant matter was protected speech either under the federal Indian Civil Rights Act or under the Constitution of the Little River Band of Ottawa Indians and that the Tribal Court erred in its dismissal of Count I.

B. Count II

Plaintiff-Appellant seeks position reinstatement, back pay and attorneys fees for the alleged violation of his free speech rights. The relief is requested is based upon Plaintiff-Appellant's theory of the case, i.e. that his demotion was unlawful. The Tribal Court dismissed this Count as a matter of law because there was no protected speech involved in the instant matter. Plaintiff-Appellant was a tribal employee engaged in official business during the course of his employment. The Tribal Court review of the record established, as a matter of law, that the Defendants-Appellees acted within the scope of their authority while administering the adverse employment disciplinary action.

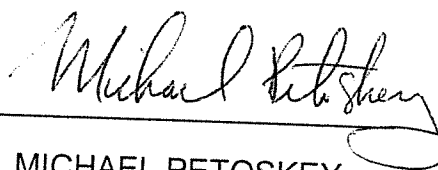
The legislative history of personnel actions clearly establishes that the personnel review (appeal) process runs up to and stops with the Tribal Ogema. The courts of this Tribe have been removed for the review process. Thus, they are without authority to

hear these kinds of actions.

In conclusion, this Court rejects Plaintiff-Appellant's arguments that the Tribal Court erred in its dismissal of Count II. The courts of this Tribe are without authority to review personnel disciplinary matters.

FOR ALL OF THE FOREGOING, this Court affirms the decision of the Tribal Court and dismisses Plaintiff-Appellant's appeal.

IT IS SO ORDERED this 26th day of April, 2005.



MICHAEL PETOSKEY
CHIEF JUSTICE
For an Unanimous Court

TRIBAL COURT OF APPEALS
LITTLE RIVER BAND OF OTTAWA INDIANS

JOSEPH LAPORTE,

Plaintiff–Appellant,

Case No. 04142AP

v.

JUNE FLETCHER and the LITTLE
RIVER BAND of OTTAWA INDIANS,
Defendants–Appellees.

Appearances: Michael H. Dettmer for the Plaintiff–Appellant and
Kaighn Smith, Jr. for the Defendants–Appellees.

Before: Michael Petoskey, Chief Justice; Stella Gibson, Appellate
Justice; and Ryan L. Champagne, Appellate Justice.

By: Ryan L. Champagne, Appellate Justice, for a unanimous
Court.

I. Introduction

This matter comes to the Tribal Court of Appeals in an appeal by Plaintiff–Appellant, Joseph LaPorte, on a *Motion for Reconsideration* of the Court of Appeals decision made in this matter. In summary, the Tribal Court granted Defendants–Appellees *Motion for Summary Disposition and Dismissal*. Plaintiff–Appellant then filed an appeal with the Tribal Court of Appeals that the Tribal Court misinterpreted the facts and erroneously applied the law. The Tribal Court of Appeals heard the oral arguments on January 19, 2005. On April 26, 2005 the Tribal Court of Appeals made a decision by a unanimous Court. It now comes before the Tribal Court of Appeals on the

Motion for Reconsideration. Plaintiff-Appellant argues that this Court did not consider several of his arguments.

This Court, with the addition of a third Justice who filled a vacancy that existed on this Court when this Court originally decided this matter, has carefully considered Plaintiff-Appellant's *Motion for Reconsideration* and again carefully considered the arguments presented.

II. Factual Background

Plaintiff-Appellant, Joseph LaPorte, is the Director for Public Safety for the Little River Band of Ottawa Indians. Joseph LaPorte served in his leadership role for two and one-half years without incident. He was required by his job description, which was adopted by Tribal Council Resolution, to "*represent the Tribal Council with citizens and community groups within the Tribe, media, and other governmental agencies and professional associations to promote the best interest of the Little River Band of Ottawa Indians and resolve concerns when necessary.*" In June of 2003 the Tribal Council adopted Resolution #03-0625-193 that temporarily addressed how the Tribe would deal with media and the public until the powers could be designated back to the Ogema. The Tribal Council repealed that resolution on March 17, 2004 and gave back the power to speak to the media under the discretion of the Ogema and Executive Branch. Joseph LaPorte's job description was not clarified and changed to meet the new standards of the Tribe. On or about February 7, 2004, Joseph LaPorte was demoted to Lieutenant for one year due to the meeting with the Lake County Sheriff Department and press

coverage that ensued due to this meeting. Joseph LaPorte was in fact reinstated to the position of Director of Public Safety after his one year demotion was fulfilled.

III. Issues Raised in Original Appeal

1. Whether the Tribal Court erred in not finding that plaintiff had a right to free speech as protected under 25 U.S.C.?
2. Whether the Tribal Court erred in not finding that *Resolution #03-0625-193* was unconstitutional due to the possible violation of 25 U.S.C., and the possibility that it was unlawful on its face?
3. Whether the Tribal Court erred in not finding that the *Resolution #03-0625-193* was unlawful as applied to the Plaintiff?
4. Whether the Tribal Court erred in dismissing the Plaintiff's complaint since a material fact may have remained in dispute because the Plaintiff's job description, which was adopted by Tribal Council resolution, was in direct conflict with *Resolution #03-0625-193*?

IV. Analysis and Discussion

A. Issue 1

Plaintiff seeks that the Tribal Government–Employer violated Indian Civil Rights Act as stated in 25 U.S.C. Although free speech is granted under the United States Constitution, the Little River Band of Ottawa Indian Constitution and protected under the Indian Civil Rights Act, the communication to the media was clearly made by Tribal Representative

and in the capacity of that of a Tribal Director of Public Safety. When one engages in media relations as a spokesperson of the Tribe the right of censorship applies. Free speech may apply to public employees if such employee is unveiling an injustice of the government or the information is vital to public concern. Mr. LaPorte was clearly acting as Director of Public Safety. Therefore, all communications regarding any possible agreement must be interpreted as speech which can be controlled.

