

FOREST v LRBOI --- #14036GR

Summary: Plaintiff received a disciplinary action results in three days of unpaid leave. He was disciplined for singling out an employee/tribal member who had a CPL.

Decision and Order: The Court finds the suspension of the Plaintiff baseless after hearing testimony. The court finds that the emails did not constitute any form of harassment because it was legally disseminated by a law enforcement personnel. \$500.00 towards the Plaintiff's attorney fees.

LRBOI Tribal Council v LRBOI Tribal Ogema ---14127GC

Summary: This matters involves a contract between the Tribe and a law firm to represent the Tribe with regards to labor matters. The contract was approved by the Ogema and ratified by the Tribal Council. The contract stated "This engagement may be terminated by either party by giving written notice to the other party."

Decision and Order: In Conclusion the Constitution gives Tribal Council authority to authorize, employ, etc. also implies the authority to un-authorize, or un-employ, and thence terminate the contract. The plaintiff's motion for summary disposition is granted.

LRBOI Tribal Council v Mitchell ---14145GC

Summary: A motion was filed from an action filed by Tribal Council seeking Mandamus, Injunctive, and Declaratory Judgment, as well as a claim for conversion.

Decision and Order: The Court rules that Mr. Mitchell is not the proper party. This case is dismissed for failure to name the proper party.

MARTIN v LRBOI --- #14258GR

Summary: Petitioner filed an appeal to Tribal Court regarding Termination as Public Safety Director. The Tribe terminated due to egregious actions and felt the termination was correct and prudent outcome.

Decision and Order: The decision to terminate the Director of Public Safety as he did not do the job he was paid to do was upheld by the Court.

SZYNSKI v LRBOI --- #14260GR

Summary: The Petitioner filed a Grievance for termination from employment with the Department of Public Safety as the Respondent terminated him for egregious actions.

Cause: Carrying unregistered weapons for which you were not qualified, in violation of the Departmental SOPs on firearms.

Decision and Order: The Court finds that the allegations as a cause for termination do not rise to the level of being egregious. The Petitioner shall be reinstated to the same position held before termination. He shall receive back pay and any benefits.

DEFOREST v LRBOI --- #14262GR

Summary: The Petitioner filed a Grievance for termination from employment with the Department of Public Safety. The Petitioner was terminated for egregious actions

Decision and Order: The Court finds the behavior of Lieutenant was egregious, ongoing and a detriment to the department.

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

PLAINTIFF:
DAVID DEFOREST

V.

CASE NO.: 14036GR
HON. DANIEL BAILEY

DEFENDANT:
LRBOI DEPARTMENT OF PUBLIC SAFETY

Attorney for Plaintiff:
Dennis M. Swain
P.O. Box 288
Beulah MI 49617

Attorney for Defendant:
Damian S. Fisher
2608 Government Center Drive
Manistee MI 49660

ORDER AFTER INFORMAL HEARING ON GRIEVANCE

At a session of said Court on March 10, 2014
In the Reservation Boundaries of the
Little River Band of Ottawa Indians,
State of Michigan
PRESENT: HON. DANIEL BAILEY

This issue comes to the Tribal Court after Plaintiff received a disciplinary action resulting in three days unpaid suspension from his duties as Lieutenant for the Little River Band of Ottawa Indians Public Safety Department. An informal hearing was noticed and held on March 10, 2014.

On November 21, 2013, Lt. DeForest issued an email addressed to All Public Safety stating:

"Officers:

Israel Stone now has a CPL."

On January 24, 2014, Michael Martin, the Director of LRB Public Safety disciplined Lt. DeForest by issuing a three (3) day suspension of the Plaintiff's position, without pay. DeForest was suspended for singling out Mr. Stone by sending that email to his officers.

The Court is in receipt of Lieutenant DeForest's Personnel file. There are no "write-ups"; no disciplinary actions; and no indication of any oral warnings issued. His evaluations over the course of his tenure with the Tribe have all been exemplary.

Director Martin testified that he had two conversations with his superior about the incident. He was told by his 'boss' to investigate and discipline Officer DeForest. The Tribe's Personnel Policies have a progressive method of sanctions when dealing with employees that do something in contradiction of those policies. This did not happen in Lt. DeForest's case.

In the written Disciplinary Action signed by Director Martin, the Lieutenant was cited with a violation of Chapter IX, Section 9.1 (a.) A Commitment to the Tribe's goals, its leadership, and management is (a) requirement of all employees."

The Lieutenant was also cited with violating Section 9.1 (b) "Employees are expected to present a positive image as tribal government professionals at all time in forms of dress, communication, and action"

The Lieutenant was cited for violating Section 9.1 (d) "Employees shall be responsible for and shall not misuse Tribal records, or other material in their care, custody, and control,... etc."

Mr. DeForest was also cited for violation of Section 9.1 (p) "No employee will use his or her position with the Tribe for person [sic] gain..."

Director Martin's testimony was ambiguous when describing how the Plaintiff met each criterion that was cited. Martin said the DeForest appeared to adhere to the goals of the Tribe. Martin said Plaintiff was always professional in dress and communications. The Director admitted that the email was not a violation of policy or law, because it was specifically sent to the other Tribal Law Enforcement Officers. The Director could also not articulate how Lt. DeForest would possibly use the email or knowledge for personal gain.

Martin did testify that there was a bigger picture that he became privy to through his supervisor, the Ogema. The Director was asked to interview Israel Stone. Mr. Stone felt the email was a continuing harassment by DeForest. This was based on "negative contacts Lt. DeForest has had with Mr. Stone and Stone's family." There was an allegation that other Tribal Officers said that "Sgt. Szynski threatened to do harm to Mr. Stone." The Court does not see how an alleged threat by another officer became a part of the discipline of Lt. DeForest.

