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

Karen Raines,
Petitioner,

v.

Ho-Chunk Nation,
Respondent.

Case No.: **CV 99-32c**

**ORDER
(Final Judgment)**

INTRODUCTION

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The Court must determine whether the plaintiff is entitled to her request for relief on the basis of an alleged incident of racial discrimination and/or unequal treatment. The Court carefully weighed the facts in the instant case, and the application of the relevant law to such facts. Based upon the below legal analysis, the Court denies the plaintiff's request.

PROCEDURAL HISTORY

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The Court recounts the procedural history in significant detail in its *Order (Motion to Dismiss: Granting in Part, Denying in Part and Remanding in Part)*, CV 99-32 (HCN Tr. Ct., Aug. 4, 1999) [hereinafter *Order (Motion to Dismiss)*]. For purposes of this decision, the Court notes that it received a September 9, 1999 correspondence from the plaintiff, by and through Attorney Gerald R. Fox, requesting a

1 *Scheduling Conference* due to a failure to secure relief through the Administrative Review Process upon
2 remand. The Court granted the plaintiff's request by convening a *Scheduling Conference* on September 27,
3 1999, resulting in the entry of the September 29, 1999 *Scheduling Order*.

4 Following the timely submission of witness lists, both parties independently sought and received
5 postponements of the scheduled *Trial* dates. *Order (Postponement of Trial)*, CV 99-32 (HCN Tr. Ct., Nov.
6 2, 1999). The Court convened the rescheduled *Trial* on December 14, 1999 at 9:00 A.M. CST, and
7 continued the proceeding on January 6, 2000 at the same time. The following parties appeared at the *Trial*:
8 Karen Raines; Attorney Gerald R. Fox, plaintiff's counsel; and Ho-Chunk Nation Department of Justice
9 Attorney William A. Boulware, Jr., defendant's counsel. Thereafter, the defendant submitted its *Proposed*
10 *Findings of Fact* on February 4, 2000, and *Defendant's Post Trial Brief* on February 18, 2000. The Court
11 permitted the plaintiff additional time to file the same due to difficulties experienced in receiving trial
12 transcripts. *Order (Granting Extension)*, CV 99-32 (HCN Tr. Ct., Feb. 9, 2000). The plaintiff later filed the
13 *Plaintiff's Post-Trial Brief* on April 25, 2000. Consequently the defendant submitted the *Defendant's Post*
14 *Trial Reply Brief* on May 18, 2000.
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19 **APPLICABLE LAW**

20 21 **CONSTITUTION OF THE HO-CHUNK NATION**

22 **Article V – Legislature**

23 **Section 2. Powers of the Legislature.** The Legislature shall have the power:

- 24 (a) To make laws, including codes, ordinances, resolutions, and statutes;
- 25
26 (q) To issue charters of incorporation, to charter corporations and other organizations for economic or
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1 other purposes, and to regulate their activities;

2 Article XII – Sovereign Immunity

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

6 HO-CHUNK NATION PERSONNEL POLICIES AND PROCEDURES MANUAL

7 Chapter 4. Position Classification and Allocation.

8 Position Classification [p. 8]

9 The Nation has adopted a policy to maintain job descriptions on each separate class of employment, to
10 allocate individual employee positions into job classes, and to classify or reclassify positions as is necessary
11 based on the best interest of the Nation.

12 The Personnel Department will be responsible for maintaining job descriptions on all separate classes of
13 employment with the aid and assistance of supervisors and employees. Such job descriptions shall contain
14 the designation as to whether the position(s) covered by the job descriptions will be reviewed periodically to
15 determine their continued accuracy, completeness, compliance with applicable laws, and relevance to the
16 Nation's pay and performance evaluation system. Position vacancies will be filled on the basis of job
17 description standards after notification of the vacancy to the Personnel Department.

18 New Positions [p. 8]

19 New positions are those which there is an identified, justified, and approved list of job tasks and
20 qualification standards sufficiently differing from existing position descriptions, or the position is in addition
21 to positions of the existing work force. Job descriptions for new positions shall be prepared by the
22 department requesting approval and shall include qualifications, skills, responsibilities or job duties, and
23 proposed wage scale. In either case, new positions (*sic*) request must be preliminary (*sic*) approved by the
24 Personnel Committee for all positions within the Executive Branch of the Nation only. All new positions
25 (*sic*) descriptions for every Branch of the Ho-Chunk Nation must be forwarded to and approved by the
26 Legislature before they have any force or effect.