Government may place restrictions on communications of their employees in order to protect trade secrets, confidential information, on-going or existing business transactions, or all other pertinent information regarding the safety and security to that of the government. Mr. LaPorte was not entitled to the rights of absolute free speech, due to the fact that certain restrictions could be applied since the communications were in fact done as a Tribal Employee and not that of an ordinary Tribal Citizen.

B. Issue 2

The Plaintiff states that that *Resolution #03-0625-193* was unconstitutional due to the possible violation of 25 U.S.C., and the possibility that it was unlawful on its face. *Resolution #03-0625-193* does not appear to be unconstitutional on mere face value. The Tribal Constitution Article IV, Section 5(a)(4) provides that the Speaker of the Council "*perform the duties of the Tribal Ogema in the absence of or due to the inability of the Ogema to perform those duties.*" Therefore it is logical to conclude that Tribal Council was acting in accordance with that

of the Little River Band of Ottawa Indian's Constitution. An argument of whether the *Resolution #03-0625-193* was constitutional after the Ogema regained office would be relevant but was not made. At this time the Court of Appeals could not state that the *Resolution # 03-0625-193* was unconstitutional due to the fact that the resolution is not in effect. Whether the legislative body decided to repeal *Resolution #03-0625-193* because it was in a conflict with the Constitution or whether the Resolution has served its short term purpose, one can only assume. With that stated, the Tribal Council should take into careful consideration the long term effects that each and every resolution has upon its citizens and whether the resolution would be in conflict with the Constitution of the Tribe.

In the instant matter, Tribal Council adopted a resolution that was in direct conflict with Mr. LaPorte's previously adopted job description. This action has created confusion about the employee's job responsibilities.

C. Issue 3

The Plaintiff's argument to this Court is that his comments are protected under the right of public concern because he was acting as a public citizen. While this issue was briefly discussed above in the Issue 1 Analysis, the Plaintiff was in fact acting as the Tribe's Public Safety Director. The communications were clearly that of the Director of Public Safety. Mr. LaPorte communicated to the media in uniform and as an official of the Tribe. Mr. LaPorte's right to voice a general public concern

would be protected as a citizen, only if he was speaking as a private citizen and not as an official of the Tribe.

It is critical that the government set forth clear and concise guidelines on which officials can release information to the general public and what information may be released. In this case, this was not accomplished which led to confusion and conflict.

D. Issue 4

The Plaintiff's argument that there was a direct conflict between the Plaintiff Joseph LaPorte's job description and *Resolution #03-0625-193* which led to the confusion on whom shall speak on behalf of the Public Safety Department is accurate. The Defendants would have this Court believe that *Resolution #03-0625-193* would take precedence over any job description and therefore Plaintiff's claim is without warrant. The Resolution did not cover or amend any employee's job description. The Tribal Council did not place clear language within the Resolution concerning this type of conflict. For the Tribal Council to act in an effective manner, the impact of a proposed Tribal Council action on existing law, policies, procedures, or any other tribal mechanism or institution that has been previously established must be carefully considered. In the case of *Resolution #03-0625-193* the Tribal Council did not take into the consideration the conflicts that would arise, since no job description nor resolutions were amended or repealed. It is the function of the

Government to ensure stability and not to infringe on the rights of its employees and citizens.

It is clear the Plaintiff, Joseph LaPorte, was acting as Public Safety Director when the communications to the media occurred. Every employee and employer is guaranteed limited rights which are described under their job description. An employee's job description clearly details the expectations one has from its employer and vice versa. In the matter of Mr. LaPorte, the job description clearly states that the director shall *"represent the Tribal Council with citizens and community groups within the Tribe, media, and other governmental agencies and professional associations to promote the best interests of the Little River Band of Ottawa Indians and resolve concerns when necessary."* The Defendants would have this Court believe that neither the Executive Branch nor the Legislative Branch knew this type of communication was about to occur. Both Mr. Eugene Zeller, representing the executive branch, and Mr. William Brooks, representing legislative branch filed affidavits with knowledge of what was about to occur. This Court can only believe that these lawyers who work each on separate branches of government were the key personnel in the matters of this type of agreement. After the fact the Executive and Legislative Branches can not claim to have any knowledge of a meeting and its intent since both branches had lawyers speak with Mr. LaPorte prior to the meeting with Lake County.

The Tribe can not hold their employees liable for inconsistencies in laws and policies. However, there is a hierarchy to the systematic approach when distinguishing between what laws or policy takes precedence. The Tribe and its citizens shall hold with utmost importance and the highest authority the Constitution above all other laws of the land. Ordinances and/or Statutes take compelling authority over Resolutions. Finally, Resolutions take compelling authority over policies and/or job administrative rules. It is the job of the Government and employer to ensure that law and job descriptions coincide. It is not the responsibility of an employee to ensure that job descriptions and laws are compatible.

V. Conclusion

This Court affirms its earlier decision. That *Opinion* was based upon the pleadings before the Court. The various counts and prayers for relief provided the parameters for the litigation and the basis for this Court's original *Opinion*. During oral argument it became apparent incidentally that the target was moving for Plaintiff-Appellant's counsel, as he was only then beginning to realize and suspect a power struggle context, between the Executive and Legislative Branches of Tribal Government, in this matter. This Court did not consider new arguments in that regard on appeal, as appellate review must be limited to those raised in the original action before the Tribal Court.

Justice Champagne, *separately*

Mr. LaPorte's right to free speech was not violated. Further, *Resolution #03-0625-193* can not be deemed unconstitutional due to the fact that when this Resolution was adopted it was in accordance with the Little River Band of Ottawa Indians Constitution. Further, this Court concludes that Mr. LaPorte was in a unique circumstance where *Resolution #03-0625-193* was in direct conflict with the job description of the Public Safety Director. It is not the responsibility of an employee of a government to determine what takes precedence when the new resolution did not change the job description. The Little River Band of Ottawa Indians has the obligation to take responsibility for the incoherence and conflict between the *Resolution #03-0625-193* and the job description of the Public Safety Director. The Government ultimately has the responsibility to ensure coherency of the laws passed, and to make sure that those laws do not conflict with previous laws. Justice Champagne would have ordered that The Little River Band of Ottawa Indians should reimburse the Plaintiff, Joseph LaPorte, for all reasonable costs incurred for legal expenses retained in reference to case number 04-142-AP & 04-023-GC. This is allowable under the inherent powers of the Tribal Court to provide equitable relief to further the interest of justice and fairness, in accordance with *Article IV Section 8-Powers of the Tribal Court and Section 9-Judicial Independence*. It is the custom of the Little River Band of Ottawa Indians to believe that society must be mended to make whole

again. Each side that believes they have been wronged has that right to ask for the circle to be whole. This can only be done in this case by awarding attorney costs to Mr. LaPorte, so he is not out any monies by bringing forth such action. Lastly, neither the Defendant nor the Plaintiffs were without fault.

