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**IN THE
HO-CHUNK NATION TRIAL COURT**

Sherry Wilson,
Plaintiff,

v.

Case No.: **CV 05-43**

**Ho-Chunk Nation Department of
Personnel,**
Defendant.

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**ORDER
(Final Judgment)**

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INTRODUCTION

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The Court must determine whether it disagrees with the defendant's characterization of the events that led to the plaintiff's release from employment. The Court recognizes the legitimacy of the plaintiff's argument and proffered testimony, but the Court must deny the request for relief on the basis of sovereign immunity. The analysis of the Court follows below.

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PROCEDURAL HISTORY

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The plaintiff, Sherry A. Wilson, initiated the current action by filing the *Complaint* with the Court on May 19, 2005. Consequently, the Court issued a *Summons* accompanied by the above-mentioned *Complaint* on May 20, 2005, and delivered the documents by personal service

1 to the defendant's representative, Ho-Chunk Nation Department of Justice (hereinafter DOJ).¹
2 The *Summons* informed the defendant of the right to file an *Answer* within twenty (20) days of
3 the issuance of the *Summons* pursuant to *HCN R. Civ. P. 5(A)(2)*. The *Summons* also cautioned
4 the defendant that a *default judgment* could result from failure to file within the prescribed time
5 period.
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7 The defendant, by and through DOJ Attorney Michelle M. Greendeer, filed its *Answer* on
8 June 9, 2005. Prior to this filing, the plaintiff filed the June 7, 2005 *Motion for Default*
9 *Judgment*, claiming a failure to file a timely responsive pleading. The defendant reacted by
10 submitting the June 9, 2005 *Motion to Deny Plaintiff's Motion for Default Judgment*. See *HCN*
11 *R. Civ. P. 19(B)*.

12
13 Regardless, the Court mailed *Notice(s) of Hearing* to the parties on June 24, 2005,
14 informing them of the date, time and location of the *Scheduling Conference*. The Court
15 convened the *Conference* on July 13, 2005 at 9:00 a.m. CDT. The following parties appeared at
16 the *Scheduling Conference*: Sherry A. Wilson, plaintiff, and DOJ Attorney Michelle M.
17 Greendeer, defendant's counsel. The Court entered the *Scheduling Order* on July 13, 2005,
18 setting forth the timelines and procedures to which the parties should adhere prior to trial.
19

20 In accordance with the *Scheduling Order*, the Court convened a *Pre-Trial Conference* on
21 September 21, 2005 at 9:00 a.m. CDT. The following parties appeared at the *Conference*:
22 Sherry A. Wilson, plaintiff, and DOJ Attorney Michelle M. Greendeer, defendant's counsel. The
23 Court denied the plaintiff's standing request for a default judgment from the bench since the
24 defendant clearly filed its responsive pleading within twenty (20) calendar days of the issuance
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28 ¹ The *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*) permit the Court to serve the *Complaint* upon the DOJ when the plaintiff/petitioner names as a party either a unit of government or enterprise or an official or employee being sued in their official or individual capacity. *HCN R. Civ. P. 27(B)*.

1 of the *Summons. Pre-Trial Conference* (LPER, Sept. 21, 2005, 09:58:53 CDT) (citing *HCN R.*
2 *Civ. P. 5(A)(2)*). The Court, therefore, convened *Trial* on October 4, 2005 at 9:00 a.m. CDT.
3 The following parties appeared at *Trial*: Sherry A. Wilson, plaintiff, and DOJ Attorney Michelle
4 M. Greendeer, defendant's counsel.
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6 **APPLICABLE LAW**

7 **CONSTITUTION OF THE HO-CHUNK NATION**

8 **Article III - Organization of the Government**

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11 Sec. 4. Supremacy Clause. This Constitution shall be the supreme law over all territory
12 and persons within the jurisdiction of the Ho-Chunk Nation.