27 Chapter 12. Employment, Conduct, Discipline, and Administrative Review.

28 Administrative Review Process for Non-gaming [p. 50]

The burden of proof is on the grievant to show that what he/she is claiming actually happened. All levels of
reprimands shall be forwarded to the Personnel Department promptly by the grievant. This proof may
include documentation and witnesses.

1 1. Grieve in writing to the Supervisor and the Personnel Department within five (5) working days of the
2 action. The Supervisor has an affirmative duty to try and resolve the problem. The Supervisor has five (5)
3 days to respond to the grievance. She/He must meet with the person and document the decision.

4 2. If there is no relief or no response within five (5) days after the end of the time period of the first
5 step, grieve in writing, on the required form, to the department director or enterprise manager and the
6 Personnel Department. The manager or director has an affirmative duty to try and resolve the problem, and
7 has ten (10) days to respond. If the grievance cannot be resolved, go to step 3. Manager will talk with
8 involved people and document the decision.

9 3. Within ten (10) days of decision or notice of decision at level 2, appeal in writing to the appropriate
10 Administrator and Personnel Department. The appropriate Administrator has fifteen (15) days for initial
11 review and response. Administrator will investigate, document & inform Grievant.

12 HO-CHUNK NATION LEGISLATURE RESOLUTION 6-9-98A [p. 50b-51]

13 NOW, THEREFORE BE IT RESOLVED, that the Ho-Chunk Nation Legislature pursuant to its
14 constitutional authority, hereby amends the Ho-Chunk Nation Personnel Policies and Procedures by
15 inserting the following language to Chapter 12 (Employee Conduct, Discipline, and Administrative Review)
16 following the Administrative Review Process section:

17 Tribal Court Review

18 Judicial review of any appealable claim may proceed to the Ho-Chunk Nation Tribal Court after the
19 Administrative Review Process contained in this Chapter has been exhausted. The Ho-Chunk Nation Rules
20 of Civil Procedure shall govern any judicial review of an eligible administrative grievance shall

21 file a civil action with the Trial Court within thirty (30) days of the final administrative grievance review
22 decision.

23 Limited Waiver of Sovereign Immunity

24 The Ho-Chunk Nation hereby expressly provides a limited waiver of sovereign immunity to the extent that
25 the Court may award monetary damages for actual lost wages and benefits established by the employee in an
26 amount not to exceed \$10,000, subject to applicable taxation. Any monetary awards granted under this
27 Chapter shall be paid out of the departmental budget from which the employee grieved. In no event shall the
28 Trial Court grant any monetary award compensating an employee for actual damages other than with respect
to lost wages and benefits. The Trial Court specifically shall not grant any monetary award against the
Nation or its officials, officers, and employees acting within the scope of their authority on the basis of
injury to reputation, defamation, or other similar invasion of privacy claim; nor shall the Trial Court grant
any punitive or exemplary damages.

The Trial Court may grant equitable relief mandating that the Ho-Chunk Nation prospectively follow its
own laws, and as necessary to remedy any past violations of tribal law. Other equitable remedies shall

1 include, but not be limited to: an order of the Court to the Personnel Department to reassign or reinstate the
2 employee, a removal of negative references from personnel files, an award of bridged service credit, and a
3 restoration of seniority. Notwithstanding the remedial powers noted in this Resolution, the Court shall not
4 grant any remedies that are inconsistent with the laws of the Ho-Chunk Nation. Nothing in this Limited
5 Waiver or within the Personnel Policies and Procedures Manual shall be construed to grant a party any legal
6 remedies other than those included in this section.

5 HO-CHUNK NATION LIMITED LIABILITY COMPANY ACT

6 Subchapter I – General Provisions

7 Sec. 105. Nation as a Member.

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9 (d) Nothing contained in this Act shall be construed as creating any liability or waiving sovereign
10 immunity of the Nation in any manner; provided that the assets of the limited liability company in which the
11 Nation holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no
12 event shall any action taken by the Legislature concerning the exercise of any right or privilege or discharge
13 of any duty with respect to an interest in a limited liability company be construed as a waiver of immunity or
14 creation of a liability on the part of the Nation separate and apart from its interest as a Member of the limited
15 liability company.