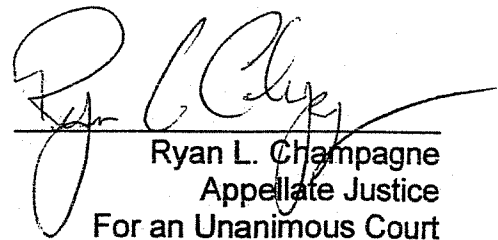
Chief Justice Petoskey and Justice Gibson, *together*.

This Court does not have the authority to order attorneys fees. Federal and state courts only have that authority where it is expressly and specifically provided by statutes. Likewise, the courts of this Tribe should only attempt to draw on the Tribal treasury when that authority is expressly and specifically provided by tribal statutes.

Importantly, it should be noted that this matter was not argued nor briefed for this Court's consideration. The prayer of attorney's fees was merely the boilerplate language used by attorneys in filing pleadings.

IT IS ORDERED this 21st day of April in the year 2006 by a majority Court.




Ryan L. Champagne
Appellate Justice
For an Unanimous Court

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 DOMRES ROAD
MANISTEE MI 49660
231-398-3406

LORETTA BECCARIA,
Plaintiff

v.

Case Number: 04132GC

LITTLE RIVER BAND ELECTION BOARD,
Defendants

Tracy J. Andrews,
Attorney for Defendants
420 East Front Street
Traverse City MI 49686

Before: Honorable Daniel Bailey

Opinion and Order

This matter comes before the court on Defendant's Motion to Dismiss. Hearing was held May 16, 2005. All parties were permitted ample opportunity to set forth their position and present evidence.

Plaintiff has represented herself throughout these proceedings. The court has allowed her certain latitude, but must nevertheless make its decision based upon the admissions of the parties and any evidence submitted. The following facts have presented themselves:

Plaintiff was a co-sponsor of a recall election, and was responsible for circulating petitions to gather sufficient number of signatures necessary to cause the election to take place.

Defendant Election Board reviewed the petitions, made numerous determinations that some signatures did not conform to its rules, and finally determined the petitions did not contain enough signatures to cause an election to be held.

Defendant subsequently issued a "Notice of Assessment of Fines for Civil Infractions of Improper Filing of Recall Petitions" to Plaintiff and others. The original notice stated Plaintiff was to be fined \$3400.00, and that she had a right to a hearing on the matter before the Board. Plaintiff attended that hearing and was apparently required to present evidence to challenge the Board's decision. (Defendant's Brief, p. 7.) On June 23, 2004, Defendant issued an opinion ruling

Case Number: 04132GC

against the principal sponsors, but nevertheless reducing the fines by half. Plaintiff continued to challenge the Election Board's decisions and procedures, and eventually filed suit in this court.

Plaintiff has made numerous allegations in her Complaint, but essentially seeks dismissal of the fines against her. She further alleges that Defendant's actions have a chilling effect upon a tribal member's right to seek a recall of its elected officials. Defendant has set forth its arguments in its Brief in Support of its Motion to Dismiss. Essentially, Defendant argues that it operated within its constitutional mandate, and that Plaintiff has made no allegations which would bring this action within the court's jurisdiction.

After review of all pleadings, evidence and arguments, the court finds there are sufficient factual and legal issues to bring this matter within its jurisdiction; rules in favor of Plaintiff; and denies Defendant's Motion. The Court orders that the fines levied upon Plaintiff as a result of circulating the recall petitions at issue, be rescinded, unless fraud or any other intentional act to deceive can be demonstrated. The court reaches this conclusion for the following reasons:

1) After review of the "Rules and Regulations for the Recall of Elected Officials", (hereafter "Rules") the court agrees with Plaintiff that tribal members would be deterred from participating in a recall election because of the overall complexity of the Rules, and the clear threat of financial penalties if mistakes in signing or securing signatures are made.

It is not disputed that an agency created by the Tribal Constitution has a right to formulate its rules of operation, but the effect of those rules must be in conformity with the agency's constitutional mandate. Article X of the Constitution states that members shall have the right to recall elected officials, and gives to the Election Board (established in Article IX) the responsibility to conduct such elections. Contrary to Defendant's assertions (Brief, p.9), the Constitution does not specifically, or by inference, authorize financial penalties for violations of Board's rules.

Not only has Defendant assumed authority to impose financial penalties on circulators and signers of recall petitions, but it has done so with no objective standards for imposition of these penalties, or what act or mistake will cause a penalty to be imposed. There is no reference to fraud, intentional acts of deception, or any other act which might be done intentionally to falsify information or to subvert the integrity of the recall. Section 15 of the Rules simply states that any violation of the Rules is considered a civil infraction and punishable by a fine of "not more than \$500.00." Presumably, innocent mistakes can be punished on the same level with intentional fraud, with the sole determination made by Defendant.

Case Number: 04132GC

The arbitrariness of this scheme was demonstrated by Defendant's own acts. After issuing the "Notice of Assessment of Fines..." Plaintiff was allowed a hearing before the Election Board to challenge its actions. Even though the Plaintiff presented no evidence to support her actions or demonstrate the inappropriateness of Defendant's levy, Defendant reduced Plaintiff's fines from \$3400.00 to \$1700.00. The reasons for the reduction were stated to be:

(1) 'This was only the second recall petition process in the history of the Tribe,' and (2) "this recall petition process is the first one to impose fines and many persons who were assessed fines did not feel that it was fair..." But as a result of the fines the Tribal membership is put on notice that fines will be assessed in the future..." (Brief, p.7.) Not only are Defendant's acts of assessing and then reducing fines, arbitrary and capricious, but they are openly threatening to those who, in the future, might contemplate signing a recall petition.

