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

**Morning Star Leonard,**  
Plaintiff,

v.

Case No.: **CV 02-45**

**Julie Nakai, Floor Sales Supervisor of Ho-  
Chunk Bingo, and Ho-Chunk Nation,**  
Defendants.

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**ORDER  
(Final Judgment)**

**INTRODUCTION**

The Court must determine whether the defendants improperly denied the plaintiff a minimum full-time employee work schedule. The Court concludes that the relevant statutory language does not create an entitlement to work a defined amount of hours. The Court accordingly denies the plaintiff's request for relief. The analysis of the Court follows below.

**PROCEDURAL HISTORY**

The plaintiff, Morning-Star Leonard, by and through Attorney JoAnn F. Jones, initiated the current action by filing a *Complaint* with the Court on May 17, 2002. Consequently, the Court issued a *Summons* accompanied by the above-mentioned *Complaint* and attachments on May 17, 2002, and delivered the documents by personal service to the defendants' representative,

1 Ho-Chunk Nation Department of Justice (hereinafter DOJ).<sup>1</sup> The *Summons* informed the  
2 defendants of the right to file an *Answer* within twenty (20) days of the issuance of the *Summons*  
3 pursuant to *HCN R. Civ. P. 5(A)(2)*. The *Summons* also cautioned the defendants that a *default*  
4 *judgment* could result from failure to file within the prescribed time period.  
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6 The defendants, by and through DOJ Attorney Michael P. Murphy, timely filed their  
7 *Answer* on June 6, 2002. The Court reacted by mailing *Notice(s) of Hearing* to the parties on  
8 June 10, 2002, informing them of the date, time and location of the *Scheduling Conference*. The  
9 Court convened the *Conference* on July 16, 2002 at 1:30 p.m. CDT. The following parties  
10 appeared at the *Scheduling Conference*: Attorney JoAnn F. Jones, plaintiff's counsel, and DOJ  
11 Attorney Michael P. Murphy, defendants' counsel. The Court entered the *Scheduling Order* on  
12 July 17, 2002, setting forth the timelines and procedures to which the parties should adhere prior  
13 to trial.  
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15 On September 16, 2002, the parties jointly filed the *Stipulation & Order to Amend*  
16 *Scheduling Order*. The Court responded by entering its October 2, 2002 *Order (Amending*  
17 *Scheduling Order)*. See *HCN R. Civ. P. 42*. The defendants subsequently filed the October 24,  
18 2002 *Motion to Dismiss* (hereinafter *Defendants' Motion*), which incorporated a legal  
19 memorandum. *Id.*, Rule 18. On October 29, 2002, the parties again requested an amendment to  
20 the *Scheduling Order*, agreeing to a filing extension for amendments to the pleadings. The  
21 plaintiff utilized the extension by submitting her *Amended Complaint* on November 4, 2002.  
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23 Due to a medical emergency, the parties jointly filed the November 13, 2002 *Stipulation*  
24 *& Motion to Reschedule Pre-Trial Date & Cancel Trial Dates*. The Court responded by entering  
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28 <sup>1</sup>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

1 its Order (*Rescheduling Pre-Trial & Canceling Trial Dates*). *Id.*, Rule 42. The Court convened  
2 the *Pre-Trial Conference* on November 26, 2002 at 9:30 a.m. CST. The following parties  
3 appeared at the *Conference*: Attorney JoAnn F. Jones, plaintiff's counsel, and DOJ Attorney  
4 Michael P. Murphy, defendants' counsel. On the same date, the Court issued its *Pre-Trial Order*,  
5 indicating, in part, the deadline for an amended responsive pleading and establishing the dates of  
6 *Trial*.

8 On December 3, 2002, the defendants timely filed the *Amended Answer*. The Court  
9 convened *Trial* on January 21-22, 2003 at 9:00 a.m. CST. The following parties appeared at  
10 *Trial*: Morning-Star Leonard, plaintiff; Attorney JoAnn F. Jones, plaintiff's counsel; Julie A.  
11 Nakai, defendant; Yvonne L. Funmaker, institutional defendant's designated representative; and  
12 DOJ Attorney Michael P. Murphy, defendants' counsel.<sup>2</sup> *See* FED. R. EVID. 615.

## 14 APPLICABLE LAW

### 17 CONSTITUTION OF THE HO-CHUNK NATION

#### 18 Art. VII - Judiciary

#### 19 Sec. 5. Jurisdiction of the Judiciary.

20 (a) The Trial Court shall have original jurisdiction over all cases and controversies, both  
21 criminal and civil, in law or in equity, arising under the Constitution, laws, customs and  
22 traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its

23 an official or employee being sued in their official or individual capacity. *HCN R. Civ. P. 27(B)*.

