

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

Sidney Nolan
5814 Balsam Road
Madison WI 53711

Complainant

vs.

Ho-Chunk Gaming Wisconsin
4002 Evan Acres Rd
Madison WI 53719

Respondent

HEARING EXAMINER'S DECISION AND
ORDER ON RESPONDENT'S MOTION TO
DISMISS FOR LACK OF JURISDICTION

CASE NO. 20142101

EEOC CASE NO. 26B201400043

BACKGROUND

This is a Decision and Order stemming from the Respondent's Motion to Dismiss the complaint in this matter for a lack of jurisdiction. On July 3, 2014, the Complainant, Sidney P. Nolan, filed a complaint of discrimination with the City of Madison Department of Civil Rights Equal Opportunities Division. The Complaint charged that the Respondent, Ho-Chunk Gaming, discriminated against the Complainant on the bases of his race and color by permitting or causing his harassment and by treating him less favorably than other employees not of his race and color in the terms and conditions of his employment. Additionally, the Complainant asserted that the Respondent retaliated against him for his exercise of a right protected by the Ordinance, i.e., for his opposition to the discrimination he objected to. The Respondent denied having discriminated or retaliated against the Complainant and further stated that the Department of Civil Rights was without jurisdiction to process the complaint.

The complaint was transferred to a Division Investigator/Conciliator for investigation and issuance of an Initial Determination with respect to the allegations of the complaint. On October 27, 2014, the Investigator/Conciliator issued an Initial Determination concluding that there was probable cause to believe that the Respondent discriminated against the Complainant in employment on the bases of race and color and that the Respondent had retaliated against the Complainant for his exercise of a right protected by the Ordinance. Subsequently, the complaint was transferred to conciliation.

The Respondent refused the opportunity to conciliate the complaint. The Complaint was then transferred to the Hearing Examiner for a public hearing on the merits of the complaint. The Hearing Examiner issued a Notice of Pre-Hearing Conference.

The Respondent, in response to the Notice of Pre-Hearing Conference, filed a Motion to Dismiss and brief in support of its motion on December 8, 2014. On December 22, 2014, the Hearing Examiner issued a briefing schedule in response to the Respondent's Motion to Dismiss.

DECISION

The basis for the Respondent's claim that the Department of Civil Rights is without jurisdiction over this complaint stems from the Respondent's status as a tribe recognized by the United States Department of the Interior and that the land upon which its gaming facility is located is land held in trust for the tribe by the Department of the Interior. These are equal, but separate claims that the Respondent asserts deprive the Department of Civil Rights of jurisdiction. This is not the first case in which the Respondent has come before the Department of Civil Rights and asserted its sovereign immunity as a recognized tribe or the status of its trust land ownership. Recently, in Meyer v. Ho-Chunk Gaming Wisconsin, MEOC Case No. 20142034 (Ex. Dec. 12/22/2014), the Respondent challenged the Department's jurisdiction on identical grounds to those asserted in the present matter.

In the Meyer case, the Hearing Examiner determined that the Department was without jurisdiction over the Respondent for reasons of the Respondent's sovereign immunity and because the ownership of the Respondent's land falls outside of the geographic jurisdiction of the City of Madison.

As neither party has provided the Hearing Examiner with a reason not to apply the ruling in Meyer v. Ho-chunk Gaming Wisconsin MEOC Case No. 20142034 (Ex. Dec. 12/22/2014), the Hearing Examiner finds his decision in that case to be controlling in the present matter. That decision compels the Hearing Examiner to the conclusion that the Department of Civil Rights is without jurisdiction over the Respondent in the present matter.

The Hearing Examiner notes that nothing in this file indicates that the Respondent has any process or body whereby an employee of the Respondent can complain about mistreatment or discrimination. As a group that has from time to time asserted such mistreatment at the hands of others, it would behoove the Respondent to provide its employees with a process for resolving these matters since it does not wish the Department to resolve them in its place.

ORDER

For the foregoing reasons, this complaint is dismissed.

Signed and dated this _____ day of _____, 20 ____.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Wendi Huling