2. The court does not address Plaintiff's allegations that the Election Board was inappropriately influenced in its decision to disallow the recall petitions.

However, a review of the Rules gives an indication for the basis of suspicion. Article X, Sec. 2 of the Tribal Constitution authorizes the Election Board to "verify and approve or deny" a recall petition. However, in its Rules, Defendant has not only described the process used to determine the validity of signatures on a petition, but it has also reserved to itself the right to determine the MERIT of the petitions. Section 5 of the Rules states that the Board shall determine whether the petitions are of "sufficient clarity," and further, "...whether the reasons for recall are accurate and truthful."

Review of recall petitions for clarity of language may be a valid administrative function, necessary to accomplish the purpose of having a recall election. (Tribal Constitution, Article X, Sec. 2.) But nowhere in the Constitution is Defendant given authority to become a judge of the merit of the petitions and the espoused reasons for the desired recall. That is a function of the Tribal members, expressed in their votes for or against recall.

In claiming authority to determine if petitions are "accurate and truthful," Defendant has exceeded its constitutional mandate and exposed itself to allegations it was, or could be, influenced by outside, vested interests in making such decisions.

3. Defendant's Brief, p. 7, has raised a due process issue which is not dispositive, but is nevertheless of concern to the court. Plaintiff was allowed a hearing by Defendant, before Defendant, to present evidence and argument to challenge the actions of Defendant. An agency of government makes a decision to impose a penalty upon a citizen, and then allows the citizen the opportunity to

Case Number: 04132GC

come before it to present evidence why the agency should not have decided to do what it did. In this scheme, Defendant is the prosecuting agency, the presiding judge, and finally, the jury deciding the strength and veracity of Plaintiff's evidence.

4. Further, Defendant's requirement that Plaintiff present evidence to dispute the allegations in the Notice of Assessment, improperly places the burden of proof on Plaintiff. At the hearing, Defendant should have been required to prove its case against Plaintiff, and only then, would Plaintiff be required to present a defense to the allegation. True due process would have required that Defendant present its allegation to an independent judicial authority, and that, that independent authority, would decide on the merits of Defendants allegation and actions, and Plaintiff's evidence in defense.

For all the above reasons;

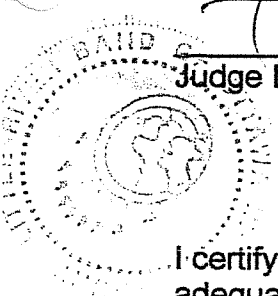
IT IS ORDERED the fines imposed upon Plaintiff arising out of the circulation of recall petitions, are hereby rescinded, unless fraud or other acts intended to deceive, can be demonstrated by a preponderance of evidence.



Judge Daniel Bailey

6/1/05
Date

CERTIFICATION OF SERVICE



I certify a copy of this order was placed in the Tribal mail system to have adequate postage attached to be taken to the Manistee branch of the U.S. Post Office for mailing to the parties as listed on this order at their last known address on file with the court.

Deborah Miller
Deborah Miller/Court Administrator

6/2/05
Date

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road
Manistee, MI 49660

Tribal Ogema,
Plaintiff,

v.

Little River Band Tribal Council
and Tribal Council Speaker,
Defendants.

Case Number: 041546C

Judge: Honorable Ronald G. Douglas

ORDER GRANTING TEMPORARY WRIT
AND RESTRAINING ORDER

Brown & LaCounte, LLP
Alysia E. LaCounte,
Attorney for Plaintiff
The Inacom Building
3001 W. Beltline Hwy., Suite 304
Madison, WI 53713
(608) 227-3100

Robert J. Lytle
Attorney for Defendant Little River Band
P.O. Box 1189
Carefree, AZ 85377
(480) 488-5027

ORDER UPON EX-PARTE PETITION AND MOTION FOR: TEMPORARY RESTRAINING
ORDER, DECLARATORY JUDGMENT, PRELIMINARY INJUNCTION AND WRIT OF
MANDAMUS.

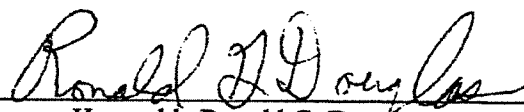
Findings of fact and law:

1. Upon an Ex-parte petition and Motion submitted by the Plaintiff in this matter, there was a showing of immediate irreparable harm that could not be corrected by money damages or an action in equity and that the Ogema clearly had a right to relief in a matter involving Ogema duties and involving non-discretionary ministerial duties of Tribal Council.
2. There was further, a showing of a strong likelihood of prevailing on the merits that would make a Temporary Restraining Order and a Writ of Mandamus, both an appropriate remedy under all of the circumstances.
3. There was a showing that the resolution 05-0233-90 is clearly a direct interference in the integrity of the office of the Tribal Ogema in mandating his personal appearance instead of a staff member at a federal court hearing on March 2, 2005.
4. The Ogema's affidavit of authority allowing a staff member to attend with full power to negotiate a settlement appears to be an integral part of the Ogema's duties and discretion, particularly, with the job description that was written and approved by the Tribal Council, allowing the staff member to attend hearings and negotiations in place of the Ogema.
5. There is a strong showing that the Ogema could not perform his duties with out the clear authority to delegate duties to staff.
6. There are no disputes of fact in regards to the delegation except to the legal effect of the Ogema's agreement with the Tribal Council to handle all legal disputes against the tribe such as this case where the tribe is an intervener defendant.
7. There is a showing that there would likely be irreparable harm as the hearing is in two