13 **Article V - Legislature**

14 Sec. 2. Powers of the Legislature. The Legislature shall have the power:

15 (b) To establish Executive Departments, and to delegate legislative powers to the Executive
16 branch to be administered by such Departments, in accordance with the law; any Department
17 established by the Legislature shall be administered by the Executive; the Legislature reserves
18 the power to review any action taken by virtue of such delegated power;

19 **Article VI - Executive**

20 Sec. 1. Composition of the Executive.

21 (b) The Executive Branch shall be composed of any administrative Departments created by
22 the Legislature, including a Department of the Treasury, Justice, Administration, Housing,
23 Business, Health and Social Services, Education, Labor, and Personnel, and other Departments
24 deemed necessary by the Legislature. Each Department shall include an Executive Director, a
25 Board of Directors, and necessary employees. The Executive Director of the Department of
26 Justice shall be called the Attorney General of the Ho-Chunk Nation. The Executive Director of
27 the Department of Treasury shall be called the Treasurer of the Ho-Chunk Nation.

28 **Article VII - Judiciary**

Sec. 5. Jurisdiction of the Judiciary.

(a) The Trial Court shall have original jurisdiction over all cases and controversies, both
criminal and civil, in law or in equity, arising under the Constitution, laws, customs and

1 traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its
2 officials and employees, shall be a party. Any such case or controversy arising within the
3 jurisdiction of the Ho-Chunk Nation shall be filed in the Trial Court before it is filed in any other
4 court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of
5 the Nation's sovereign immunity.

6 Sec. 6. Powers of the Tribal Court.

7 (a) The Trial Court shall have the power to make findings of fact and conclusions of law.
8 The Trial Court shall have the power to issue all remedies in law and in equity including
9 injunctive and declaratory relief and all writs including attachment and mandamus.

10 Article XII - Sovereign Immunity

11 Sec. 1. Immunity of Nation from Suit. The Ho-Chunk Nation shall be immune from suit except
12 to the extent that the Legislature expressly waives its sovereign immunity, and officials or
13 employees of the Ho-Chunk Nation acting within the scope of their duties or authority shall be
14 immune from suit.

15 Sec. 2. Suit Against Officials and Employees. Officials and employees of the Ho-Chunk
16 Nation who act beyond the scope of their duties or authority shall be subject to suit in equity only
17 for declaratory and non-monetary injunctive relief in Tribal Court by persons subject to its
18 jurisdiction for purposes of enforcing rights and duties established by this constitution or other
19 applicable laws.

20 DEPARTMENT OF BUSINESS ESTABLISHMENT AND ORGANIZATION ACT OF 2001,
21 1 HCC § 3

22 Sec. 5. Internal Organization.

23 c. The Department shall maintain a current Organizational Chart. The
24 Organizational Chart shall accompany its annual budget submission and any budget
25 modifications during the fiscal year in accordance with the Nation's *Appropriations and Budget*
26 *Process Act.*

27 EMPLOYMENT RELATIONS ACTION OF 2004, 6 HCC § 5

28 Subsec. 18. Annual and Sick Leave.

c. Transfer of Leave Time. Employees may transfer leave hours to another
employee who is eligible to use accrued leave hours. This policy does not apply to an employee
who has given notice of resignation or an employee being separated because of lay-off or
termination.

(1) To be eligible to receive these hours an employee must meet the following
criteria:

1 (a) Have forty (40) or less hours of accrued leave hours.

2 (b) Not receiving any other type of pay (i.e., Short Term Disability,
3 Worker's Compensation, etc).

4 (c) Approval of his or her supervisor.

5 (2) To be eligible to transfer hours, the donating employee must meet the
6 following criteria:

7 (a) Execute a voluntary option of consent with signature and a specific
8 amount of hours donated/transferred.

9 (b) Maintain a minimum balance of 24 hours in his or her respective
10 donating leave account.

11 (c) Approval of his or her supervisor, where applicable.

12 (3) This policy is strictly voluntary and no employee shall be required to
13 transfer accrued leave time.

14 (4) In the event that an employee decides to transfer his/her accrued leave
15 time, such leave time shall not be recovered and the employee will be eligible to utilize
16 only hours that he/she has remaining and thereafter accumulates.

17 (5) Any leave transferred that violates this policy shall result in the transferred
18 leave being revoked from the receiving employee.