24 <sup>2</sup> The presiding judge extends his sincerest apologies to the parties for the failure of the Court to enter a timely  
25 decision in this matter. Each trial judge maintains a duty to "dispose promptly of the business of the court." *HCN*  
26 *Rules of Judicial Ethics*, § 4-1(E); *see also In the Matter of Timely Issuance of Decisions*, ADMIN. RULE 04-09-05(1)  
27 (HCN S. Ct., Apr. 9, 2005) (requiring issuance of final judgments within ninety (90) days following completion of  
28 trial level process). Former Chief Judge William H. Bossman failed in this regard by not issuing a judgment prior to  
the expiration of his legislative appointment on July 1, 2005. In the interests of justice, the Court informs the parties  
of the availability of seeking mandamus relief from the Ho-Chunk Nation Supreme Court in order to compel action  
of a trial level judge. *See In re: Casimir T. Ostrowski*, SU 05-01 (HCN S. Ct., Feb. 21, 2005) (citing CONSTITUTION  
OF THE HO-CHUNK NATION, ART. VII, § 6(a)).

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

4 Sec. 6. Powers of the Tribal Court.

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

8 HO-CHUNK NATION PERSONNEL POLICIES AND PROCEDURES MANUAL (updated  
9 Feb. 11, 2002)

10 Ch. 3 - Selection, Orientation, Probation

11 KINDS OF EMPLOYMENT [p. 6]

12 Permanent Full-time Employees:

13 Employees who regularly work a minimum of 32 hours per week on a continuous basis  
14 following satisfactory completion of a probationary period.

15 During Probation [p. 8]

16 If, at the conclusion of the employee's probationary period, the employee's performance and  
17 employment conditions have been satisfactory, a retention recommendation is to be made to the  
18 Director, on or before the expiration of the employee's probationary period.

19 Such a recommendation will be accompanied by the complete, final probationary performance  
20 evaluation according to standards developed by the Personnel Department and status change.  
21 Upon approval of the Department Director, the employee shall be advanced to permanent  
employment status and eligible for those benefits to permanent employees.

22 Ch. 5 - Hours, Meals, and Rest Periods

23 General Hours of Work [p. 11]

24 Due to the varying nature of Tribal business and service needs, no single work schedule can be  
25 established for all employees. For the purpose of establishing work schedules, the various  
26 enterprise and office sites will be considered field locations.

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1 General working times are as follows for Administration and Programs, Monday - Friday, 8:00  
2 a.m. to 5:00 p.m. Working times for Gaming and Non-gaming Enterprises will be established  
3 individually based upon operational needs.

4 Services

5 B. Work Schedules: Will be established for each employee by supervisory personnel who  
6 may change such schedules based on the needs and requirements of work unit operations.  
7 Supervisory personnel may also require an employee to work an unscheduled day in place of a  
8 scheduled day within the same work week, in which case the unscheduled day worked shall be  
treated as a modified work schedule and not be subject to overtime compensation on the basis of  
a changed work day.

9 Ch. 12 - Employment Conduct, Discipline, and Administrative Review

10 General Conduct of Employees [p. 52]

11 An obligation rests with every employee of the HoChunk [*sic*] Nation to render honest, efficient,  
12 and courteous performance of duties. Employees will therefore be responsible and held  
13 accountable for adhering to all Tribal policies, rules, directives, and procedures prescribed by the  
Nation through supervisory or management personnel.

14 A. All employees have a duty to report, in writing, promptly and confidentially, any  
15 evidence of any improper practice of which they are aware. As used here, the term "improper  
16 practice" means any illegal, fraudulent, dishonest, negligent, or otherwise unethical action arising  
in connection with Tribal operations or activities.

17 B. Reports of improper practice should be submitted through the line of administrative  
18 supervision except when the alleged impropriety appears to involve a management employee. In  
19 such cases, reports should be referred to the next higher level management employee.

20 Discipline Policy [pp.54-55]

21 The intent of this policy is to openly communicate the Tribal standards of conduct, particularly  
22 conduct considered undesirable, to all employees as a means of avoiding their occurrence.