16 (e) If the Nation is the sole Member of a limited liability company formed under this Act, that
17 limited liability company shall possess the Nation’s sovereign immunity from suit except to the extent
18 otherwise provided in its Articles of Organization.

16 Subchapter IV – Rights and Duties of Members and Managers

17 Sec. 401. Management.

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19 (2) If the articles of organization vest management in one or more managers, management of the
20 business or affairs of the limited liability company shall be vested in the manager or managers, subject to
21 any provisions in an operating agreement or this Act restricting or enlarging the management rights and
22 duties of any manager or group of managers. Unless otherwise provided in an operating agreement, the
23 manager or managers:

24 (a) Shall be designated, appointed, elected, removed or replaced by a vote of a majority in interest of
25 the members.

24 Subchapter V – Finance

25 Sec. 501. Contributions.

1 (1) A member's contributions to a limited liability company may consist of cash, property or
2 services rendered, or promissory notes or other written obligations to provide cash or property or to perform
3 services.

4 (2) The value of a member's contribution shall be determined in the manner provided in an
5 operating agreement. If the operating agreement does not fix a value to a contribution, the value of a
6 contribution shall be approved by a majority in interest of the members, shall be properly reflected in the
7 records and information kept by the limited liability company under s. 405(1). The value of contributions so
8 determined shall be binding and conclusive on the limited liability company and its members.

9 OPERATING DECLARATION OF FOUR WINDS INSURANCE AGENCY, LLC, A HO-CHUNK
10 NATION LIMITED LIABILITY COMPANY

11 **THIS DECLARATION** is adopted by the Legislature of the Ho-Chunk Nation (the "Nation") as of
12 December 1, 1998.

13 Article I – Definitions; Name and Term

14 Sec. 1.2. Formation. Effective December 1, 1998, pursuant to Legislative Resolution 12/1/98, Gary F.
15 Brownell, Esq. Organized the Company by executing and filing the Articles of Organization
16 with the office of the Legislative Secretary pursuant to the Act.

17 Article II – Business of the Company

18 The business of the Company shall be:

- 19 (a) To conduct a general insurance agency with respect to any or all coverages;
- 20 (b) To accomplish any lawful purpose which shall at any time appear conducive or expedient for
21 the protection or benefit of the Company and its assets;
- 22 (c) To exercise all the powers necessary to or reasonably connected with the Company's
23 business which may be legally exercised by limited liability companies under the Act; and
- 24 (d) To engage in all activities necessary, customary, convenient or incident to any of the
25 foregoing.

26 ARTICLES OF ORGANIZATION: LIMITED LIABILITY COMPANY

27 Art. 6. Four Winds Insurance Agency, LLC shall not possess the Ho-Chunk Nation's sovereign
28 immunity from suit, and may sue and be sued.

1 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

2 Rule 31. Required Disclosures.

3 (A) Disclosures. Except to the extent otherwise stipulated or directed by order, a party shall, without
4 waiting for a discovery request, provide to the other parties:

5 (5) judicial notice shall be taken of and required disclosures shall be made of official documents,
6 public documents, documents subject to public inspection, document (*sic*) and materials of non-executive
7 session, governmental minutes and recordings of a governmental body pursuant to the HCN OPEN
8 MEETINGS ACT OF 1996.

8 Rule 58. Amendment to or Relief from Judgement or Order.

9 (A) Relief from Judgement. A *Motion to Amend* or for relief from judgement, including a request for a new
10 trial shall be made within ten (10) calendar days of the filing of judgement. The *Motion* must be based on an
11 error or irregularity which prevented a party from receiving a fair trial or a substantial legal error which
12 affected the outcome of the action.

13 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not later than ten
14 (10) calendar days after entry of judgement, the Court may amend its findings or conclusions or make
15 additional findings or conclusions, amending the judgement accordingly. The motion may be made with a
16 motion for a new trial. If the Court amends the judgement, the time for initiating an appeal commences upon
17 entry of the amended judgement. If the Court denies a motion filed under this rule, the time for initiating an
18 appeal from the judgement commences when the Court denies the motion on the record or when an order
19 denying the motion is entered, whichever occurs first. If within thirty (30) days after the entry of judgement,
20 the Court does not decide a motion under this Rule or the judge does not sign an order denying the motion,
21 the motion is considered denied. The time for initiating an appeal from judgement commences in accordance
22 with the Rules of Appellate Procedure.

