

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

Debbie Meyer
1850 Hidden River Rd
Verona WI 53593

Complainant

vs.

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

Respondent

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

CASE NO. 20142034

EEOC CASE NO. 26B201400025

BACKGROUND

On February 19, 2014, the Complainant, Debbie L. Meyer, filed a complaint of discrimination with the City of Madison Department of Civil Rights Equal Opportunities Division (EOD). Meyer charged that the Respondent, Ho-Chunk Gaming-Madison, discriminated against her on the basis of her sex and race by permitting or causing her sexual harassment and by terminating her employment in violation of the Madison Equal Opportunities Ordinance Sec. 39.03(8) Mad. Gen. Ord. The Respondent denies that it discriminated against the Complainant in any manner and further asserts that the EOD is without jurisdiction over the Respondent.

The complaint in this matter was assigned to a division Investigator/Conciliator for an investigation and issuance of an Initial Determination of either probable cause or no probable cause to believe that the Respondent had discriminated against the Complainant. As part of its response to the complaint and the Respondent's initial questionnaire, the Respondent first interposed its claim to a lack of jurisdiction. On August 8, 2014, the Investigator/Conciliator transferred the complaint to the Hearing Examiner to make a determination of jurisdiction.

On August 15, 2014, the Hearing examiner issued a briefing schedule to the parties giving them the opportunity to address the issue of jurisdiction. Both parties submitted written argument in furtherance of their positions.

DECISION

The question of the EOD's jurisdiction over the Respondent in this matter is not complicated. The Respondent posits two theories for a lack of jurisdiction on the part of the EOD. First, as a tribe recognized by the United States Department of Interior and subject to various federal laws, the Respondent is a sovereign nation entitled to immunity from suit except where explicitly permitted. The second ground asserted by the Respondent for a lack of

jurisdiction is a lack of geographic jurisdiction due to the ownership of the property resting in trust for the tribal government with the Department of the Interior Bureau of Indian Affairs. Such ownership of the property by an entity not subject to suit would deprive the EOD of jurisdiction to proceed.

In response to the Respondent's motion, the Complainant asserts that the City of Madison has exercised jurisdiction in certain capacities such as police action. The Complainant contends that if the City has jurisdiction to arrest someone on the Respondent's property, other municipal agencies such as the DCR should also have authority to act.

The City of Madison has entered into a Memorandum of Understanding (MOU) with the Respondent in exchange for an agreement to make certain payments to the City of Madison in lieu of property tax payments which the City of Madison cannot collect given the Respondent's status. The MOU covers only the provision of enumerated services and does not extend to all aspects of municipal regulations. More specifically, the City of Madison, in exchange for receipt of payments for services provided, provides the Respondent's property and the Respondent police and fire protection, water and street maintenance services and perhaps other similar health and safety related services. These services are not provided as a governmental entity exercising jurisdiction over the Respondent but rather are services provided subsequent to a contract between two independent parties.

The fact that the Complainant may have been arrested by City of Madison police while on the Respondent's property was not an exercise of the City's police power but was the action of a contractor providing policing services pursuant to an agreement between two parties.

The MOU does contain a provision relating to nondiscrimination. However, that provision only applies to discrimination in the performance of the terms and conditions of the MOU. It does not grant to the City of Madison a license to regulate all aspects of the Respondent's enterprise.

The DCR has relinquished jurisdiction over several entities due to their relationship to the City of Madison. See State ex rel. Area Vocational, Technical and Adult Education District No. 4 v. Equal Opportunities Commission of the City of Madison and Clifford E. Blackwell, 91CV1537 (Dane County Cir. Ct. 07/29/91). Similarly, the DCR has recognized that it cannot exercise jurisdiction over State of Wisconsin entities or agencies or programs regulated by the federal government. Carey v. UW Health, MEOC Case No. 19992097 (Ex. Dec. 08/17/99), Page1 v. Elder Care of Dane County, MEOC Case No. 22442 (Ex. Dec. 10/31/96). As a municipal agency, the DCR's jurisdiction is specifically limited geographically and as a matter of a number of other factors such as immunity and subject matter jurisdiction. As noted above, the Respondent asserts that its enterprise identified in the complaint is not subject to suit for two of these reasons, immunity and geographic jurisdiction, although the Hearing Examiner understands that the geographical jurisdiction argument is somewhat intertwined with the Respondent's immunity contention. More specifically, the Respondent's facility is within the geographical boundaries of the City of Madison, but because of its status as a recognized tribe, and the titling of the land in the Bureau of Indian Affairs, the enterprise is not subject to the DCR's jurisdiction.

The position that the Respondent is immune from the jurisdiction of the DCR because it is a recognized Indian tribe does not need much analysis. It is clear that as a sovereign nation,

the Respondent represents an entity separate and distinct from the City of Madison and the DCR is unable to exercise jurisdiction over it unless it acquiesces to the jurisdiction of the DCR. There is nothing in the record of this matter indicating that the Respondent has willingly submitted itself to the jurisdiction of the DCR. Its status as a sovereign nation places it in the same position as other governmental entities such as the federal government, the State of Wisconsin or Dane County that are immune from action under the Equal Opportunities Ordinance. As with these other governments, it is hoped that the Respondent recognizes its duty to afford all citizens and employees their human and civil rights. In this regard, it is hoped that the Complainant can access the Respondent's own judicial system for redress of her grievances or that she may find relief through the federal system.

Since the Hearing Examiner finds that the Respondent is immune from suit under the Equal Opportunities Ordinance, he will not address the Respondent's geographical jurisdiction arguments.

For the foregoing reasons, the Hearing Examiner dismisses the complaint in this matter for a lack of jurisdiction.

Signed and dated this 11th day of December, 2014.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner

cc: Sheila D Corbine