19 Subsec. 29. General Hours of Work and Attendance.

20 e. Abandonment of Employment. An employee who is absent from his or her
21 assigned work location without authorized leave for three (3) consecutive days or five (5) days in
22 a twelve (12) month period shall be considered absent without authorized leave, and as having
23 abandoned his or her employment. The employee shall be automatically terminated, unless the
24 employee can provide the Nation with acceptable and verifiable evidence of extenuating
25 circumstances justifying the absence(s).

26 Subsec. 33. Grievances.

27 a. Employees may seek administrative and judicial review only for alleged
28 discrimination and harassment.

d. Candidates for employment may file a complaint with the Department of
Personnel regarding the interview and selection process and may elect to file a complaint directly
with the Grievance Review Board.

1 Subsec. 34. Administrative Review Process.

2 a. Policy.

3 (2) Employees are entitled to grieve suspensions or terminations to the Board.
4 The Board will be selected from a set pool of employees and supervisors with grievance
5 training, who will review a case and determine whether to uphold the discipline.

6 (3) Following a Board decision, the employee shall have the right to file an
7 appeal with the Ho-Chunk Nation Trial Court (Court).

8 Subsec. 35 Judicial Review.

9 a. Waiver of Sovereign Immunity. Pursuant to Article XII of the Constitution of the
10 Ho-Chunk Nation, the Ho-Chunk Nation Legislature expressly waives the sovereign immunity of
11 the Ho-Chunk Nation in the limited manner described herein. This waiver shall be strictly
12 construed.

13 b. There is no judicial review of employee evaluations or disciplinary actions that do
14 not immediately result in suspension or termination.

15 c. Judicial review of a grievance involving suspension, termination, discrimination,
16 or harassment may proceed to the Ho-Chunk Nation Trial Court only after the Administrative
17 Review Process has been exhausted through the Grievance Review Board. An employee may
18 appeal a Board decision to the Trial Court within thirty (30) calendar days of when the Board
19 decision is served by mail.

20 d. Relief.

21 (1) This limited waiver of sovereign immunity allows the Trial Court to award
22 monetary damages for actual wages established by the employee in an amount not to
23 exceed \$10,000, subject to applicable taxation.

24 (2) The Trial Court may grant equitable relief mandating that the Ho-Chunk
25 Nation prospectively follow its own law, and as necessary to directly remedy past
26 violations of the Nation's laws. Other equitable remedies shall only include:

27 (a) an order of the Court to the Executive Director of the Department
28 of Personnel to reassign or reinstate the employee;

(b) the removal of negative references from the employee's personnel
file;

(c) the award of bridged service credit; and

(d) the restoration of the employee's seniority.

1 (3) Notwithstanding the remedial powers noted above, the Court shall not
2 grant any remedies that are inconsistent with the laws of the Ho-Chunk Nation. Nothing
3 in this limited waiver or within this Act shall be construed to grant a party any legal
remedies other than those included in this section.

4 e. Under this limited waiver of sovereign immunity, the Court shall review the
5 Board's decision based upon the record before the Board. Parties may request an opportunity to
6 supplement the record in the Trial Court, either with evidence or statements of their position. The
7 Trial Court shall not exercise *de novo* review of Board decisions. The Trial Court may only set
8 aside or modify a Board decision if it was arbitrary and capricious.

8 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

9 Rule 5. Notice of Service of Process.

10 (A) Definitions.

11 (2) Summons - The official notice to the party informing him/her that he/she is identified
12 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (See
13 HCN R. Civ. P. 6) and that a *Default Judgment* may be entered against them if they do not file an
14 *Answer* in the prescribed time. It shall also include the name and location of the Court, the case
15 number, and the names of the parties. The *Summons* shall be issued by the Clerk of Court and
16 shall be served with a copy of the filed *Complaint* attached.

16 Rule 27. The Nation as a Party.

17 (B) Civil Actions. When the Nation is filing a civil suit, a writ of mandamus, or the Nation is
18 named as a party, the *Complaint* should identify the unit of government, enterprise or name of
19 the official or employee involved. The *Complaint*, in the case of an official or employee being
20 sued, should indicate whether the official or employee is being sued in his or her individual or
21 official capacity. Service can be made on the Ho-Chunk Nation Department of Justice and will
22 be considered proper unless otherwise indicated by these rules, successive rules of the Ho-Chunk
23 Nation Court, or Ho-Chunk Nation Law.