17 (C) Erratum Order or Reissuance of Judgement. Clerical errors in a court record, including the *Judgement or*
18 *Order*, may be corrected by the Court at any time.

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

24 **FINDINGS OF FACT**

25 1. The plaintiff, Karen Raines, is a non-Indian employee of Four Winds Insurance Agency, LLC
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1 [hereinafter Four Winds], and resides at 151 South Lincoln Street, Lot #13, Ontario, WI 54651.

2 2. The defendant, Ho-Chunk Nation, is a federally recognized Indian tribe with its Tribal Headquarters
3 located at W9814 Airport Road, Black River Falls, WI 54615.

4 3. Four Winds is a wholly owned domestic limited liability company of the Ho-Chunk Nation chartered
5 and organized pursuant to the HO-CHUNK NATION LIMITED LIABILITY COMPANY ACT [hereinafter LLCA]
6 with its principal place of business located at 21 South Second Street, Black River Falls, WI 54615. *Articles*
7 *of Organization: Limited Liability Company* [hereinafter *Articles of Organization*]; *see also* CONSTITUTION
8 OF THE HO-CHUNK NATION [hereinafter CONSTITUTION], ART. V § 2 (q).

10 4. On November 25, 1997, the Ho-Chunk Nation Legislature [hereinafter Legislature] adopted the
11 LLCA by means of its delegated authority within the CONSTITUTION, ART. V § 2 (a). HO-CHUNK NATION
12 LEGISLATIVE RESOLUTION 11/25/97 E.

14 5. The plaintiff made no allegations that Four Winds was organized or operated in violation of the
15 LLCA or its December 1, 1998 *Operating Declaration of Four Winds Insurance Agency, LLC, a Ho-Chunk*
16 *Nation Limited Liability Company* [hereinafter *Operating Declaration*].

17 6. The *Articles of Organization* represent that Four Winds does not share sovereign immunity from suit
18 with its sole member, the defendant. *Articles of Organization, see also* LLCA §105 (e).

20 7. On December 1, 1998, the Legislature duly authorized and executed the formation of Four Winds.
21 HO-CHUNK NATION LEGISLATIVE RESOLUTION 12/01/98 A [hereinafter LEG. RES. 12/01/98 A], p. 1; *Articles*
22 *of Organization; and Operating Declaration*, p. 1 and Art. I § 1.2.

23 8. On December 1, 1998, the Legislature designated and appointed an initial Board of Managers for
24 Four Winds, including the following individuals: Karen Martin, Gary Brownell, Virginia Collies, Tom
25 Walker and Phillip Beaverson. LEG. RES. 12/01/98 A, p. 1; *see also* LLCA § 401 (2)(a).

1 9. Prior to January 1, 1999, the plaintiff was employed by the Insurance Division of the Ho-Chunk
2 Nation Department of Personnel [hereinafter Personnel Dept.] in the position of Insurance Specialist. Court
3 Transcript (*Trial*, Dec. 14, 1999) p. 14, lines 17-23. The Legislature established the maximum allowable
4 wage for an Insurance Specialist at \$17.08 per hour, but neither party presented evidence indicating whether
5 or not the plaintiff exceeded such amount prior to the June 27, 1997 effective date of the job description.
6 *Personnel Dept. Job Description*; see also HO-CHUNK NATION PERSONNEL POLICIES AND PROCEDURES
7 MANUAL [hereinafter PERSONNEL MANUAL], Ch. 4, p. 8.

9 10. In or around August 1998, the Legislature contracted with Phillip Beaverson of Diversified Business
10 Consultants, Inc. of Oconto, WI to assist in the development and formation of Four Winds. Court Transcript
11 (*Trial*, Dec. 14, 1999) p. 20, lines 8-24. Mr. Beaverson's consulting agreement coincided with the
12 Legislature's desire to create a domestic limited liability company for the purpose of managing the Ho-
13 Chunk Nation's insurance operations. *Id.*, p. 19, lines 18-21; see also *Operating Declaration*, Art. II.

15 11. From August to mid December 1998, Mr. Beaverson continued in his role as consultant, and during
16 such period made assurances to the staff of the Insurance Division that no employee would suffer a
17 reduction in salary upon their transition to Four Winds. Court Transcript (*Trial*, Dec. 14, 1999) p. 22, lines
18 6-17, pp. 63-64, lines 24-8, p. 66-67, lines 22-8. During the same time period, Michelle DeCora served as
19 the plaintiff's immediate supervisor in the position of Executive Director of the Personnel Dept. *Id.*, p. 17,
20 lines 7-11.