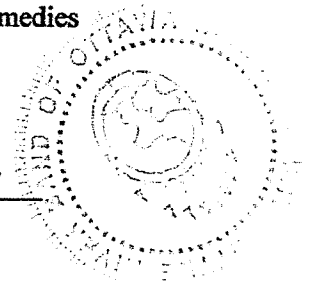
- days and would greatly adversely affect the reputation of the Little River Band if no appearance is made and if they are dismissed as a party; as well as a probable effect on its outcome in addition to money damages and sanctions imposed by that court which has ordered only that an individual with authority and power to negotiate appear at a hearing.
8. There is little damage to the Tribal Council outside of this one delegated appearance where the court must assume that the staff person is experienced and trained to perform the duties for the Ogema in light of her job description.
 9. The Tribal Council is hereby Temporarily Ordered to cease interfering with the Ogema's integral duties and authority to delegate his duty to appear and negotiate in this specific federal case, *The Manistee Salt Works Development Corporation v. City of Manistee*.
 10. The Tribal Council's duties to issue a travel fund check to the staff employee is purely a ministerial duty that is clearly required by tribal ordinance and without discretionary power once the Ogema has properly signed and approved the travel request.
 11. The Ogema has a clear right to the relief of a Writ of Mandamus as; there is no adequate alternative remedy at law or in equity, and it is appropriate under the circumstances since the staff person is acting clearly within executive duties and cannot travel without the funds or without risking sanctions for violating tribal law enacted by the Resolution.
 12. This court has the constitutional authority to issue a Writ of Mandamus to the Tribal Council where their duties are clearly mandated by a tribal ordinance, are not discretionary and would greatly interfere with the constitutional separation of powers and cause irreparable harm if the action is not taken to issue the travel check to Lynn Moore.
 13. The Tribal Council is hereby Ordered by a Writ of Mandamus to immediately issue the required travel checks for the staff person delegated to appear in the federal case.
 14. The other remedies of a declaratory judgment regarding the constitutional validity of the resolutions may be resolved upon a hearing and evidence submitted at a later time and are therefore denied.
 15. Both of these orders are temporary pending further hearings in this case or notice that the court has terminated the orders due to there no longer being irreparable harm or there being a ruling clarifying the separation of powers and determining a definition of executive duties or wrongful interference with the office of the Ogema.
 16. A hearing shall be set at the request of either party for response and further remedies requested or evidence to be submitted by either party.

The above is so Ordered.

Date: February 28, 2005

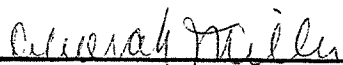


Honorable Ronald G. Douglas



CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for adequate postage to be attached and then taken to the Manistee branch of the U.S. Post Office for mailing on this date to all parties of record.



Deborah Miller/Clerk

3/1/05

Date

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road
Manistee, MI 49660

Tribal Ogema,
Plaintiff,

Case Number: 04-154-GC

v.

Judge: Honorable Ronald G. Douglas

Little River Band Tribal Council
and Tribal Council Speaker,
Defendants.

ORDER GRANTING RECONSIDERATION

Brown & LaCounte, LLP
Alysia E. LaCounte,
Attorney for Plaintiff
The Inacom Building
3001 W. Beltline Hwy., Suite 304
Madison, WI 53713
(608) 227-3100

Robert J. Lyttle
Attorney for Defendant Little River Band
P.O. Box 1189
Carefree, AZ 85377
(480) 488-5027

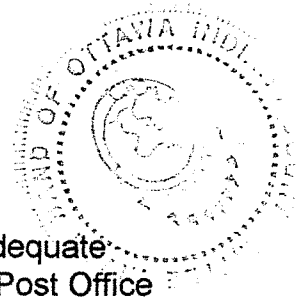
ORDER GRANTING RECONSIDERATION OF TEMPORARY EX-PARTE ORDER

1. A Motion for Reconsideration was submitted by the attorney for the Tribal Council in this matter, asserting a claim of false or misleading statements that would affect the validity or an emergency situation requiring the Temporary Ex-Parte Restraining Order and the Writ of Mandamus entered by this court on Monday night, February 28, 2005.
2. Therefore; a hearing is to be held to determine whether there is good cause to continue or to rescind either or both temporary ex-parte orders.
3. Due to the importance of the issue of separation of powers and the issue of this court's power to enter writs involving the tribal council members in their capacity of administrative activities of endorsing checks or in allowing court appearances by the Ogema's delegates, this matter is scheduled for an early hearing to be held at tribal court and allowing telephone appearances by counsel for either or both parties.

The above is so Ordered.

Date: March 3, 2005

Ronald G. Douglas (RM)
Honorable Ronald G. Douglas



CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for adequate postage to be attached and then taken to the Manistee branch of the U.S. Post Office for mailing on this date to all parties of record.

Deborah Q. Miller
Deborah Miller/Clerk

3/3/05
Date

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee, Michigan, 49660
(231) 398-3404

Tribal Ogema,
Plaintiff,

Case Number 04154-GC

v.

Judge, Honorable Ronald G. Douglas

Little River Band of Ottawa Indians,
Tribal Council,
Defendants.

Brown & LaCounte, LLP
Alysia E. LaCounte,
Attorney for Plaintiff
The Inacom Building
3001 W. Beltline Hwy., Suite 304
Madison, WI 53713
(608) 227-3100

Robert J. Lytle
Attorney for Defendant Little River Band
P.O. Box 1189
Carefree, AZ 85377
(480) 488-5027

ORDER AFTER MOTION HEARING

Upon notice to all parties, a Motion Hearing was held in the Tribal Court on March 11, 2005, regarding Defendant's Motion for Reconsideration of the Temporary Restraining Order and Writ of Mandamus entered. Upon testimony and admission of documents the following facts are established and the following Order is entered:

1. The testimony and statements of the parties persuade this court that the situation appeared to be a true emergency with serious irreparable harm as proper justification for issuance of temporary Ex-parte orders against parties acting in this case under administrative duties under a tribal ordinance regarding travel approval, even though they are also members of the Tribal Council, but were not acting in a legislative capacity nor as a member of the Tribal Council.
2. The parties have agreed that there is no longer a showing of good cause nor any current emergency to justify the continuation of the temporary orders.
3. The evidence showed that the Defendant Council members have rescinded the three ordinances: creating the casino Board of Directors, the directions for the Comptroller and the ordinance controlling all legal department personnel as under the direction of the Tribal Council, thereby terminating all conflicts in the underlying matter as soon as these new ordinances become effective.