23 The illustrations of unacceptable conduct cited below are to provide specific and exemplary  
24 reasons for initiating disciplinary action, and to alert employees to the more commonplace types  
25 of employment conduct violations. No attempt has been made here to establish a complete list.  
Should there arise instances of unacceptable conduct not included in the following list, the  
26 Nation may initiate disciplinary action in accordance with policies and procedures.

27 B. Behavior [p. 55]

28 8. Discourteous treatment of the public or other employees, including harassing,  
coercing, threatening, or intimidating others.

1 Matters Covered by Administrative Review System

[p. 59]

2 Eligible employees who have complaints, problems, concerns, or disputes with another  
3 employee, the nature of which causes a direct adverse effect upon the aggrieved employee, may  
4 initiate an administrative review according to established procedures. Such matters must have to  
do with:

5 3. unfair treatment

6 10. a claimed violation, misinterpretation, or inequitable application of these policies  
7 and procedures.

8 ENTERPRISE EMPLOYEES ONLY

[pp. 60-61]

9 Matters covered by Administrative Review System: Eligible employees who have complaints,  
10 problems, concerns, or disputes with another employee, the nature of which causes a direct  
11 adverse effect upon the aggrieved employee, may initiate an administrative review according to  
12 established procedures. Such matters have to do with: specific working conditions, safety,  
13 unfair treatment, disciplinary actions (except verbal reprimands), compensation, job  
classification, reassignment, any form of alleged discrimination, a claimed violation,  
misinterpretation, or inequitable application of these policies and procedures.

14 The following Administrative Review Process is to be followed in seeking relief for all  
15 grievances. The burden of proof is on the grievant to show that what he/she is claiming, actually  
16 happened. All grievances will be courtesy copied to the Personnel Department promptly, by the  
grievant. This proof may include documentation and witness statements.

17 1. A grievance will be submitted directly to the immediate supervisor and the Personnel  
18 Department within five (5) calendar days of the disciplinary action by the grievant. The  
19 supervisor will meet with the General/Facility Manager to discuss and investigate the grievance.  
20 Together, the supervisor and the General/Facility Manager will document and sign the response  
within ten (10) calendar days of receipt. The grievant will be notified of the response by  
certified mail with a courtesy copy sent to the Personnel Department.

21 2. Within five days after the end of the previous deadline, and [sic] appeal may be filed in  
22 writing to the Executive Director or his/her designee. The appeal may be submitted to level 2, if  
23 the grievant has not received a response to the grievance or has not reached an acceptable  
24 agreement in seeking [sic] to the grievance. The Executive Director has fifteen days for initial  
25 review and response. The response shall be sent to the appellant by certified mail with a  
courtesy copy sent to the Personnel Department.

26 3. Within five (5) days after the end of the previous deadline, an appeal may be filed in  
27 writing to the Trial Court. The Trial Court had [sic] forty-five (45) days for review. The  
grievant will receive a letter informing them of their preliminary hearing date, time and place.

1 Tribal Court Review:

2 Judicial review of any appealable claim may proceed to the HoChunk [sic] Nation Tribal Court  
3 after the Administrative Review Process contained in this Chapter has been exhausted. The  
4 HoChunk [sic] Nation Rules of Civil Procedure shall govern any judicial review of an eligible  
5 administrative grievance shall file [sic] a civil action with the Trial Court within thirty (30) days  
6 of the final administrative grievance review decision.

6 Limited Waiver of Sovereign Immunity

[p. 62]

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

14 The Trial Court may grant equitable relief mandating that the HoChunk [sic] Nation  
15 prospectively follow its own laws, and as necessary to remedy any past violations of tribal law.  
16 Other equitable remedies shall include, but not be limited to: an order of the Court to the  
17 Personnel Department to reassign or reinstate the employee, a removal of negative references  
18 from the personnel file, an award of bridged service credit, and a restoration of seniority.  
19 Notwithstanding the remedial powers noted in the Resolution, the Court shall not grant any  
20 remedies that are inconsistent with the laws of the HoChunk [sic] Nation. Nothing in this  
21 Limited Waiver or within the Personnel Policies and Procedures Manual shall be construed to  
22 grant a party any legal remedies other than those included in the section. (RESOLUTION  
23 06/09/98A)

20 HO-CHUNK NATION RULES OF CIVIL PROCEDURE (Apr. 13, 2002 revision)

21 Rule 5. Notice of Service of Process.

22 (A) Definitions.