The negative contacts that Lt. DeForest has been accused of, appears to be law enforcement contacts when DeForest was a Tribal Conservation Officer and Mr. Stone was a fisher. Stone was issued tickets for offenses relating to the operation of a commercial fishing venture from approximately 6 years ago.

The Attorney for the Defendant, Damian Fisher, made the inference of direct competition between Mr. DeForest and Mr. Stone. He based this on the fact that Mr. DeForest has a charter boat captain license and Israel Stone has (had) a commercial fishing license.

The Court asked the parties to differentiate between the kind of catch each are allowed to legally harvest and the waters in which each fisherman fished. DeForest stated he uses fishing poles and that his charter operation fishes for salmon and steelhead. He also testified that he has been fishing in the river the past two years, not on Lake Michigan. The commercial fishermen fish in the great lakes with trap nets and they harvest white fish. Mr. Stone has not fished commercially for a number of years.

Mr. Fisher alleged that there was harassment; that it is a power game. "It doesn't rely on facts, it relies on innuendo." "Mr. Stone has subjective feelings of being harassed." Attorney Fisher felt that Mr. DeForest participating in a gun show at the Casino a few weeks ago was a competitive and harassing action.

Mr. Fisher explains the Ogema is the Chief Law Enforcement Officer of the Tribe. The Ogema has to listen to the complaints of the community. Attorney Fisher says the Ogema can forego progressive discipline if an egregious action is committed.

Was the dissemination of the email to the Tribal Police Officers egregious or illegal? The Plaintiff attests that he never recognized anyone's name prior to seeing Israel Stone's name on the list of person's holding concealed pistol licenses. His reasoning for sending out the email was to alert the Officers of a person employed at the Casino who was recently approved for a CPL and for officer safety reasons.

FINDINGS

The Court finds the suspension of Officer DeForest baseless after hearing testimony by the Lieutenant and that of his supervisor, Director Martin. The court finds that the email did not constitute any form of harassment because it was legally disseminated to law enforcement personnel only.

What does concern the Court is the fact that the email and its contents were "leaked" to Mr. Stone. That in itself is egregious. Which Tribal Officer shared the confidential information with the complainant? If protocol were followed, Mr. Stone would not have known he was singled out as an employee/member who holds a CPL. The information would have remained within the Department of Public Safety where it belonged. If there was to be any type of discipline, it should have been an oral reprimand stating that it wasn't necessary or particularly prudent to single out an individual.

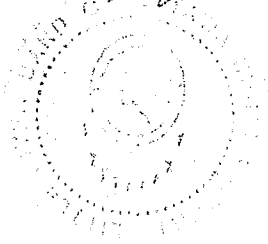
Because the suspension was not warranted by evidence other than "innuendo" the Court orders the suspension/disciplinary paperwork removed from Mr. DeForest's personnel file. Officer DeForest is to be paid for the days he was suspended. The Court also grants a payment of \$500 toward the Lieutenant's attorney fees, payable to Dennis Swain (at the address on the top of this order.)

SO ORDERED:



Judge Daniel Bailey

3/17/14
Date



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

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COUNCIL.

Plaintiffs,

Case No. 14127GC

v.

Hon. Daniel Bailey

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL OGEMA

Defendant.

Michelle A. Bostic
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2608 Government Center Dr.
Manistee, MI 49660

Jana M. Simmons
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Ferndale, MI 48220

Martha L. King
John Petoskey
Attorneys for Defendant
1900 Plaza Drive
Louisville, CO 80027

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION
AND DENYING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION**

The facts of this matter are not in dispute. This matter involves a contract between the Little River Band of Ottawa Indians and the law firm Drummond Woodsum to represent the Tribe with regard to labor matters that was entered into on or about March 24, 2008. The contract was approved by the Ogema as noted by his signature, and was ratified by the Tribal Council by resolution. The contract was modified by the parties on or about June 10, 2009, which modification was also ratified by the Tribal Council through Resolution # 09-0603-152. Neither resolution nor the contract contains any provision to who had authority to terminate the contract within the Tribe. The contract simply indicated "This engagement may be terminated by either party by giving written notice to the other party."

On May 22, 2014, the Ogema wrote a letter to Drummond Woodsum terminating the contract. On May 24, 2014, the Tribal Council Speaker wrote a letter indicating that the contract was not terminated as far as the Tribal Council was concerned. The Tribal Council has also passed Resolution #13-0814-241, which resolved that "all outside counsel retained by the Tribe or the Tribal Council who are paid through the Legislative Legal Department Budget shall direct their communications regarding their work to the Chief Legislative Counsel, and not to other in-house Tribal attorneys, on all matters overseen by the Legislative Legal Department unless expressly authorized by the Tribal Council or Chief Legislative Counsel. The Chief Legislative Counsel shall inform other in-house counsel as

to the status of such matters as she deems appropriate or as otherwise directed by Tribal Council.

The Tribal Council sought and received an Ex Parte Temporary Restraining Order on June 2, 2014, which restrained the Tribal Ogema from taking any action, or allowing a subordinate employee or official to take any action that attempts to unilaterally terminate any contract to which the Tribe is a party, and invalidated the attempted termination of the contract. The Court later lifted the temporary restraining order by order dated September 16, 2014.

In the Court's view, the question at hand is not interpretation of the contract terms, but whether the Ogema had legal authority under the Little River Band of Ottawa Indians Constitution to terminate a contract which has been ratified and authorized by Tribal Council.