4. This court only has jurisdiction where there is a specific case and controversy, and a case cannot be brought to order the tribal council to create ordinances under the Tribal Constitution nor to interfere in matters purely of a political issue such as the political process seriously needed for the Tribal Council to determine the issues necessary to decide in an ordinance to recognize Ogema powers and authority, including the ability to set standards for delegation of executive duties to staff members and to retain legal counsel.
5. The matter is of a type likely to cause interference with the Tribal Council's daily duties and therefore subject to the strongest scrutiny to ensure the least burden on the effective operation of the tribal government, but without interference with Ogema duties and must be resolved as quickly as possible.
6. The court sua sponte takes notice of these limitations and that there is no longer a case or controversy existing once the court receives notice that the ordinances alleged in this complaint to be unconstitutional and invalid have been replaced as there is no action that this court could take at that point and will enter a dismissal without prejudice once proof of the enactment becoming effective and a Motion to Dismiss are received.
7. Further, this court notes that this matter remaining is based on a purely political controversy over the need for ordinances and regulations for government program operations to clarify the overlap of Executive and Legislative powers, budget issues and duties that are beyond the court's authority under the Tribal Constitution and better served by consensus or political negotiations as this court has no jurisdiction under the separation of powers to order either party to create legislation or regulations without a specific controversy restricted to constitutional review of the legality of ordinances or regulations, once enacted.
8. The Parties are highly encouraged to meet in non-binding arbitration prior to this matter being dismissed.

THEREFORE IT IS ORDERED:

- A. There are currently no orders of costs nor temporary actions to be taken.
- B. The Motion for Reconsideration is granted and the Temporary Restraining Order and Writ of Mandamus each entered by this court on February 28, 2005, upon an ex-parte emergency request are both revoked and of no further effect.
- C. The parties are to meet to discuss non-binding arbitration before a neutral party Peacemaker for discussion of a settlement at an agreed time and place.
- D. No further hearings are scheduled nor discovery deadlines set at this time.



Judge Ronald Douglas

March 14, 2005
Date

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee, Michigan, 49660
(231) 398-3404

Tribal Ogema,
Plaintiff,

Case Number 04154-GC

v.

Little River Band of Ottawa Indians,
Tribal Council,
Defendants.

Judge, Honorable Ronald G. Douglas

ORDER OF DISMISSAL

Brown & LaCounte, LLP
Alysia E. LaCounte,
Attorney for Plaintiff
The Inacom Building
3001 W. Beltline Hwy., Suite 304
Madison, WI 53713
(608) 227-3100

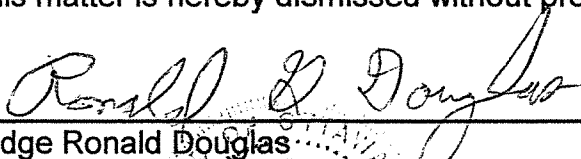
Robert J. Lyttle
Attorney for Defendant Little River Band
P.O. Box 1189
Carefree, AZ 85377
(480) 488-5027

Upon notice to all parties, a Motion Hearing was held in the Tribal Court on March 11, 2005, regarding Defendant's Motion for Reconsideration of the Temporary Restraining Order and Writ of Mandamus entered. Notice was given by the court that this matter would be dismissed upon filing a Motion and proof that the three disputed ordinance were revoked and replaced:

1. The Defendant, Tribal Council has submitted copies of ordinances appearing to be properly enacted by the Legislative Body replacing the ordinances in dispute.
2. There has been a Motion for Dismissal filed with the terms of the Order filed by this court on March 14, 2005, which has not been noticed as to objection.
3. The Motion indicates that all conditions of the earlier Order have been met and on its face, shows that, as a matter of law, there is no longer an actual dispute for this court to retain jurisdiction over the Complaint filed regarding the disputed Tribal Ordinances which have now been rescinded.

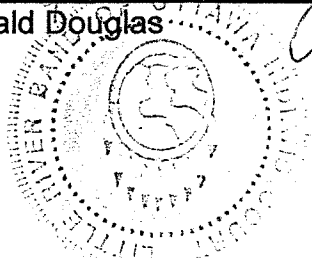
THEREFORE IT IS ORDERED:

This matter is hereby dismissed without prejudice and without costs as to either party.



Judge Ronald Douglas

March 21, 2005
Date



Tribal Court
3035 Domres Road
Manistee, Michigan 49660

Tribal Council, LRBOI
Plaintiff

v.

Case # 041570C

Lee A. Sprague
Ogema, LRBOI

Now comes the Tribal Council requesting the Tribal Court to issue an ex parte temporary restraining order against the Tribal Ogema, Lee A. Sprague, in his capacity as Ogema.

For the following reasons, the Tribal Council requests this order:

1. The Tribal Ogema has indicated to the Speaker of the Tribal Council that he intends to exclude Legislative Counsel Jo Anne House from her office, and have the office sealed by members of the Public Safety Department. Speaker Parson's affidavit is attached in support of this assertion.
2. The Tribal Ogema has indicated that he will attempt to declare the contract between Little River Band and Jo Anne House to be null and void, even though there is a resolution adopted by Tribal Council in accordance with the Little River Band Constitution authorizing and engaging such employment contract.
3. The Tribal Ogema has already filed a motion seeking a temporary restraining order against the Tribal Council on October 4, 2004.
4. The Tribal Council believes that the general welfare of the tribe and its members will be irreparably harmed if the Ogema carries out his plan to seal the office of the Legislative Counsel. By such action, if carried out, the Ogema will place the operation of Tribal Council at a stand still, as much of the ongoing work of the Tribal Council is contained in the files and work product of the Legislative Counsel.
5. Pending legislation under consideration by the Tribal Council is housed in the office of the legislative counsel, and action by the Ogema to seal the office and limit access to the Tribal Council Speaker and Ogema may result in the postponement of critical and necessary actions by the Tribal Council. This would have a direct and negative impact on the Tribal Membership, as the actions of Tribal Council are to provide for the welfare of the Tribe and its members.
6. The Ogema has no authority to carry out such proposed action, as whether the contract is valid or not is not in question, because the Legislative Council

would remain an employee of the Tribal Council irregardless of the existence of any contract.