22 12. On December 9, 1998, the plaintiff earned \$18.96 per hour in her position as Insurance Specialist.
23 *Id.*, p. 24, lines 14-22.

24 13. On December 14, 1998, Phillip Beaverson informed the plaintiff that her wages would be reduced
25 to \$17.08 per hour upon her transition to Four Winds, representing a base wage for the future insurance
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1 managers of Four Winds: the plaintiff, Marie Lewis and Karena Day. *Id.*, p. 30, lines 15-19; *see also*
2 *Plaintiff's Post Trial Brief* (April 25, 2000) p. 2, lines 3-6. Ms. Lewis, Tribal ID #439A001393, was
3 expected to retain her wage of \$17.08 per hour, and Ms. Day, Tribal ID #439A001768, was expected to
4 receive an increase to \$17.08 per hour. Court Transcript (*Trial*, Dec. 14, 1999) p. 25-26, lines 21-8 and 15-
5 20, p. 34, lines 15-24.

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7 14. On or about December 14, 1998, Phillip Beaverson received an appointment as Interim Director of
8 Four Winds. *Id.*, p. 30, lines 1-4; Court Transcript (*Trial*, Jan. 6, 2000) p. 11, lines 3-16, p. 17, lines 13-21;
9 *see also Plaintiff's Post-Trial Brief*, p. 8, lines 17-20. Mr. Beaverson would have possessed the authority to
10 make employment decisions upon accepting the appointment, including the ability to hire and fire personnel.

11 Court Transcript (*Trial*, Dec. 14, 1999) p. 90, lines 5-8; Court Transcript (*Trial*, Jan. 6, 2000) p. 50, lines 7-
12 12.

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14 15. On December 17, 1998, Phillip Beaverson related to the plaintiff that she would be terminated if she
15 grieved the December 14, 1998 involuntary wage concession. Court Transcript (*Trial*, Dec. 14, 1999) pp.
16 23-24, lines 24-6; *see also Order (Motion to Dismiss: Granting in Part, Denying in Part and Remanding in*
17 *Part)*, CV 99-32 (HCN Tr. Ct., Aug. 4, 1999).

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19 16. On December 17, 1998, Michelle DeCora issued a correspondence to the Division of Insurance staff,
20 informing them of their inevitable lay-off effective 4:30 P.M. CST on January 1, 1999 due to the
21 discontinuation of the division. *Defendant's Brief in Support of Motion to Dismiss* (June 14, 1999) Exhibit
22 A.

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24 17. Sometime between December 17 and 28, 1998, Phillip Beaverson informed the plaintiff that he
25 intended to increase the Four Winds managerial wage of \$17.08 per hour by fifty cents (50[¢]) effective
26 January 1, 1999. Court Transcript (*Trial*, Dec. 14, 1999) p. 31, lines 19-25.

1 18. On December 28, 1998, the plaintiff signed an employment agreement with Four Winds, consenting
2 to the terms contained therein. *Plaintiff's Post-Trial Brief* (April 25, 2000) p. 2, lines 15-17; *Proposed*
3 *Findings of Fact* (Feb. 4, 2000) p. 1, lines 16-17.

4 19. On January 1, 1999, the plaintiff began her employment at Four Winds as an Insurance Manager
5 earning a wage of \$17.58 per hour.¹ *Proposed Findings of Fact* (Feb. 4, 2000) p. 2, lines 7-8; Court
6 Transcript (*Trial*, Dec. 14, 1999) p. 14, lines 13-16. Four Winds is responsible for maintaining the
7 independent payroll of its employees. Court Transcript (*Trial*, Dec. 14, 1999) p. 56, lines 21-22, pp. 95-96
8 lines 25-12.

10 20. The plaintiff has since received raises in the amounts of fifty cents (50[¢]) per hour in July 1999 and
11 twenty-five cents (25[¢]) per hour in October 1999. Court Transcript (*Trial*, Dec. 14, 1999) p. 52, lines 6-19.