22 Rule 19. Filing and Responding to Motions.

23 (B) Responses. A *Response* to a written *Motion* must be filed at least one (1) day before the
24 hearing. If no hearing is scheduled, the *Response* must be filed with the Court and served on the
25 other parties within ten (10) calendar days of the date the *Motion* was filed. The party filing the
Motion must file any *Reply* within three (3) calendar days.

26 Rule 58. Amendment to or Relief from Judgment or Order.

27 (A) Relief from Judgment. A *Motion to Amend* or for relief from judgment, including a request
28 for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *Motion*

1 must be based on an error or irregularity which prevented a party from receiving a fair trial or a
2 substantial legal error which affected the outcome of the action.

3 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not
4 later than ten (10) calendar days after entry of judgment, the Court may amend its findings or
5 conclusions or make additional findings or conclusions, amending the judgment accordingly.
6 The motion may be made with a motion for a new trial. If the Court amends the judgment, the
7 time for initiating an appeal commences upon entry of the amended judgment. If the Court
8 denies a motion filed under this rule, the time for initiating an appeal from the judgment
9 commences when the Court denies the motion on the record or when an order denying the
10 motion is entered, whichever occurs first. If within thirty (30) days after the filing of such
11 motion, and the Court does not decide a motion under this Rule or the judge does not sign an
12 order denying the motion, the motion is considered denied. The time for initiating an appeal from
13 judgment commences in accordance with the Rules of Appellate Procedure.

14 (C) Motion to Modify. After the time period in which to file a *Motion to Amend* or a *Motion for*
15 *Reconsideration* has elapsed, a party may file a *Motion to Modify* with the Court. The *Motion*
16 must be based upon new information that has come to the party's attention that, if true, could
17 have the effect of altering or modifying the judgment. Upon such motion, the Court may modify
18 the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal
19 commences upon entry of the modified judgment. If the Court denies a motion filed under this
20 rule, the time for initiating an appeal from the judgment commences when the Court denies the
21 motion on the record or when an order denying the motion is entered, whichever occurs first. If
22 within thirty (30) calendar days after the filing of such motion, and the Court does not decide the
23 motion or the judge does not sign an order denying the motion, the motion is considered denied.
24 The time for initiating an appeal from judgment commences in accordance with the Rules of
25 Appellate Procedure.

26 (D) Erratum Order or Reissuance of Judgment. Clerical errors in a Court record, including the
27 *Judgment* or *Order*, may be corrected by the Court at any time.

28 (E) Grounds for Relief. The Court may grant relief from judgments or orders on motion of a
party made within a reasonable time for the following reasons: (1) newly discovered evidence
which could not reasonably have been discovered in time to request a new trial; or (2) fraud,
misrepresentation or serious misconduct of another party to the action; or (3) good cause if the
requesting party was not personally served in accordance with Rule 5(c)(1)(a)(i) or (ii); did not
have proper service and did not appear in the action; or (4) the judgment has been satisfied,
released, discharged or is without effect due to a judgment earlier in time.

29 Rule 61. Appeals.

30 Any final *Judgment* or *Order* of the Trial Court may be appealed to the Ho-Chunk Nation
31 Supreme Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate*
32 *Procedure*, specifically *Rules of Appellate Procedure*, Rule 7, Right of Appeal. All subsequent
33 actions of a final *Judgment* or Trial Court *Order* must follow the HCN *Rules of Appellate*
34 *Procedure*.

1 **FINDINGS OF FACT**

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3 1. The parties received proper notice of the October 4, 2005 *Trial*.

4 2. The plaintiff, Sherry A. Wilson, is an enrolled member of the Ho-Chunk Nation, Tribal
5 ID# 439A002379, and resides at 108 Maplewood Court, Apt. #23, Black River Falls, WI 54615.
6 The plaintiff was employed as a Group Sales Manager at Ho-Chunk Casino, a division within the
7 Ho-Chunk Nation Department of Business, located on trust lands at S3214 Highway 12,
8 Baraboo, WI 53913. *See* DEP'T OF BUS. ESTABLISHMENT & ORG. ACT OF 2001, 1 HCC § 3.5c;
9 http://www.ho-chunknation.com/government/executive/org_chart.htm (last visited Jan. 3, 2006)
10 (on file with Bus. Dep't).