The Tribal Council reserves the right to extend or support or provide additional support for the arguments above at any future hearing or action regarding this request.

The Tribal Council hereby requests that the Tribal Court issue an ex parte restraining order against the Ogema as follows:

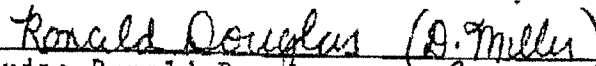
1. The Tribal Ogema shall not seal the office of the Legislative Council.
2. The Tribal Ogema shall not attempt to interfere in the work of the Legislative Council in support of the work of the Tribal Council.
3. The Tribal Ogema shall not issue any executive Order compelling the department of Public Safety to seal any office, escort any tribal council employee off the reservation or out of the offices of the Tribe.
4. The Tribal Ogema shall not attempt to interfere with the employment of any employee of the Tribal Council.

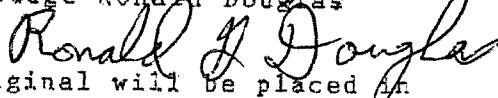
Signed:


On behalf of Tribal Council, Stephen Parsons, Speaker

SO ORDERED, THIS 5TH DAY OF OCTOBER, 2004

BY:


Judge Ronald Douglas



Original will be placed in the mail on 10/06/04 with Judge Douglas's own signature.

Signed by express permission of Judge Douglas via telephone at 4:42 p.m 10/5/04



TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

Tribal Council,
Plaintiff

v.
Lee A. Sprague,
Defendant

Case Number: 04157GC

SPECIAL PROCEEDINGS AND ACTIONS

EX PARTE ORDER FOR TEMPORARY RESTRAINING ORDER

The request for the temporary restraining order was prepared without aid of legal counsel by the Tribal Council, faxed to the court offices, read to the Judge over the telephone, and signed by the court administrator with the Judge's permission. Therefore the notice to the defendant about the his right to object to the order was inadvertently left out.

The Michigan Rule of Court, Rule 3.207 EX PARTE, TEMPORARY, AND PROTECTIVE ORDERS Section B, § (6) states: "In all other cases, the ex parte order must state that it will automatically become a temporary order if the other party does not file a written objection or motion to modify or rescind the ex parte order and a request for a hearing. The written objection or motion and the request for a hearing must be filed with the clerk of the court, and a true copy provided to....the other party, within 14 days after the order is served. "

"(a) If there is a timely objection or motion and a request for a hearing, the hearing must be held within 21 days after the objection or motion and request are filed."

"(b) A change that occurs after the hearing may be made retroactive to the date the ex parte order was entered."

CERTIFICATION OF SERVICE

I certify that a copy of this notice was placed in the Tribal mail system for sufficient postage to be attached and mailed to the parties listed above.

Deborah A. Miller
Deborah A. Miller – Court Administrator

10-7-04
Date

Little River Band Of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406

James E. Wabsis, Salli R. Wabsis,
and Catherine M. Wabsis
Petitioners,

Case Number: 04-185-EA

v.

Honorable Ronald G. Douglas

LITTLE RIVER BAND OF OTTAWA INDIANS,
Enrollment Commission,
Respondent

Jana M. Berger P-58739
Attorneys for Petitioners
24355 West 13 Mile, Suite 200
Bingham Farms, MI 48025
(248) 540-9636

Damian S. Fischer P-63078
Attorney for Respondent Enrollment Comm.
375 River Street
Manistee, MI 49660
(231) 723-8288

ORDER REMANDING FOR RECONSIDERATION

This matter was heard in Tribal Court on April 11, 2005, upon Motion for Summary Disposition by Respondent, Enrollment Commission, and had been set for a Pre-Trial Hearing. The following findings of fact and law are made based upon the documents on file and the statements made at the hearing:

1. This Court has jurisdiction over the Petition under the Tribal Constitution and the Enrollment Ordinance, Article X for the tribal court to hear all appeals from a final decision of the Enrollment Commission.
2. The Petitioners are tribal members who were notified of their enrollment on July 6, 2000.
3. There were findings of fact that: the Petitioners were all at least one-quarter Ottawa Indian blood; that they were lineal descendants from an Ottawa listed on the 1908 historic Durant Roll; and that those ancestors did reside in one of the counties required under the Constitution at some time in their lives.
4. In August of 2004, the Enrollment Commission conducted a hearing and notified the Petitioners that they had reconsidered their earlier decision and determined that there was a "Mistake of Fact" that resulted in a decision that the Petitioners were to be disenrolled as allowed under the Ordinance.
5. There was a timely appeal that resulted in this hearing.
6. That this Petition is from an administrative hearing so that this court must presume that

their decision is correct on all facts unless there is a showing of no evidence, proof of fraud or a showing of bias that influenced the decision: or that it was against the great weight of the evidence presented; or if there was an error of law; otherwise, the Petition must be dismissed.

7. This court hearing showed no evidence of bias; there was some evidence supporting the decision, but the earlier findings of fact were confirmed instead of being reversed as none of the earlier findings were actually found to have been in error to support a finding of a mistake of fact.
8. The record shows that there was no timely appeal disputing the August, 2000, decision, the interpretation, or the finding of facts made by the Enrollment Officer at that time.
9. This court must allow due process and allocate the burden of proof for a finding that there was a mistake of fact on the Enrollment Commission when there was a finding involving the most important civil right of a membership decision.
10. The court must also show the highest deference to a separation of powers for the Executive Branch of the tribe in their interpretation of Constitutional language and in enactment of ordinances, especially in the area of determining who is qualified as a member of the tribe.
11. It appears that there are two possible interpretations of the language in the Constitution and the Enrollment Ordinance regarding the ancestor who appears in the Durant Roll and was a resident of the listed counties.
12. The August 2000 decision appears to have relied on the fact that there are two clauses where the first requires a listing on the Durant Roll; and the second requires a residency, but does not specifically state that residency must be listed at the time of the Durant Roll.
13. The Enrollment Commission appears to have changed its interpretation of this clause in 2004, to require that the person's name and residency within the specific counties must both have been met at the time of the Durant Roll and that a later residency will not allow membership qualification.
14. This court must remand the matter if there is a finding of an error or law; or dismiss it if there is a basis for a finding that there was a mistake of fact.