23  
24 (2) Summons - The official notice to the party informing him/her that he/she is identified  
25 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (See  
26 HCN R. Civ. P. 6) and that a *Default Judgment* may be entered against them if they do not file an  
27 *Answer* in the prescribed time. It shall also include the name and location of the Court, the case  
28 number, and the names of the parties. The *Summons* shall be issued by the Clerk of Court and  
shall be served with a copy of the filed *Complaint* attached.

1 Rule 18. Types of Motions.

2 *Motions* are requests directed to the Court and must be in writing except those made at trial.  
3 *Motions* based on factual matters shall be supported by affidavits, references to other documents,  
4 testimony, exhibits or other material already in the Court record. *Motions* based on legal matters  
5 shall contain or be supported by a legal memorandum, which states the issues and legal basis  
6 relied on by the moving party. The *Motions* referenced within these rules shall not be considered  
7 exhaustive of the *Motions* available to the litigants.

8 Rule 19. Filing and Responding to Motions.

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

13 Rule 21. Amendments to Pleadings.

14 Parties may amend a *Complaint* or *Answer* one time without leave of the Court prior to the filing  
15 of the responsive pleading, or if no responsive pleading is permitted, at any time within twenty  
16 (20) days of the original filing date. Subsequent amendments to *Complaints* or *Answers* may  
17 only be made upon leave of the Court and a showing of good cause, or with the consent of the  
18 opposing party. All amendments to the *Complaint* or *Answer* must be filed at least thirty (30)  
19 calendar days prior to trial or as otherwise directed by the Court. When an *Amended Complaint*  
20 or *Answer* is filed, the opposing party shall have ten (10) calendar days, or the time remaining in  
21 their original response period, whichever is greater, in which to file an amended responsive  
22 pleading.

23 Rule 27. The Nation as a Party.

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

Rule 42. Scheduling Conference.

Scheduling Order. The Court may enter a scheduling order on the Court's own motion or on the  
motion of a party. The Scheduling Order may be modified by motion of a party upon a showing  
of good cause or leave of the Court.

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

3 (A) Relief from Judgment. A *Motion to Amend* or for relief from judgment, including a request  
4 for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *Motion*  
5 must be based on an error or irregularity that prevented a party from receiving a fair trial or a  
6 substantial legal error that affected the outcome of the action.

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

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

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

(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; (2) fraud,  
misrepresentation or serious misconduct of another party to the action; (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.

1 Rule 61. Appeals.

2 Any final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme Court. The  
3 *Appeal* must comply with the *Rules of Appellate Procedure*, specifically *Rules of Appellate*  
4 *Procedure*, Rule 7, Right of Appeal. All subsequent actions of a final *Judgment* or Trial Court  
5 *Order* must follow the *Rules of Appellate Procedure*.

6 FEDERAL RULES OF EVIDENCE<sup>3</sup>

7 Rule 615. Exclusion of Witnesses.

8 At the request of a party the court shall order witnesses excluded so that they cannot hear the  
9 testimony of other witnesses, and it may make the order on its own motion. This rule does not  
10 authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party  
11 which is not a natural person designated as its representative by its attorney, or (3) a person  
12 whose presence is shown by a party to be essential to the presentation of the party's cause, or (4)  
13 a person authorized by statute to be present.

14 **FINDINGS OF FACT**

15 1. The parties received proper notice of the January 21-22, 2003 *Trial*.

16 2. The plaintiff, Morning-Star Leonard, is a non-member, and resides at S2834 Decorah  
17 Road, Baraboo, WI 53913. The plaintiff was formerly employed as a Floor Salesperson at Ho-  
18 Chunk Bingo, a division within the Ho-Chunk Nation Department of Business (hereinafter  
19 Business Department), located on trust lands at S3214 Highway 12, Baraboo, WI 53913. *See*  
20 DEP'T OF BUS. ESTABLISHMENT & ORG. ACT OF 2001, 1 HCC § 3.5c; [http://www.ho-chunknation.](http://www.ho-chunknation.com/government/executive/org_chart.htm)  
21 [com/government/executive/org\\_chart.htm](http://www.ho-chunknation.com/government/executive/org_chart.htm) (last visited Oct. 19, 2006) (on file with Bus. Dep't).

22 3. The defendant, Ho-Chunk Nation (hereinafter HCN or Nation), is a federally recognized  
23 Indian tribe with principal offices located on trust lands at the HCN Headquarters, W9814  
24 Airport Road, P.O. Box 667, Black River Falls, WI. *See* 70 Fed. Reg. 71194 (Nov. 25, 2005).  
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28 <sup>3</sup> The Supreme Court adopted the FEDERAL RULES OF EVIDENCE for usage in all tribal judicial proceedings. *In re Adoption of Fed. R. Evid.* (HCN S. Ct., June 5, 1999).