11
12 3. The defendant, Ho-Chunk Nation Department of Personnel (hereinafter Personnel
13 Department), is an executive department with principal offices located on trust lands at Ho-
14 Chunk Nation Headquarters, W9814 Airport Road, P.O. Box 667, Black River Falls, WI. *See*
15 CONSTITUTION OF THE HO-CHUNK NATION (hereinafter CONSTITUTION), ART. VI, § 1(b).

16
17 4. In or around March 2005, tribal employee Caralee Murphy attempted to transfer an
18 unidentified amount of annual leave hours to the plaintiff by completing and presenting a
19 *Request to Transfer Annual/Sick Leave Time* to her acting supervisor, Melissa A. Pettibone, but
20 Ms. Pettibone allegedly declined to grant the request on the basis that the plaintiff was not a
21 permanent employee. *Trial* (LPER, Oct. 4, 2005, 09:09:51 CDT).

22
23 5. In or around March 2005, former tribal employee Linda L. Goodwin attempted to transfer
24 eighty (80) annual leave hours to the plaintiff by completing and presenting a *Request to*
25 *Transfer Annual/Sick Leave Time* to her supervisor, Marketing Director Daniel M. Sine, and Mr.
26 Sine approved the request. *Id.*, 09:13:24 CDT. Gloria J. White Thunder, Director of Human
27 Resources, also preliminarily approved the request when Ms. Goodwin sought her assistance in
28

1 filling out the form. *Id.*, 09:15:13 CDT. Regardless, Ms. Goodwin never had the annual leave
2 hours deducted from her account and transferred to the plaintiff, and Ms. Goodwin never
3 received an explanation from the Personnel Department regarding the reason for the apparent
4 denial despite requesting one from Personnel Manager James Lambert. *Id.*, 09:16:33 CDT.
5

6 6. Former Personnel Department Director Toni R. McDonald testified that the Personnel
7 Department possesses no discretion to deny a transfer of leave provided that the transacting
8 employees satisfy the statutory requirements. *Id.*, 09:44:03 CDT; *see also* EMPLOYMENT
9 RELATIONS ACT OF 2004 (hereinafter ERA), 6 HCC § 5.18c(1-2). Yet, a supervisor maintains
10 discretion to allow the usage of annual leave hours. LPER, 09:45:47 CDT.
11

12 7. Mr. Lambert agreed with Ms. McDonald's assertion concerning the transfer of annual
13 leave policy. *Id.*, 09:56:14 CDT.

14 8. On April 22, 2005, Mr. Sine released the plaintiff from employment since she was "not
15 eligible to be on Family Medical Leave *and d[id] not have sufficient leave hours to cover [her]*
16 *absence.*" *Def.'s Answer*, Attach. I (emphasis added). The Personnel Department subsequently
17 processed a *Ho-Chunk Nation Employee Status Change Notice*, indicating an April 20, 2005
18 resignation for failure to return to work after non-approval of Family Medical Leave. *Id.*,
19 Attach. D.
20

21 9. The plaintiff satisfied the criteria for receipt of transferred annual leave hours, but the
22 attempted transfers nonetheless failed to occur. *See* ERA § 5.18c(1-2).
23

24 10. The plaintiff was not afforded an opportunity to present the instant matter before the Ho-
25 Chunk Nation Grievance Review Board (hereinafter GRB) since job abandonment does not
26 constitute a grievable matter. LPER, 09:38:00 CDT; *see also* ERA § 5.33a, d, 34a(2).
27
28

1 11. The GRB was not prepared to hear grievances upon the effective date of the ERA on
2 January 31, 2005. LPER, 09:36:21 CDT. The GRB did not begin to hear grievances until early-
3 September 2005. *Id.*, 09:59:02 CDT.
4