The Tribal Council's authority is in part to "employ", "authorize" and "ratify." Specifically, Article IV, Section 7 (b) of the Constitution indicates that Tribal Council has the power:

(b) To authorize and ratify agreements and contracts negotiated by the Tribal Ogema on behalf of the Little River Band with federal, state and local governments and other Indian tribes or their departments or political subdivisions, or with private persons on all matters within the authority of the Tribal Council;

* * *

(e) To employ legal counsel, subject to the approval of the Secretary of the Interior so long as such approval is required by Federal law;

The Ogema's authority is to "consult", "negotiate", and "execute." Specifically, Article V, Section 5(a)(3) states that the Ogema has the power:

To consult, negotiate, and execute agreements and contracts on behalf of the Little River Band with federal, state, and local governments and other tribal governments, or with private persons or organizations. Agreements and contracts reached must be approved or ratified by Tribal Council to be effective.

The Court finds that the Tribal Council's complaint for declaratory relief raises a dispute that implicates questions as to interpretation of the above Constitutional provisions and determining the respective powers of each branch of government. This case raises a question which can be resolved by the Court, pursuant to Article XI, Section 2(a) and is not a political question over which the Court would not have jurisdiction. The Court has subject matter jurisdiction under Article XI, Section 2(a), where the Tribal Council has sought declaratory relief. Declaratory judgment is proper in this circumstance. The Court disagrees with the assertion of the Tribal Ogema that it is necessary to include the law firm Drummond Woodsum as a party in order for the Court to make a determination of declaratory relief. The issue here is the scope of the powers of the respective branches of government under the Constitution; it is not a matter of the Court interpreting the contract itself, or whether the

contract should or should not have been terminated. This case relates to who has the legal authority under the LRB Constitution to exercise the termination clause of the contract rather than interpretation of the contract terms themselves. Had the contract been specific as to what branch of government had authority to terminate the contract and it had been approved by both branches, then this matter is not likely to have come before the Court.

The Plaintiff is not asking the Court to determine a political question, or determine a policy choice. Whether the contract should or shouldn't be terminated would clearly be a political question, but that's not the issue before the Court. The Court is interpreting the parameters of the authority granted by the Constitution as to both branches of government as it relates to *all* contracts between the Tribe and third parties. One party to the contract is the outside party; the other party is the Tribe as a whole. This is very clearly a controversy between the Tribal Council and the Ogema over the authority to terminate a contract, any contract, not just the one involved in this case.

The Constitution involves both the legislative and executive branches of government with regard to contracts with the Tribe. Both branches need to be involved in the consummation of a contract in order for it to be effective under the Constitution. The Constitution is silent and does not speak specifically to termination of a contract. Therefore, the Court must look at the Constitutional authority granted to the two branches of government and their relative powers as stated in the Constitution, and not in this instance to the language of the contract. The Constitution indicates that the Tribal Council has authority to "authorize" and "ratify" agreements and contracts negotiated and presented to them by the Ogema, and there is a separate provision as to employing legal counsel. The Constitution says that the Ogema has authority to negotiate, consult, execute and manage the contract in his executive function.

To authorize, ratify and employ implies that the Tribal Council has the role of deciding whether the contract should be entered into. It is the Ogema's duty to negotiate terms and then follow up once approved by Tribal Council. Contracts are approved by the Tribal Council passing a resolution or law approving or ratifying the contract. Under this scheme of checks and balances, it is logical that it would be Tribal Council that would have the authority to "de-authorize" or "unemploy." That is not to say that the Tribal Council could not delegate that authority by resolution to the Ogema; however that is not what occurred here. The Court finds that the Constitution's empowering the Ogema to execute and manage a contract does not include the authority to unilaterally terminate a contract authorized by Tribal Council.

This Court held in *Little River Band of Ottawa Indians Tribal Council v. Little River Band of Ottawa Indians Tribal Ogema*, Case No. 08-093-GC held that both the Ogema and the Tribal Council had the authority to terminate contracts, independent of each other, and seemed at one point to imply that who the "parties" to the contract were (i.e., who signed it) dictate the relative powers of the parties. This Court declines to follow that reasoning and holding. This Court believes that where the contract is silent, it is the Constitution which dictates the relative powers of the parties. Unless the contract approved by both parties were to specifically delegate that authority to one or the other branches of government, this Court disagrees that the Constitution grants unilateral authority to terminate to both


branches of government. There is no specific delegation of authority in the contract in this case, thus the Court looks to the Constitutional authority of the executive and legislative as to contracts. The contract in this case indicates that it may be terminated by either party upon written notice. One party is the law firm; the other party is the Tribe as a whole. Tribal officials are subject to the powers and constraints contained within the Little River Band of Ottawa Indians Constitution. The Tribe overall is the true party to the Contract, and governmental bodies must operate within the confines of their constitutionally mandated roles. This Court is not seeking to "rewrite" the contract, rather to clarify the respective authority of the governmental branches with regards to the contract.

In Resolution 13-0814-241, the Tribal Council ratified or authorized the contract with Drummond Woodson. Tribal Council's involvement did not end at that point. Another resolution was entered into adding additional terms to the contract, which was approved by the Ogema and ratified by the Tribal Council in a separate resolution. This Court finds that any modifications to the terms of a contract approved by the Ogema and Tribal Council, including terminating the contract, must also be approved or ratified by resolution of the Tribal Council. The executive function of managing the contract and overseeing compliance does not include the authority to terminate the contract unilaterally without that action also being ratified by Tribal Council.