1 The defendant, Julie A. Nakai, was formerly employed as Floor Sales Supervisor at Ho-Chunk  
2 Bingo, and acted as the plaintiff's supervisor. Floor Sales Job Description (approved Feb. 16,  
3 1999).

4  
5 4. The following findings of fact relate to the issues of exhaustion of administrative  
6 remedies and timeliness of filing:

7 a. On Sunday, March 3, 2002, the plaintiff filed a *Ho-Chunk Bingo Enterprise*  
8 *Voluntary Statement* in which she recounted the preceding night's events. The plaintiff  
9 complained that Ms. Nakai sent her home despite the presence of additional work to be  
10 performed during the shift. Pl.'s Ex. 9. The plaintiff submitted three (3) previous *Voluntary*  
11 *Statement(s)* that presented similar allegations, which the plaintiff characterized as ongoing  
12 harassment. Pl.'s Ex. 6-8. The plaintiff believed that she was entitled to receive a minimum  
13 thirty-two (32) hour workweek, but seldom eclipsed this threshold for a full-time permanent  
14 employee. Pl.'s Ex. 8 at 2-3 (citing HCN PERSONNEL POLICIES & PROCEDURE MANUAL  
15 (hereinafter PERSONNEL MANUAL), Ch. 3 at 6).

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18 b. On Tuesday, March 5, 2002, the plaintiff submitted her Level 1 grievance to Ho-  
19 Chunk Bingo General Manager Yvonne L. Funmaker. *Compl.*, Attach. 5 at 1;<sup>4</sup> *see also* PERS.  
20 MANUAL, Ch. 12 at 61 (requiring submission of Level 1 grievance "to the immediate supervisor  
21 and the Personnel Department within five (5) calendar days of the disciplinary action").

22  
23 c. The plaintiff submitted a timely Level 1 grievance.  
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27 <sup>4</sup> Presumably, the plaintiff opted to file her Level 1 grievance with Ms. Nakai's supervisor since "the alleged  
28 impropriety appear[ed] to involve [that particular] management employee." PERS. MANUAL, Ch. at 52. While this  
quoted section does not appear within the Administrative Review Process, the plaintiff's apparent reliance proves  
reasonable. *See Trial* (LPER at 41, Jan. 21, 2003, 01:38:38 CST) (representing the rationale accepted by the Level 1  
responding official).

1 d. On Thursday, March 14, 2002, General Manager Funmaker responded to the  
2 Level 1 grievance. *Compl.*, Attach. 5 at 1-2; *see also* PERS. MANUAL, Ch. 12 at 61 (requiring that  
3 "the supervisor and the General/Facility Manager . . . document and sign the response within ten  
4 (10) calendar days of receipt").

5  
6 e. General Manager Funmaker submitted a timely Level 1 response.

7 f. On or about March 15, 2002, the plaintiff submitted her Level 2 grievance to  
8 former Director of Gaming, Dennis Gager. Pl.'s Ex. 14; *see also* PERS. MANUAL, Ch. 12 at 61  
9 (requiring submission of Level 2 grievance "[w]ithin five days after the end of the previous  
10 deadline . . . to the Executive Director or his/her designee").

11  
12 g. The plaintiff submitted a timely Level 2 grievance.

13 h. On or about Monday, April 8, 2002, Director Gager responded to the Level 2  
14 grievance. Pl.'s Ex. 16; *see also* PERS. MANUAL, Ch. 12 at 63 (allowing the Executive Director  
15 "fifteen days for initial review and response").

16  
17 i. Director Gager submitted an untimely Level 2 response, signing the document  
18 approximately twenty-four (24) days after receipt of the grievance.<sup>5</sup>

19 j. The Level 2 response proposes a resolution to the perceived interpersonal conflict  
20 by "mandating that Ms. Nakai, along with a H[uman] R[esources] representative, meet with [the  
21 plaintiff] no later than April 19, 2002[.]" for the purpose of establishing "**mutually written goals**  
22 . . . for better communication between both parties." Pl.'s Ex. 16.

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28 <sup>5</sup> The Supreme Court has broadly recognized that "[a]dherence to the Nation's Administrative Review Process is  
both the responsibility of the [employee and employer,]" but has never dictated the consequences of a failure by the  
employer. *Sandra Sliwicki v. Ho-Chunk Nation: Rainbow Casino et al.*, SU 96-15 (HCN S. Ct., June 20, 1997) at  
4.