5 DECISION

6
7 The CONSTITUTION imposes the limitations on the Court's subject matter jurisdiction,
8 namely: "over all cases and controversies, both criminal and civil, in law or in equity, arising
9 under the Constitution, laws, customs and traditions of the Ho-Chunk Nation." CONST., ART.
10 VII, § 5(a). The CONSTITUTION does not explicitly impart the Ho-Chunk Nation Legislature
11 (hereinafter Legislature) with the authority to diminish the scope of the above delegation, and the
12 Legislature arguably cannot bar otherwise justiciable causes of action from judicial scrutiny. *See*
13 *Michelle M. Ferguson v. HCN Ins. Review Comm'n/Div. of Risk Mgmt.*, CV 99-20 (HCN Tr. Ct.,
14 Aug. 12, 1999), *aff'd*, SU 99-10 (HCN S. Ct., Nov. 15, 1999).
15
16

17 The denial of the right to appeal by Legislative fiat is a dangerous attempt
18 to insulate governmental actions from review. It could lead to the
19 Legislature supplanting the Judiciary entirely. The independence of the
20 Judiciary would be meaningless if the Legislature could simply exempt all
21 of its decisions from review by adding a "no review clause" to every
22 ordinance. Then the Nation could have an independent judiciary[,] which
23 would be powerless to protect individuals from Legislative or Executive
24 excess.

25 *Id.* at 9.

26 In the case at bar, the plaintiff certainly presents the Court with a dispute that arises under
27 the laws of the Nation. Consequently, the CONSTITUTION appears to confer subject matter
28 jurisdiction over the dispute to the Court. Yet, the Legislature has erected statutory limitations

1 upon the types of issues appealable to the Court.² ERA § 5.35c. In fact, the Legislature has
2 declared the plaintiff's concern as one not even worthy of administrative review by the GRB. *Id.*,
3 § 5.33a, d, 34a(2).
4

5 The Court could simply invoke the Supremacy Clause and cease engaging in this
6 analysis, but the ramifications of such a decision do not prove entirely positive or clear. CONST.,
7 ART. III, § 4. The Court has no interest in entertaining insignificant or minor employment
8 disputes, but, admittedly, the level of importance associated with a given dispute is largely
9 connected to individual perspective. If the Legislature can enumerate those causes of action
10 capable of judicial review, then what restrains the legislative body from either gradually or
11 instantaneously eroding the remaining limited subject matter jurisdiction of the Court? *See Ho-*
12 *Chunk Nation v. Harry Steindorf et al.*, CV 99-82 (HCN Tr. Ct., Feb. 11, 2000), *aff'd*, SU 00-04
13 (HCN S. Ct., Sept. 29, 2000).
14

15 By posing this hypothetical, the Court is not questioning the ability of the Legislature to
16 delegate authority to an executive administrative agency for the purpose of articulating
17 legislative rules through formal on the record adjudication. *See Baldwin*, CV 01-16, -19, -21
18 (HCN Tr. Ct., Jan. 9, 2002); *see also* CONST., ART. V, § 2(b). Furthermore, the Court endorses
19 "the long settled rule of judicial administration that no one is entitled to judicial relief for a
20 supposed or threatened injury until the prescribed administrative remedy has been exhausted."
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24 ² The Legislature formerly provided judicial recourse for enterprise employees to grieve suspensions, while not
25 making the same accommodation for non-enterprise employees. HO-CHUNK NATION PERSONNEL POLICIES AND
26 PROCEDURES MANUAL, Ch. 12 at 49-50a (3rd prtg. 1999). Regardless, the Court accepted suspension appeals of
27 non-enterprise employees. *See, e.g., Margaret G. Garvin v. Donald Greengrass et al.*, CV 00-10, -38 (HCN Tr. Ct.,
28 Nov. 16, 2001). The Court likewise continued to adjudicate other previously identified grievable matters. *See, e.g.,*
Anna Kauffman v. Denis Gager, Dir. of Gaming, et al., CV 02-49 (HCN Tr. Ct., Mar. 30, 2004) (alleging unfair
reassignment in the form of a demotion); *Regina K. Baldwin et al. v. Ho-Chunk Nation et al.*, CV 01-16, -19, -21
(HCN Tr. Ct., Oct. 3, 2003) (alleging unfair treatment and discrimination in the context of a layoff); *Liana Bush et*
al. v. Clarence Pettibone, in his official capacity as Vice President of the Ho-Chunk Nation, et al., CV 00-93, -101
(HCN Tr. Ct., Jan. 23, 2001) (alleging unfair compensation determination).