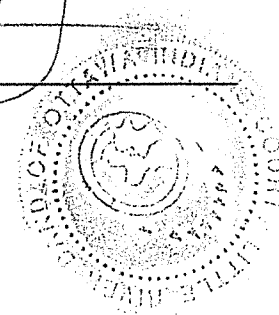
In conclusion, the language of the Constitution giving Tribal Council authority to authorize, employ, etc. also implies the authority to un-authorize, or un-employ, and thence terminate the contract.

IT IS THEREFORE ORDERED that Plaintiff's motion for summary disposition is granted, Defendant's motion for summary disposition is denied. No costs are awarded to either party.

Date: 2/25/15



Judge Daniel Bailey



LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406

Little River Band of Ottawa Indians
Tribal Council,

Petitioner,

v.

Case Number: 14-145 GC
Hon. Angela Sherigan

Jimmie Mitchell, Natural Resources
Director,

Respondent

Michelle Bostic
Associate Legislative Counsel
2608 Government Drive
Manistee, MI 49660

John F. Petoskey and Martha King
Special Attorney for Respondent
1900 Plaza Drive
Louisville, CO 80027

ORDER REGARDING RESPONDENT'S MOTION TO DISMISS

Respondent, Jimmie Mitchell, Natural Resources Director, by and through his attorneys, filed a Motion to Dismiss, a hearing was held, in which all parties and/or their attorneys were present.

This Motion stems from an action filed by Tribal Council seeking Mandamus, Injunctive, and Declaratory Judgment, as well as a claim for conversion.

Respondent first argues that the case should be dismissed based on sovereign immunity. Respondent states that "lawsuits against officials acting within their official capacity or nothing more than claims against the entity, and immunity from suit for a tribe also applies to tribal officials"¹. Respondent argues that "the suit is not to enforce a provision established by the Constitution, nor are any ordinances or lawful resolutions of the Tribe at issue ... the claims for money

¹ This is not a case where an outsider is suing the Tribe, and makes this argument somewhat circular in that it appears that Respondent is stating that the Tribe cannot sue the Tribe, or bring suits against its officials or employees for enforcement of duties imposed upon them.

damages, even if couched as a claim for restitution must be summarily dismissed, as it is expressly prohibited”.

The Court looks to the LRBOI Constitution, which states:

ARTICLE XI - SOVEREIGN IMMUNITY

Section 1 - The Tribal Council shall not waive or limit the right of the Little River Band to be immune from suit, except as authorized by tribal ordinance or resolution or in furtherance of tribal business enterprises. Except as authorized by tribal ordinance or resolution, the provisions of Article III of this Constitution shall not be construed to waive or limit the right of the Little River Band to be immune from suit for damages.

Section 2 - Suits against the Little River Band in Tribal Courts Authorized.

(a) The Little River Band, its Tribal Council members, Tribal Ogema, and other Tribal officials, acting in their official capacities, shall be subject to suit for declaratory or injunctive relief in the Tribal Court system for the purpose of enforcing rights and duties established by this Constitution and by the ordinances and resolutions of the Tribe.

(b) Notwithstanding the authorization provided in subsection (a) of this Section, persons shall not be entitled to an award of damages, as a form of relief, against the Tribe, its Tribal Council members, the Tribal Ogema, or other Tribal officials acting in their official capacities; provided that the Tribal Council may by ordinance waive the right of the Tribe or Tribal officials to be immune from damages in such suits only in specified instances when such waiver would promote the best interests of the Band or the interests of justice.

Petitioners have petitioned the court for declaratory and injunctive relief against a tribal official acting in his official capacity, for the purpose of enforcing Natural Resources Commission Regulations, as adopted by Resolution, and the duties they impose. As such, Respondents argument to dismiss based on sovereign immunity for injunctive and declaratory relief fails. However, as Petitioners have not waived immunity from damages, and any money damage award would be against the Tribe by the Tribe, the claim for conversion in a civil matter against Mr. Mitchell in his official capacity cannot survive.

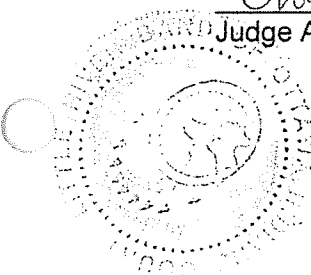
Respondent next argues that the case should be dismissed based on lack of standing, stating that there is no injury to Tribal Council, and thus the Court cannot redress the injury, therefore the case must be dismissed, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60 (1992). Contained within this

argument, is that Mr. Mitchell is not the proper party. Mr. Mitchell is an executive director, under the supervision of the Ogema, thus Respondent argues that the Ogema is the proper party. Petitioners argue that the Respondent has had time to "inter-plead", however, the Court believes that the Petitioner has misused the legal term.

The Court agrees with Respondent that he is not the right party. Tribal Council does not have the authority to direct action over Executive employees.

THEREFORE, IT IS HEREBY ORDERED:

The case is dismissed for failure to name the proper party.

 Angela Sherigan
Judge Angela Sherigan

2/23/15
Date

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for sufficient postage to be attached and mailed to the plaintiff and the defendants (or their attorneys) at the addresses on file with the court.

Laurie Wilcox
Court Clerk

2/23/15
Date

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

PETITIONER:
MICHAEL MARTIN

CASE NO.: 14258GR
HON. DANIEL BAILEY

V.