1 k. On Friday, April 19, 2002, the above-stated parties convened the mandated  
2 meeting. As reflected on the resulting written document, Ms. Nakai stated the purpose of the  
3 meeting as follows: "I feel the communication breakdown is because you do not understand or  
4 you chose [*sic*] to ignore the following issues that I have more than once addressed to the  
5 department as a whole[,]" namely, "work hours." Pl.'s Ex. 17.

7 l. On Friday, May 17, 2002, the plaintiff filed her initial pleading.<sup>6</sup> *Compl.* at 1.

8 m. The plaintiff filed a timely initial pleading.

9  
10 5. The following findings of fact relate to the cause(s) of action as presented at *Trial*:

11 a. On November 25, 2001, Ho-Chunk Bingo hired the plaintiff, and Ms. Nakai  
12 explained to the plaintiff that she would not receive a thirty-two (32) hour workweek despite full-  
13 time status. LPER at 12, Jan. 21, 2003, 09:45:54 CST, *Trial* (LPER at 26, Jan. 22, 2003,  
14 01:16:08 CST); *see also* Pl.'s Ex. 3. The plaintiff subsequently acknowledged this possibility  
15 within her Level 2 grievance, noting: "I understand that I'm not going to get 32 hours a week,  
16 but that's not my point of the grievance. My point is Julie [Nakai] made me leave in the middle  
17 of a job duty." Pl.'s Ex. 14 at 5.

19 b. On February 25, 2002, the plaintiff successfully completed her probationary  
20 period, thereby elevating her to permanent employee status, which resulted in receiving  
21 employee benefits. Pl.'s Ex. 5; *see also* PERS. MANUAL, Ch. 3 at 8.

23 c. During the plaintiff's employment as a Floor Salesperson, the plaintiff received a  
24 weekly check calculated upon an excess of thirty-two (32) hours on only four (4) occasions. On  
25

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26  
27 <sup>6</sup> The plaintiff logically considered the mandatory meeting as the starting date for statute of limitation purposes.  
28 Director Gager made his response contingent upon this future event. The plaintiff accordingly filed her initial  
pleading "within thirty (30) days of the *final* administrative grievance review decision." PERS. MANUAL, Ch. 12 at  
61 (emphasis added); *see also Marie WhiteEagle v. Ho-Chunk Nation et al.*, CV 01-52 (HCN Tr. Ct., Sept. 21, 2001) at 9-10.

1 each such occasion the plaintiff's actual working hours were combined with either holiday or  
2 maternity leave to exceed this minimum threshold. Pl.'s Ex. 19; *see also* PERS. MANUAL, Ch. 3 at  
3 6.

4  
5 d. Despite receiving less than full-time work hours, the plaintiff continued to receive  
6 benefits associated with such status, including health insurance. LPER at 28, Jan. 21, 2003,  
7 11:25:01 CST; *see also* PERS. MANUAL, Ch. 3 at 8.

8  
9 e. General Manager Funmaker testified that full-time employees working in floor  
10 sales seldom received thirty-two (32) hour workweeks, and that only the senior most employee  
11 exceeded this minimum threshold. LPER at 35-36, Jan. 21, 2003, 11:57:41 CST. General  
12 Manager Funmaker based her testimony upon examination of Kronos<sup>®</sup> workforce data. *Id.* at 43-  
13 45, 01:52:51 CST. Ms. Nakai corroborated this testimony. LPER at 27, Jan. 22, 2003, 01:17:40  
14 CST.

15  
16 f. General Manager Funmaker explained that Ho-Chunk Bingo could not attract  
17 applicants for part-time floor salesperson positions due to the absence of benefits, and that  
18 formerly floor salespeople would receive more than thirty-two (32) hours per week. However,  
19 the presence of a full staff largely eliminated the possibility of re-assigning duties from unfilled  
20 positions. LPER at 38, Jan. 21, 2003, 01:24:59 CST.

21  
22 g. Director Gager testified that a full-time employee should generally expect to work  
23 a minimum of thirty-two (32) hours per week, but that the Business Department refrains from  
24 micromanaging its various subdivisions. Most importantly, Director Gager emphasized that each  
25 subdivision should strive to work at peak efficiency in order to maximize profit. LPER at 18-19,  
26 Jan. 22, 2003, 10:58:16 CST.