13 21. The plaintiff assisted in drafting the policies and procedures of Four Winds, and later received a
14 copy of the approved final document. *Id.*, pp. 20-21, lines 25-6, p. 88, lines 9-12; Court Transcript (*Trial*,
15 Jan. 6, 2000) p. 29, lines 6-8; *see also Operating Declaration*, Art. VI § 6.3.

16 22. Four Winds and the Ho-Chunk Nation entered into a contract for services with an anticipated
17 expiration date of December 31, 1999. Court Transcript (*Trial*, Dec. 14, 1999) pp. 86-87, lines 21-17, p.
18 102, lines 5-15; *see also* LLCA § 501.

20 23. The deadline for amendments to the pleadings was November 4, 1999. Courtroom Log/Minutes, CV
21 99-32 (HCN Tr. Ct., Sept. 27, 1999) p. 2.

23 DECISION

26 ¹ The Court notes the apparent contradiction between *Findings of Fact* 16 and 19, but the overlap does not affect the legal analysis.

1 At first glance, the instant case appears to present numerous intriguing and difficult issues of first
2 impression: whether a sovereign Indian Nation may be susceptible to a racial discrimination claim arising
3 from alleged disparate treatment between non-Indian and Indian member former employees; whether the
4 political status of a federally-recognized tribe and its members insulates the defendant from such a claim
5 under the given circumstances; whether a sovereign Indian Nation may alternatively be vulnerable to a
6 discrimination claim based on the respective national origins of the former employees; whether the alleged
7 discrimination amongst suspect classes would necessarily trigger a strict scrutiny analysis by the Court; and
8 whether, and to what extent do, decisions rendered during the formation of a limited liability company affect
9 the establishing entity when the intended impact occurs solely within the limited liability company. The
10 case, however, does not turn upon any of these, or similar, issues. The grounds for denying the relief
11 requested by the plaintiff are found within the limited waiver of sovereign immunity. PERSONNEL MANUAL,
12 Ch. 12, pp. 50b-51.

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15 The Legislature “expressly provide[d] a limited waiver of sovereign immunity to the extent that the
16 Court may award monetary damages for actual lost wages and benefits . . . not to exceed \$10,000, subject to
17 applicable taxation.” *Id.*, p. 50b; *see also* Constitution, Art. XII § 1. The potential award “shall be paid out
18 of the departmental budget from which the employee grieved.” PERSONNEL MANUAL, Ch. 12, pp. 50b. The
19 Court accordingly cannot entertain the underlying suit until “after the Administrative Review Process
20 contained in [the PERSONNEL MANUAL] has been exhausted.” *Id.*

21
22 The plaintiff did properly exhaust the Administrative Review Process within the Personnel
23 Department, but the wage reduction did not occur until after her termination of employment from the
24 Personnel Department. Neither the Personnel Department nor the Ho-Chunk Nation continues to pay the
25 wages of the plaintiff. Rather, Four Winds utilizes profits derived from its business ventures to meet its
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1 payroll obligations. The Legislature approved separate personnel policies and procedures for use by Four
2 Winds, and expressly declared that Four Winds “shall not possess the Ho-Chunk Nation’s sovereign
3 immunity from suit, and may sue and be sued.” *Articles of Organization*, Art. 7.

4 Simply stated, the limited waiver contained in the PERSONNEL MANUAL does not apply. Aggrieved
5 employees of Four Winds must abide by the procedures approved for that limited liability company. The
6 Legislature’s subsequent approval of these procedures confirms the inapplicability of the PERSONNEL
7 MANUAL to Four Winds employees.

8 The Court cannot require the Personnel Department to pay wages lost during the plaintiff’s
9 employment with Four Winds. The plaintiff could presumably have sued Four Winds for the alleged harm
10 attributable to Four Winds, but she chose not to pursue this avenue of redress. The plaintiff instead argues
11 that the cause of action originated on December 14, 1998 while still employed by the Personnel Department,
12 but also argues that the alleged discriminatory act was perpetrated by Phillip Beaverson, then Interim
13 Director of the already formed Four Winds. The plaintiff fails to demonstrate how the actions of the
14 Personnel Department caused any harm. At *Trial*, the plaintiff received an affirmative answer to the
15 following question posed to Michelle Decorah: “So whenever it was that [Phillip Beaverson] was appointed
16 Interim Director, he then was clothed with the authority to hire, fire and manage the day-to-day operations
17 of [Four Winds]. Would that be a fair statement?” Court Transcript (*Trial*, Jan. 6, 2000) p. 50, lines 7-12.