RESPONDENTS:
LARRY ROMANELLI, TRIBAL OGEMA
AMY SEDELMAIER, HUMAN RESOURCE DIRECTOR

Attorney for the Petitioner:
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160 East State Street
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Traverse City MI 49684

Attorney for Respondents:
William F. Stephens
1425 K Street NW
Suite 600
Washington DC 20005

At a session of said Court on January 12, 2015
In the Reservation Boundaries of the
Little River Band of Ottawa Indians,
State of Michigan
PRESENT: HON. DANIEL BAILEY

On December 16, 2014, Petitioner Michael Martin presented an appeal to the Tribal Court regarding his termination as the Public Safety Director. He filed a written request for a Grievance Hearing. Petitioner denied each and every charge/allegation leveled against him and asked the Court to overrule the decision by the Ogema to let him go. That hearing was scheduled and held on January 12, 2015.

Director Martin was given a chance prior to the scheduled hearing to defend his actions. He has never submitted anything in writing.

The Petitioner began testimony by arguing there was no due process in the way the hearing was being conducted or in the termination paperwork. The Petitioner had no idea who made the complaints against him thereby not allowing him an adequate defense. Martin received the Termination Letter with a highly redacted copy of an investigative report that was written by Detective Sgt. Grabowski.

Martin also felt that the Ogema may have shown bias against him because of an earlier grievance hearing in 2014 regarding the Lieutenant. The Ogema wanted Martin to suspend the lieutenant but after the proofs were put on record regarding the Lieutenants

grievance hearing, the Court found no real basis for suspension, due in part to Martin's testimony at that hearing. Mr. Martin intimated that one of the reasons for his termination was in part, retaliation.

Respondents testified they redacted the identity of the individual names on the investigative report after finding no relevance to this case and/or because the identities may initiate some retaliation at a future time. (The redactions were also based on Human Resources own Standard Operating Procedures regarding confidentiality of employee information.)

The Respondents outlined why the Tribe felt that the actions, or lack thereof, by Director Martin were egregious in nature and they felt terminating his employment was the correct and prudent outcome to their investigation. The Respondents reasoned that the charges did not need the testimony of the complaining witnesses; they were policy violations that could stand alone as such.

As to the causes of termination:

Cause 1: Failure to ensure Department Personnel complied the firearms requirements.

The Petitioner did not provide witnesses or any proof that the Lieutenant and the Sergeant had qualified in 2014 to carry and use the two weapons in question. The Lieutenant carried a pistol in a holster on his ankle that he had never been qualified to carry, per his own admission. There was also no proof that the Sergeant had qualified on the rifle in question in 2014. These two guns and the qualifications for them were an issue in 2013 and it appears that the Director never followed up on the complaints to make sure the SOP's of the Public Safety Department for firearms were followed. This failure to uphold the firearm policy put the Tribe at great risk and the Court finds this lapse in leadership, egregious.

Cause 2: Failure to secure the Department's Evidence Control Room.

The Petitioner provided neither witnesses nor any proof that he did not have knowledge of the breach of the Evidence Room/Locker. The Detective (who incidentally is responsible for the Evidence Room) found the door to the evidence room unlocked and open (the date is unclear; sometime in early 2014.) He investigated and found out that Officer Gilles was testing keys and found an extra key to the evidence room. Detective Grabowski testified that he informed both the Lieutenant and the Director of the breach regarding the door being open and the extra key. Only the Detective and the Officer Manager were to have keys. To Grabowski's knowledge, the Director took no action on the breach of the evidence room or the breach of the extra key. Grabowski testified that after the Director was terminated they found a few more keys to the evidence locker that were not sanctioned. The Court finds the compromise of evidence and the lack of leadership on the part of the Director an egregious offense.

Cause 3: Failure to ensure officers were issued and carried federal Special Law Enforcement Commission cards.

These cards are issued to Tribal Officers to be able to act (without pay) as Federal Officers on Tribal Lands. The Petitioner testified that he assigned Lieutenant DeForest the job of arranging all the steps and criteria to allow the officers to either renew or apply

to get the SLEC card. It appears that the Lieutenant had failed to arrange the requisite background and financial checks for the law enforcement officers. Director Martin was

ultimately responsible for all that transpired in his department. It appears that he failed to supervise or discipline his staff for certain violations. Because he was the Director of Public Safety, the Court finds this an egregious dereliction of duty.

Cause 4: Violating the Tribe's Constitution by executing an unauthorized agreement with local governments.

The Petitioner felt he did nothing to compromise the sovereignty of the Tribe by signing the Memorandum of Understanding for the Reporting an Investigation of Felonies Committed Against Vulnerable Adults. This MOU did not specifically mention the Tribe as a party, but did have Mr. Martin sign it as a representative of the Tribe. The Petitioner argued that the Tribe was not listed as a direct party. The Ogema argued on the stand that the Cross-Deputization Agreement made the Tribe a party under the Manistee County Sheriff Department.

The Constitution of the Little River Band (Section 5(3) – Powers of the Ogema) dictates that the Ogema has the power to: “3. Consult, negotiate, and execute agreements, and contracts on behalf of the Little River Band with federal, state, and local governments and other tribal governments, or with private persons or organization. Agreement and contracts must be approved or ratified by the Tribal Council to be effective.” Director Martin failed to adhere to the Constitution of the Little River Band which is the major law for the Band.

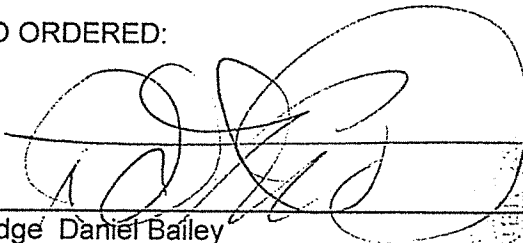
Cause 5: Violation of the terms of Employee's Suspension Letter.