1 h. On January 17, 2002, former HCN Department of Personnel Executive Director  
2 Joan F. Greendeer-Lee issued a memorandum that recognized that employees at Ho-Chunk  
3 Bingo were "classified as permanent full-time but [were] working less than full-time hours."  
4 Pl.'s Ex. 11 at 6. Consequently, Director Greendeer-Lee entered the following directive: "[i]f  
5 these employees do not work full-time hours, they should be classified as either part- or quarter-  
6 time. Since permanent full-time employees are eligible for all benefits, it could result in  
7 significant savings to change their status to part/quarter time." *Id.*

9 i. On March 13, 2002, General Manager Funmaker recognized receipt of the above-  
10 referenced memorandum, and responded, in part, as follows:  
11

12 One option is to move all of you[, the floor sales department,] to part-time  
13 status, in which case you will lose your health insurance benefits and will  
14 only accrue sick and annual leave at ½ the rate. Another option is to have  
15 you come in early to perform other duties as assigned, most likely  
16 maintenance duties. If you choose not to comply, we have no other choice  
17 but to move you to part-time status. . . . In the past, we were able to keep  
18 you busy at night after your normal duties were complete but since the  
19 other departments are fully staffed, this is no longer necessary. At the  
20 completion of nightly duties you will still be sent home when your duties  
21 are complete. . . . If you have any questions, you may speak to your  
22 supervisor.

19 Pl.'s Ex. 13.

20 j. As a result, supervisory staff informed the plaintiff of her two (2) options, but the  
21 plaintiff instead chose to locate different employment. LPER at 22, Jan. 21, 2003, 10:44:44  
22 CST.

23 k. The plaintiff presented the testimony of several individuals, patrons and co-  
24 workers, who offered observations in relation to Ms. Nakai's treatment of workers, in general,  
25 and the plaintiff, sometimes, in particular. *Id.* at 49-61, 02:43:32 CST, LPER at 2-16, Jan. 22,  
26 2003, 09:08:54 CST.  
27  
28

1 6. Prior to filing the initial pleading, the plaintiff laterally transferred to Whitetail Crossing  
2 located at 3214 Highway 12, Baraboo, WI 53913. On May 5, 2002, the plaintiff began  
3 employment as a Retail Associate earning the identical rate of pay offered in her capacity as  
4 Floor Salesperson, *i.e.*, \$8.16 per hour. Pl.'s Ex. 20 at 1.  
5

## 7 DECISION

8  
9 The Court possesses constitutional authority to grant prospective equitable remedies in  
10 the form of declaratory and injunctive relief. CONSTITUTION OF THE HO-CHUNK NATION, ART.  
11 VII, § 6(a); *see also Robert A. Mudd v. HCN Legislature: Elliot Garvin et al.*, SU 03-02 (HCN  
12 S. Ct., Apr. 8, 2003) at 6 n.2. For example, the Court could direct an employee to abstain from  
13 further harassing behavior. However, in the instant case, while the plaintiff claims a pattern of  
14 harassment and unfair treatment, the plaintiff departed from her job prior to the filing of the  
15 initial pleading. Consequently, the Court lacked any ability to affect the prospective actions of  
16 Ms. Nakai during the pendency of this suit, regardless of whether the Court found the presence of  
17 either harassment or unfair treatment. Furthermore, the Court lacks authority to discipline an  
18 Executive Branch employee for past behavior since outside the parameters of judicial power.  
19  
20 *See Joshua F. Smith, Sr. v. Adam Estes et al.*, CV 03-08 (HCN Tr. Ct., Dec. 18, 2003) at 14.  
21

22 The Court, therefore, must only determine whether the plaintiff was improperly denied  
23 full-time work, *i.e.*, a minimum of thirty-two (32) hours per week. The Court may grant money  
24 damages if the plaintiff can demonstrate a loss of "actual lost wages and benefits." PERS.  
25 MANUAL, Ch. 12 at 62. The plaintiff presented evidence that she seldom achieved the minimum  
26 threshold of weekly hours, but the Court must first establish whether a full-time employee is  
27 entitled to the thirty-two (32) hour minimum.  
28

1 The PERSONNEL MANUAL provides that permanent full-time employees "*regularly* work a  
2 minimum of 32 hours per week on a continuous basis." *Id.*, Ch. 3 at 6 (emphasis added).  
3 Notably, the provision does not state that such employees "shall" or "must" work a weekly  
4 hourly minimum. Instead, the provision uses the adverb, "regularly," which significantly  
5 modifies the following active verb. The *Compact Oxford English Dictionary* defines "regular,"  
6 in relevant part, as follows:  
7

8 **regular**

- 9 • **adjective** 2 doing the same thing often or at uniform intervals:  
10 *regular worshippers.* 3 done or happening frequently.