18 On December 14, 1998, Phillip Beaverson informed the plaintiff of the anticipated wage reduction
19 upon transition to Four Winds on January 1, 1999. Mr. Beaverson made this employment decision while
20 possessing the actual authority as Interim Director of Four Winds. The Court, therefore, need not determine
21 whether such action evidenced racial or another manner of discrimination since the plaintiff failed to sue the
22 parties responsible for committing the alleged harm. The plaintiff urged that
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1 it doesn't matter where the money comes from. The point is, that every wrong has a remedy.
2 And, it is fair enough here to say that when management does this, we're not going to look
3 to what their status is or what their lines of authority are, we're going to make the employee
4 whole.

5 *Id.*, p. 60, lines 8-15. The Court generally strives to uphold the equitable principle espoused by the plaintiff,
6 and this commonly accepted doctrinal basis, in turn, has necessitated lengthy deliberation. However, the
7 Court disagrees with the plaintiff's direction to disregard certain procedural and substantive requisites. As
8 stated above, the failure to identify the proper parties and adhere to the relevant procedures proves fatal to
9 the plaintiff's arguments. Merely encouraging the Court to "pierce the corporate veil" without presenting
10 any legal analysis of the controlling law (e.g. LLCA or *Operating Declaration*) will not suffice.² *Plaintiff's*
11 *Post-Trial Brief*, p. 5, lines 10-12.

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13 Absent persuasive argument to the contrary, the Court presumes that the Legislature properly formed
14 and chartered Four Winds. *See* CONSTITUTION, ART. V § 2(q). The plaintiff offered no evidence to show
15 that she could not have grieved her cause of action to Four Winds either contemporaneous with the
16 December 14, 1998 incident or after the transition on January 1, 1999. Four Winds maintained a Board of
17 Directors since its formation on December 1, 1998, and could be sued in its own name. The plaintiff cannot
18 justify suing the Ho-Chunk Nation simply because of a sustained legal relationship.

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20 **BASED UPON THE FOREGOING**, the Court denies the plaintiff's request for relief. The parties
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23 ² Alternatively, the plaintiff argued that the Court should grant the requested relief on the basis that Phillip Beaverson had
24 unlawfully threatened the plaintiff with termination should she file a timely grievance concerning the December 14, 1998 incident.
25 Court Transcript (*Trial*, Jan. 6, 2000) p. 57, lines 5-14. The plaintiff believes that such an order would serve as a clear
26 disincentive for like behavior in the future. *Id.* The Court, however, has already granted the appropriate relief in this regard
27 through its remand to the Administrative Review Process. *Order (Motion to Dismiss)*. The Court fashioned the earlier relief upon
28 the facts established at the time. Assuming *arguendo* that the plaintiff sued the correct parties and exhausted the proper
administrative process, the Court would be barred from granting a punitive award of money damages pursuant to the limited
waiver of sovereign immunity. PERSONNEL MANUAL, Ch. 12, pp. 50b-51.

1 retain the right to file a timely post judgment motion with this Court in accordance with *HCN R. Civ. P. 58*,
2 Amendment to or Relief from Judgement or Order. Otherwise, “[a]ny *final Judgement* or *Order* of the Trial
3 Court may be appealed to the Ho-Chunk Nation Supreme Court. The *Appeal* must comply with the Ho-
4 Chunk Nation *Rules of Appellate Procedure* [hereinafter *HCN R. App. P.*], specifically [*HCN R. App. P.*],
5 Rule 7, Right of Appeal.” *HCN R. Civ. P. 61*. The appellant “shall within thirty (30) calendar days after the
6 day such judgment or order was rendered, file with the [Supreme Court] Clerk of Court, a Notice of Appeal
7 from such judgment or order, together with a filing fee of thirty-five dollars (\$35 U.S.)” *HCN R. App. P.*
8 7(b)(1). “All subsequent actions of a *final Judgement* or Trial Court *Order* must follow the [*HCN R. App.*
9 *P.*]” *HCN R. Civ. P. 61*.

11 **IT IS SO ORDERED** this 1st day of June, 2001 at the Ho-Chunk Nation Trial Court in Black River
12 Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation.

14 _____
15 Hon. Todd R. Matha,
16 HCN Associate Trial Judge
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