The Suspension Letter of October instructed the Petitioner “...not have any contact with any outside agencies that deal with the Band...” Mr. Martin testified that he felt it was a professional courtesy to inform the Sheriff Department of his suspension. Mr. Martin's suspension letter informed him that he was no longer cross-deputized, alluding to the fact that the Sheriff Department must have already known. The Court finds his explanation rational and not to the point of being an egregious violation.

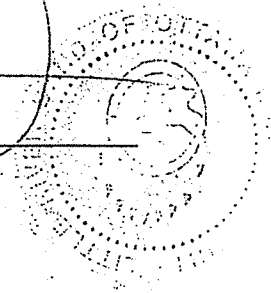
Civil matters are decided by the preponderance of evidence. The Petitioner failed to provide witnesses or exhibits to lend credence to his testimony. This was not a criminal matter where he would have the absolute right to confront his accusers. This was a matter of policy violations. It was not important who or how the information came to light. It is important that the testimony and witnesses of the Little River Band proved to the Court that the former Director of Public Safety did not do the job he was paid to do. The Court finds that his lack of supervision and his blind faith in his lieutenant does rise to the level that would be considered egregious. Martin's actions could have compromised the Tribe on many levels.

The Court upholds Michael Martin's termination from the position of the Director of Public Safety.

SO ORDERED:



Judge Daniel Bailey



2/2/15
Date

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

PETITIONER:
MARK SZYNSKI

CASE NO.: 14260GR
HON. DANIEL BAILEY

V.

RESPONDENTS:
LARRY ROMANELLI, TRIBAL OGEMA
AMY SEDELMAIER, HUMAN RESOURCE DIRECTOR,
AND THE LITTLE RIVER BAND OF OTTAWA INDIANS

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Traverse City, MI 49684

Attorney for Respondent/Defendant:
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Washington DC 20005

At a session of said Court on January 19, 2015
In the Reservation Boundaries of the
Little River Band of Ottawa Indians,
State of Michigan
PRESENT: HON. DANIEL BAILEY

This matter comes before the Court through a Grievance filed by the Petitioner for his Termination from employment with the Department of Public Safety as a Sergeant in the Conservation Department. The Petitioner was accused of egregious actions enumerated in the Notice of Cause for Termination dated December 5, 2104. The Cause: *Carrying unregistered weapons for which you were not qualified, in violation of the Departmental SOPs on firearms.*

The Tribe alleged the Petitioner was responsible for multiple violations of the Department of Public Safety Standard Operating Procedures regarding firearms. This charge was based on an internal investigation by Detective Sergeant James Grabowski assigned to him by the LRBOI Human Resource Department. The investigation was prepared on the department's incident reporting form and was assigned a number: 14-000584.

The Petitioner was summoned to the Justice Center on October 30, 2014, and was informed that he was under investigation. He was told to turn-in his gun, badge, keys, and department and BIA identification cards.

The Petitioner was terminated from employment on December 8, 2014. The Petitioner filed a Grievance on December 15, 2014.

The Respondents "answer" to the request for a Grievance Hearing came in the form of a Supervisor's Written Statement received on January 5, 2015. The Respondents also provided a Summary of that answer. On page one in the first paragraph it states "that the Employee carried four rifles without authorization, **as well as a "308" sniper rifle** [emphasis added] he was neither authorized nor qualified to carry." This would involve five long guns that were found in petitioner's truck.

Testimony of the former range officer, who removed the guns from the truck the morning after the suspension, determined that there were only 3 long guns in the truck. The shotgun issued to truck number 24, which was the Petitioner's assigned truck. The Bushmaster XM15-E2S .223 Caliber assigned to Sgt. Szynski and the Springfield Scout Rifle, .308 which was issued/assigned to Lt. DeForest, (who was Szynski's supervisor) who then assigned the gun to Petitioner for use in the field.

Officer Brown testified that based on his knowledge, many Michigan Department of Natural Resource Officers carry the Springfield Scout Rifle for dispatching large animals. It appears that the Springfield Scout M1A is a hunting rifle and not a sniper rifle.

An audit of all weapons owned by DPS was requested by HR and performed on November 5, 2014, by the former range officer Brown and the former property officer Velikan [Exhibit D]. On page two (2) of the audit is a highlighted portion denoting the pistol that was turned over by Sgt. Szynski at the beginning of his suspension. (Sig Sauer .45 caliber pistol # G 365 187) On page eight (8) is a highlighted portion denoting the Springfield Scout Rifle #279415. It is noted that the gun was initially issued to Lt. DeForest but that "Szynski had." On page nine (9) is a highlighted portion with the Bushmaster XM15-E2S .223 caliber that denoted was "issued to Szynski."

Officer Brown testified that he didn't designate the shot gun to Szynski on the audit paperwork but removed it from truck #24 which was assigned to the Petitioner.

The Court requested clarification of the definition of primary and secondary weapons from two of the officers that were sworn in. Officer Brown and former Lt. DeForest classified primary weapons as pistols which are worn normally on the hip and secondary weapons were normally concealed on the officer's person. Neither of them considered a shot gun or long gun to be classified as primary or secondary. In Exhibit B, a portion of the BIA "Law Enforcement Handbook" section 1-22-02, concurs with the testimony about primary and secondary weapons in (C.) Neither is considered to be a rifle or long gun.

The Department of Public Safety SOP's under Section II. DEFINITIONS does state that firearms "include both handguns and shotguns." Long guns or rifles are not defined in the Tribe's SOP's as firearms

Under Section III. POLICY, 2 (a.) Training and Qualifications "a. Departmental policy requires officers qualify at least twice annually, with both primary and secondary weapons." There is no mention of shotguns or long guns/rifles under these training qualifications.