11 COMPACT OXFORD ENGLISH DICTIONARY, (Oct. 20, 2006), *available at* [http://www.askoxford.com/concise\\_oed/orexxgular?view=uk](http://www.askoxford.com/concise_oed/orexxgular?view=uk). As a result, the Court must inescapably conclude that the  
12 minimum threshold does not represent an employer obligation.<sup>7</sup>  
13

14 Furthermore, Ms. Nakai informed the plaintiff in her employment interview that she  
15 could not guarantee a thirty-two (32) hour workweek, and the plaintiff acknowledged this  
16 condition of employment. The findings of fact demonstrate that the plaintiff's co-workers seldom  
17 achieved the minimum threshold, and that the HCN Department of Personnel ultimately required  
18 Ho-Chunk Bingo to affirmatively address the issue. Consequently, General Manager Funmaker  
19 acted to affect the necessary changes.<sup>8</sup>  
20

21 Perhaps the plaintiff could still show an improper denial of full-time work by establishing  
22 the presence of unfair treatment and/or harassment. However, as stated above, the plaintiff's co-  
23 workers likewise failed to consistently work full-time hours. Testimony of employees and non-  
24

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25  
26 <sup>7</sup> The defendants strongly assert that the statutory ability to adjust work schedules justifies the practice of affording a  
27 full-time employee less than a thirty-two (32) hour workweek. PERS. MANUAL, Ch. 5 at 11. However, this authority  
28 would need to conform with a mandatory minimum hourly threshold, provided that such threshold was mandatory,  
which the Court holds that it is not.

<sup>8</sup> The propriety of providing insurance or full-time status to the plaintiff and similarly situated employees is irrelevant to the resolution of this case.

1 employees painted the supervisory skills of Ms. Nakai in a negative light, but, by and large, Ms.  
2 Nakai afforded similar treatment to all of her subordinates. The plaintiff did not sufficiently  
3 persuade the Court that Ms. Nakai targeted her as an individual.  
4

5 Moreover, the Court has previously stated that the limited waiver of sovereign immunity  
6 bars it from awarding monetary damages for anything other than "actual" lost wages and  
7 benefits. *See, e.g., Janette Smoke v. Steve Garvin, in the Capacity of Table Games Manager, et*  
8 *al., CV 01-97 (HCN Tr. Ct., May 7, 2003) at 21 (quoting PERS. MANUAL, Ch. 12 at 62);*  
9 *Margaret G. Garvin v. Donald Greengrass et al., CV 00-10, -38 (HCN Tr. Ct., Nov. 16, 2001) at*  
10 *11-12.* The Court has already established that obtaining the minimum threshold proved  
11 speculative at best. Accordingly, the Court cannot make a determination regarding actual lost  
12 wages because the law did not obligate the defendants to ensure minimum hourly workweeks.  
13

14 **BASED UPON THE FOREGOING,** the Court holds that the plaintiff cannot prevail  
15 upon her cause(s) of action. The Court, therefore, declines to grant the plaintiff her request for  
16 relief. The Court enters this judgment on behalf of the defendants.  
17

18 The parties retain the right to file a timely post judgment motion with this Court in  
19 accordance with *HCN R. Civ. P. 58, Amendment to or Relief from Judgment or Order.*  
20 Otherwise, “[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme  
21 Court. The *Appeal* must comply with the *Rules of Appellate Procedure* [hereinafter *HCN R.*  
22 *App. P.*], specifically *Rules of Appellate Procedure, Rule 7, Right of Appeal.*” *HCN R. Civ. P.*  
23 *61.* The appellant “shall within sixty (60) calendar days after the day such judgment or order  
24 was rendered, file with the Supreme Court Clerk, a *Notice of Appeal* from such judgment or  
25 order, together with a filing fee as stated in the appendix or schedule of fees” *HCN R. App. P.*  
26  
27  
28

1 7(b)(1). “All subsequent actions of a final *Judgment* or Trial Court *Order* must follow the [*HCN*  
2 *R. App. P.*].” *HCN R. Civ. P.* 61.  
3

4  
5 **IT IS SO ORDERED** this 3<sup>rd</sup> day of November 2006, by the Ho-Chunk Nation Trial  
6 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.  
7

8 \_\_\_\_\_  
9 Honorable Todd R. Matha  
10 Chief Trial Court Judge  
11