1 *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938). However, in the absence of
2 an administrative process to handle the instant dispute, the Court would likely adjudge the merits
3 of the cause of action by determining whether the plaintiff has satisfied her burden of proof by a
4 preponderance of the evidence. *See, e.g., Joshua F. Smith, Sr. v. Adam Estes et al.*, CV 03-08
5 (HCN Tr. Ct., Dec. 18, 2003) at 13. Conversely, the Court would deferentially review
6 suspensions and terminations that proceed through the GRB. ERA § 5.35e. The Court refrains
7 from speculating whether a justification exists for this potential differential treatment.
8

9
10 Ultimately, the Court does not need to resolve the difficult issues identified above since
11 the Court must resolve the instant matter on the grounds of the defendant's retained sovereign
12 immunity from suit. The Court has emphasized that within this jurisdiction "the naming of
13 parties to a suit [is] an important exercise." *Ronald K. Kirkwood v. HCN Hous. Dep't et al.*, CV
14 03-62 (HCN Tr. Ct., Jan. 26, 2004) at 11 (citations omitted). Apart from informing the Court's
15 assumption of personal jurisdiction, the Court examines issues relating to justiciability and
16 sovereign immunity on the basis of the named litigants.
17

18 The defendant undeniably maintains sovereign immunity from suit unless expressly
19 waived by the Legislature. CONST., ART. XII, § 1; *see also Chloris A. Lowe, Jr. v. HCN*
20 *Legislature et al.*, CV 97-12 (HCN Tr. Ct., Mar. 21, 1997) at 14, *aff'd*, SU 97-01 (HCN S. Ct.,
21 June 12, 1997). The ERA contains a limited waiver of sovereign immunity, but it does not
22 incorporate the plaintiff's cause of action. ERA § 5.35. The plaintiff could have perhaps
23 partially overcome this defense, but she failed to name an individual defendant in the initial
24 pleading and likewise neglected to amend her *Complaint* by the deadline set forth in the
25 *Scheduling Order*. The Court may understand how an individual might view this condition as a
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1 technicality, but it represents a constitutional requirement, which the Court cannot waive.³
2 CONST., ARTS. VI, § 5(a), XII, §§ 1-2.

3 **BASED UPON THE FOREGOING**, the Court declines to reach the merits of the case
4 and denies the plaintiff's request for relief on the grounds of the defendant's sovereign immunity
5 from suit. The parties retain the right to file a timely post-judgment motion with this Court in
6 accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order.
7 Otherwise, “[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Ho-Chunk
8 Nation Supreme Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate*
9 *Procedure* (hereinafter *HCN R. App. P.*), specifically [*HCN R. App. P.*], Rule 7, Right of
10 Appeal.” *HCN R. Civ. P. 61*. The appellant “shall within sixty (60) calendar days after the day
11 such judgment or order was rendered, file with the Supreme Court Clerk, a *Notice of Appeal*
12 from such judgment or order, together with a filing fee as stated in the appendix or schedule of
13 fees” *HCN R. App. P. 7(b)(1)*. “All subsequent actions of a final *Judgment* or *Trial Court Order*
14 must follow the [*HCN R. App. P.*].” *HCN R. Civ. P. 61*.

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19 **IT IS SO ORDERED** this 4th day of January 2006, by the Ho-Chunk Nation Trial Court
20 located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

21
22
23 _____
24 Honorable Todd R. Matha
25 Chief Trial Court Judge
26

27
28 ³ In the absence of a waiver of sovereign immunity, the Court may grant declaratory and prospective injunctive relief
against a named individual defendant. CONST., ARTS. VII, § 6(a), XII, § 2; *see also Hope B. Smith v. Ho-Chunk*
Nation, SU 03-08 (HCN S. Ct., Dec. 8, 2003) at 10-11.