The Human Resource Director testified that she and the Ogema found that Sgt. Szynski being in possession of the .308 was against regulations and that it was not "properly signed out to you or accounted for by the Department's former range and firearms officer."

Testimony and copies of qualifications from 2013 signed by the Tribe's former range officer (Medacco) who had qualified Sgt. Szynski on the Springfield Scout .308. The range officer(s) obviously knew who had the gun and that Sgt. Szynski was qualified to use it at one time. The Petitioner was qualified in June 2014 on the other weapons in his possession.

The Petitioner was extended an invitation via the termination letter to *"report on Monday, December 8th to the human Resources Department for an in-person meeting to discuss these matters."* The Petitioner testified that he asked to be allowed to access his desk and computer to show them proof that he was indeed certified on the Springfield Scout. He was denied access. His desk had already been cleaned out; documents were admittedly shredded; and he was denied access to his computer.

The HR Director testified during the hearing that Sgt. Szynski never asked for access to his computer or emails. In his letter to Amy Sedelmaier, HR Director, dated December 7, 2014, he requested access to certain documents and *"access to my electronic files, email correspondence...."*

In Tab 59 submitted with the Petitioners personnel files; there were copies of handwritten notes taken by HR that indicated he requested the same things at the meeting on December 8th.

It was Petitioners contention that he could prove he was certified in 2014 if he were allowed access to the paperwork in his desk and some email threads.

It was also noted that Human Resources testified that they did not find any written warnings or write-ups in Sgt. Szynski's file. He had worked for the Tribe for 12-years without any disciplinary actions.

The Human Resource Director is given the power under the Government Operations Personnel Manual to *"authorize actions outside of the progressive discipline steps for egregious actions."* (Pg. 12) This power was utilized based on the one complaint in the Notice of Cause for Termination letter.

This grievance is a civil matter. The Court bases its opinion on the preponderance of evidence. The "evidence" that is relevant to this Court is listed below:

- Because the rifle was issued to the Petitioner by his supervisor and both range officers knew who had the rifle, Sgt. Szynski was not in violation of possessing a weapon that was not *"properly signed out to you or accounted for by the Department's former range and firearms officer."*
- There is a question as to whether or not the Petitioner passed a qualification in 2014 on the Springfield Scout. Sgt. Szynski testified that he had. The Court wonders why neither party subpoenaed Sgt. Medacco to testify. He was the range officer in March 2014 when the Petitioner should have re-qualified. He could have definitively answered the question. The range officers should have been aware that it was time for re-qualification on that rifle and would have/should have sent emails with dates to shoot; as was testified to in regard to the protocol for any re-qualification schedules.
- The Court finds it concerning that the Petitioner was not allowed to go through his desk to find certain documents or given access to his email. He may have been able to present proof of his re-qualification for 2014.

- The issue of the SOP's for Firearms not designating when or how often the officers had to qualify on rifles or long guns, is problematic also.

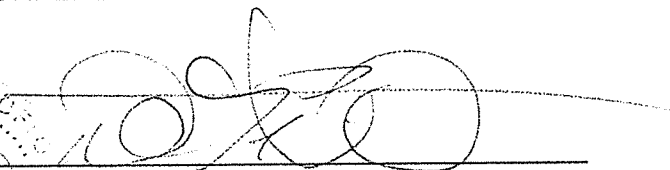
The Court finds that the allegations as a cause for termination do not rise to the level of being egregious. It is the Courts opinion after the hearing and reviewing the exhibits and evidence that Sgt. Sznyski was wrongfully terminated.

The Petitioner shall be reinstated immediately to the same position he held before being suspended/terminated. He shall receive his back wages and any benefits, within 30 days of this order, that he would have been entitled to if he had continued to be employed. (Ordinance #05-600-01)

It is the suggestion of the Court that every employee keep track of expiration dates for any certificates or training qualifications instead of relying on supervisors. (This does not negate a supervisor's responsibility.)

It is also suggested that copies of any certificates or other important personnel documents be taken home for a personal file.

SO ORDERED:



Judge Daniel Bailey

2/10/15
Date

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

PETITIONER:
DAVID DEFOREST

CASE NO.: 14262GR
HON. DANIEL BAILEY

V.

RESPONDENTS:
OGEMA LARRY ROMANELLI AND
HR DIRECTOR AMY SEDELMAIER

Attorney for the Petitioner:
Mark Quinn
402 Maple Street
Manistee, MI 49660

Attorney for Respondents:
William F. Stephens
1425 K Street NW
Ste. 600
Washington DC 20009

At a session of said Court on January 21st and 22nd, 2015
In the Reservation Boundaries of the
Little River Band of Ottawa Indians,
State of Michigan
PRESENT: HON. DANIEL BAILEY

This matter comes before the Court through a Grievance filed by the Petitioner for his Termination from employment with the Department of Public Safety as a Lieutenant for both the road patrol officers and conservation officers. The Petitioner was accused of egregious actions enumerated in the Notice of Cause for Termination dated December 5, 2104. The Causes listed are:

Cause 1: Violation of the Department's SOPs by carrying a weapon for three years he was not qualified to carry.

Under the Public Safety Departments SOPs regarding *Firearms, III Policy A. Department Standards, 1. a. Handguns*. Departmental Standards shall be 9mm minimum and .45 caliber maximum to cover both primary and secondary weapon, either carried on or off duty.

The Audit in Exhibit H assigned two handguns to Mr. DeForest. He held and/or was assigned a Sig Sauer .38 caliber, number: 27A037644 and a Glock.40 caliber number: NVF508. The primary weapon was the Sig Sauer and the secondary weapon was identified as the Glock .40 caliber. Both of these guns were acceptable under the 2005 SPOs for Handguns.