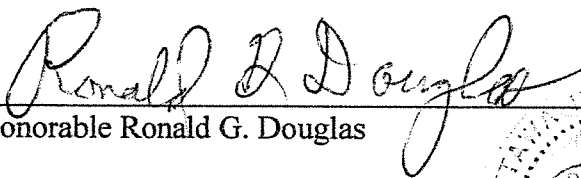
Therefore the following Findings of Law are made and it is Ordered:

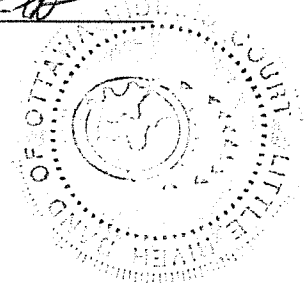
- A. There was not a proper finding of a mistake of fact during the August 2004, decision made by the Respondent Commission in 2004 as all fact decisions made were affirmed.
- B. The Crawford case, while appearing correctly decided, is not binding precedence due to its being a summary matter and there being no appeal taken to the Tribal Court of Appeals and appears to have some differences from this Petition as it appears to have been an initial decision whether to allow membership rather than a disenrollment matter which requires a greater deference to an earlier administrative decision.
- C. There was no timely appeal of the 2000 decision of the Tribal Enrollment Officer.
- D. There was an error of law by the Respondent Enrollment Commission as none of the earlier facts were overturned for any evidence to support the finding of a mistake of fact.
- E. The Tribal Constitution requires that a decision by the Enrollment Commission may not make substantive changes to the conditions for enrollment from those listed in the Constitution and in the Enrollment Ordinance.

- F. A decision properly made by the Enrollment Officer is a final administrative decision that must be given deference and cannot not be overturned unless there is evidence of bias by the agency or fraud by the applicant; a finding that there was no evidence at all to support the decision; or that the decision was against the total weight of all of the evidence.
- G. This matter is remanded to the Enrollment Commission to reconsider their decision based on whether the earlier decision of 2000, was due to fraud or bias; was not supported by any evidence, or was totally against all of the evidence.
- H. The Commission is also to determine whether the later hearing was barred by the Enrollment Ordinance's stated appeal period limitations; and whether or not the later policy change in interpreting the two clauses in the Constitution and in the Ordinance may be applied retroactively without creating new substantive conditions barred by the Tribal Constitution and Enrollment Ordinance.
- I. This Order and Finding of Law does not affect any other Enrollment decisions originally based upon the change to the later interpretation of residency as that interpretation is not disputed and appears to be within the Commission's apparent administrative authority.
- J. This Petition case is closed as it is a final decision and no further action is needed beyond remanding it to the Respondent Enrollment Commission.

The above is Ordered on this date.

Dated: April 14, 2005


Honorable Ronald G. Douglas



CERTIFICATION OF SERVICE

I certify that a copy of this Order was placed in the US mail system with sufficient postage attached and mailed to the parties attorneys at the addresses on file with the Court.


Deborah A. Miller – Clerk

4-15-05
Date

Little River Band Of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406

James E. Wabsis, Salli R. Wabsis,
and Catherine M. Wabsis
Petitioners,

Case Number: 04-185-EA

v.

LITTLE RIVER BAND OF OTTAWA INDIANS,
Enrollment Commission,
Respondent

Jana M. Berger P-58739
Attorneys for Petitioners
24355 West 13 Mile, Suite 200
Bingham Farms, MI 48025
(248) 540-9636

Damian S. fischer P-63078
Attorney for Respondent Enrollment Comm.
375 River Street
Manistee, MI 49660
(231) 723-8288

ORDER CLARIFYING ORDER ENTERED ON APRIL 14, 2005


1. This matter was heard and decided on April 12, 2005 and remanded to the Enrollment Commission for a new hearing.
2. The Commission was required by Tribal Ordinance 02-200-01 Section 10, to allow the timely appeal that was taken by the tribal members given a written Notice of Disenrollment.
3. The parties agreed in their arguments and briefs at the earlier hearing that the validity of the Notice of Disenrollment is limited to a valid finding of a "mistake of fact" by Section 8.01 (b) and limited to an Order for Remand.
4. The earlier finding of this court was that there was no mistake of fact, but rather a new interpretation of law.
5. The court further found that this lack of a mistake of fact in this case barred the decision for disenrollment of these petitioners, based on the new legal interpretation now being applied that residency was required at the time the ancestor's name were placed on the Durant Roll instead of at any time during such ancestor's lifetime.
6. This matter was remanded to the Enrollment Commission as required under Section 10.09(b)(1) as the finding was that their earlier decision was invalid as in violation of Ordinance 02-200-01 as there was no mistake of fact whereby the Enrollment Commission must issue notice that the Petitioners remain tribal members eligible for all member rights and benefits pending action under the remand.

7. The Order of Remand resulted in that the Enrollment Commission's earlier decision as to disenrollment of the petitioners was invalid and was set aside unless the Enrollment Commission meets and determines other evidence of a mistake of fact exists, and submits a new written notice of any re-determination of a decision to issue a Notice of Disenrollment to any Petitioner in this matter based on its new findings upon remand.
8. This Order is for clarification only, and does not change any of the terms or findings of fact or law in the earlier Order of April 14, 2005, which was not appealed by either party.

Therefore;

The Petitioner's Motion for relief is denied as no action is needed to be ordered against the Enrollment Commission unless a new determination and a new Notice of Disenrollment is submitted as the earlier Notice of Disenrollment was found to be invalid.

Dated: July 28, 2005



Associate Judge Ronald G. Douglas

CERTIFICATION OF SERVICE

I certify that a copy of this hearing notice was placed in the US mail system with sufficient postage attached and mailed to the parties attorneys at the addresses on file with the Court.

Deborah A. Miller – Clerk

Date