The issue in this case that the Respondents considered egregious was the admission by DeForest that he had worn the Glock as a concealed weapon in an ankle holster for approximately three years without ever being qualified to use it.

In the SOPs *Firearms, III. Policy, 2. Training and Qualifications, a. Departmental policy requires officers qualify at least twice annually, with both primary and secondary weapons.* The weapon on his ankle was his secondary weapon. The Petitioner was mandated by the regulations to test for proficiency with that weapon and be certified by the Range Officer.

DeForest testified that he thought that most of the officers were aware of the secondary weapon he carried. He testified that he "kept after" Sgt. Medacco to set-up a course for secondary weapons.

- The Court gives little weight to the testimony by the Petitioner about the need for a separate course for secondary weapons as it doubts the accuracy of the statement.
- By failing to discipline the Sergeant for not setting up the (claimed) course after repeated requests to do so reflects poorly on the Petitioner's leadership capabilities. One aspect of his job description was to scrutinize the "officers daily activities ensuring duties are carried out in a prompt, efficient and effective manner."

The purchase of the Springfield Scout .308 rifle was not an allowable purchase according to the present regulations. The Petitioner ordered the gun and assigned it to Sgt. Szynski who was a conservation enforcement officer. The reasoning for the purchase was logical. Most, if not all, DNR officers carry them for dispatching large animals.

- An amendment or addendum to the Firearms SOP would have been a simple fix for the Lieutenant to add to the existing SOPs while "working" on the newer set. (It is noted that the current SOP's for firearms does not give any direction for the qualification of long guns/rifles or how many times in the course of the year it is required.)

During testimony, Mr. DeForest opined that these policies were living documents and things would and could change. He testified that he had been working on new SOPs for the Department but that they had not been implemented as of yet. Part of the job description signed by the Petitioner (approximately 6 years ago) assigns the Lieutenant the duty that he "Formulates and executes plans, procedures and priorities to improve departmental operations."

- None of the Department SOPs had been changed or amended in his tenure with the department.

Cause 2. Failure to comply with the Department's SOPs by not following procedures regarding the Evidence Control Room.

The Petitioner testified that he was verbally assigned by Director Martin to be the alternate Evidence Control Technician in Detective Grabowski's absence. It would be Mr. DeForest's job to take evidence from the lockers left there by Tribal Officers after a complaint or an arrest. Petitioner would be responsible to catalog, store, track and

dispose of in accordance with the Departments SOPs for evidence. The alternate ECT would not have this duty on a regular basis. He did take over the responsibilities for two months or so when the Detective was off on medical leave (approximately two years ago.)

DeForest testified that Detective Grabowski told him what to do in regard to the duties. The Petitioner said he knew the procedures existed for an access log but had never seen it. He admitted that he entered the ECR from time to time without ever filling out the log. DeForest said he never saw the log. (Sgt. Grabowski testified that it was in the evidence room on the back of the door.)

The Petitioner was questioned about the extra keys to the evidence room. DeForest said he had no knowledge of any duplications until September 2014. He did testify that in the past he had seen officers in the ECR room without the evidence technician in attendance. He said that it was Detective Grabowski's responsibility as the Evidence Control Technician.

- As the alternate evidence control technician, the Petitioner lacked initiative and oversight regarding the policies concerning evidence. In the Department SOPs about evidence and its safekeeping; under *Definitions (B.) Access Log. This is a log which records; the name of each person who enters the ERC, the reason for the entry, the case or control number, the date and time entered, and the date and time departed.*
- He failed to notify the ECT when he saw other officers in the ECR without the Detective present or without going in with them himself. As the alternate Evidence Room Technician, he would carry some responsibility for unauthorized personnel in the evidence room. As the Lieutenant, his responsibility was even greater.

Cause 3. Failure to exercise proper oversight over the Department.

The Petitioner admittedly assigned a weapon to the Conservation Sergeant that was not an authorized weapon in the Department's SOPs for firearms. By his own admission, DeForest himself, failed to follow the Department requirement that all firearms be "qualified" by a range instructor at least twice a year for primary and secondary weapons.

- He carried a secondary weapon for three years without ever qualifying on that weapon.
- Exhibit D in the file is the Qualification Score Sheet where Mr. DeForest passed the both range qualifications held by DPS in 2014. Petitioner never informed the range officer that he also had a weapon concealed on his ankle.
- Petitioner either failed to read departmental policies regarding the Evidence Control Room and the responsibilities of the Evidence Control Technician or he disregarded the policies.

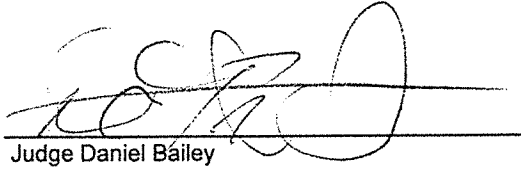
Exhibit F, contain the Rules of Conduct for Public Safety Officers. Rule 4.51:

"Supervisors: A. The primary responsibility for maintaining and reinforcing officer conformance with the standards of conduct of this department shall be with the officer and the first line supervisors. B. Supervisors are required to report any violation of the department's written directives that they either observe or receive information on."

Mr. DeForest was the second in command of the Department of Public Safety for the Tribe. The Court finds the former Lieutenant's behavior was egregious, ongoing, and a detriment to the department.

The Court upholds the decision to terminate the Petitioner's employment.

SO ORDERED:



Judge Daniel Bailey

3/18/15
Date

