

**STATE OF WISCONSIN**

**STOCKBRIDGE-MUNSEE TRIBAL COURT OF APPEALS**

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STOCKBRIDGE-MUNSEE COMMUNITY,  
Petitioner,

-v-

Case No.: 97 AA 003

PHYLLIS VLASAK,  
W649 E. Townhall Road  
Gresham, Wi 54128

DECISION AND ORDER

Respondent,

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**Jurisdictional Statement**

Petitioner, Stockbridge-Munsee Community, a federally recognized Tribe, appeals from a Stockbridge-Munsee Tribal Court decision on an Administrative Appeal of an Employment Mediation Panel's (EMP) position that they could not reach a decision under Chapter 53, the Tribe's Employee Rights Ordinance

The Stockbridge-Munsee Tribal Court of Appeals has jurisdiction over this review pursuant to Section 1.6L of the Mohican Judiciary Act which states "The Stockbridge-Munsee Tribal Court of Appeals shall have jurisdiction over appeals from the Tribal Court."

## **Facts**

Respondent, Phyllis Vlasak was hired in May of 1978 as a Community Health Representative ("CHR") for the Stockbridge-Munsee Health Clinic.

After a series of wage increases, over the years, by October 1993, Ms. Vlasak was making \$9.89 per hour. On October 31, 1994 she received an increase to \$10.14 per hour. April 2, 1995, the hourly rate of pay for Ms. Vlasak was raised to \$10.59 and then on May 1, 1995, she received an increase to her current rate of \$11.12 per hour.

On March 21, 1995, the Tribal Council implemented a Wage Classification Scale (page 5 regular Tribal Council Meeting minutes 3-21-95) which established a system whereby most positions within Tribal employment were placed into a pay grade with each pay grade describing a range of wages. Ms. Vlasak's position as CHR was placed in Grade 5 and because of her longevity, experience and performance, her hourly rate was set at the maximum level in Grade 5 or \$10.59 per hour.

Shortly after the Wage Classification Scale was enacted, it was discovered that there was no provision for an employee, who had reached the top wage within a particular pay grade, to receive any further increase in pay. Ms. Vlasak fell into this category. To accommodate this "gap", on June 18, 1995, the Tribal Human Resources Department added another step to each pay Grade which increased Ms. Vlasak to her current hourly rate of \$11.12 effective retroactive to May 1, 1995. It is unclear from this record if the added step in each pay grade was approved by the Tribal Council. Respondent's June 18, 1995 Employee Wage Change Notice included a notation "this is the top of the range".

April 4, 1996, at respondent's annual review, no wage change was recommended. Ms. Vlasak asked Tribal officials to address this issue but no action was taken. Ms. Vlasak then began the grievance process which eventually came before the Employee Mediation Panel which reviewed her case. The EMP issued its findings on February 26, 1997 in which it stated "The panel is not able to make a yes or no decision. We feel it is the Tribal Council's responsibility to make a decision on wage increases for people who have reached the end of their pay scale. The new wage scale was implemented on April 2, 1995 which made the minimum wages of the tribe

\$7.00/hr. and readjusted your wages. Currently there is no policy in place to address your situation.” The EMP then made the following recommendations:

- 1) Your direct supervisor needs to review and update your job description and duties to correspond to the pay scale.**
- 2) The Tribal Council, Sr. Managers and Human Resources Manager need to make it a priority to address the issue of employees who reach the end of their pay scale.**

The impact of the EMP’s inability to arrive at a yes or no decision was that it did not grant respondent a pay increase. Respondent then appealed to Tribal Court. There does not appear, on the record, any dispute to these facts.

The parties briefed the issues and the Trial Court held an informal hearing on the issues on April 25, 1997. Presiding Judge, Robert Miller Jr., issued a Judgment on Decision on April 25, 1997 stating, “.....The Court further concurs and understands that there is an appearance the respondent (*Stockbridge-Munsee Community*) has shown that there is no place in Tribal Law or policy that has been violated, however, the Court would like to inform the legislative body that although it feels bound to apply the law, it feels the legislature should consider current needs and change an outmoded, obsolete, poorly worded problematic law and policy i.e wage classification schedules, position reclassifications, empowered mediation Panel decision definitions, grievance procedures and steps to Mediation Panel process to resolve complaints.....”

Judge Miller further states “Therefore, the Stockbridge-Munsee Tribal Court finds that violations did occur under the Administrative Appeal Ordinance 6(d), by virtue of their failure to act in a prudent manner, the Court findings represent an abuse of discretion by the administrative entity without recommending a creditable resolution to this problematic process.”

“It is ordered and adjudged that the petitioner (*Phyllis Vlasak*) receive compensation equal to the Cost of Living Index retroactive to May 1, 1996 effective immediately and continue those annualized cost of living increases until such time the Stockbridge-Munsee Community demonstrates to the Court that a suitable remedy to handle potential wage complaint issues has been adopted by the legislature. Further the Court does not affirm the decision of the employee Mediation Panel, again, based on it’s findings under the Administrative Appeals Ordinance 6(D).”

The Stockbridge-Munsee Community now appeals that decision and on June 4, 1997, Chief Judge, David Raasch, of the Stockbridge-Munsee Tribal Court issued an Order for Stay of Judgment pending the outcome of the decision of the Stockbridge-Munsee Court of Appeals..

### **Scope of Review**

Section 23(I) of the Stockbridge-Munsee Tribal Court Rules of Procedure states "The Court may only hear appeals concerning matters of law." Therefore, the Court is limited to determining if the Trial Court made a material error of law when it ordered the Stockbridge-Munsee Community to give a cost of living increase to Ms. Vlasak.

### **Issues**

The issues center on whether the Trial Court erred, as a matter of law, when it found the Employment Mediation Panel had abused its discretion by not recommending a creditable resolution to this problem and when it ordered that Ms. Vlasak receive an increase in pay equal to the Cost of Living Index. The issue of retroactivity is secondary.

### **Decision**

The Stockbridge-Munsee Tribal Court Code instructs the Court, as a general rule, to exempt the Tribal Code from strict interpretation. (Section 1.3(B)).

This case comes before the Appellate Court because of the Trial Court's finding that the Employment Mediation Panel had not acted in a prudent manner and had an abuse of discretion by not recommending a creditable resolution to this problematic process. The EMP is an organization created by Chapter 53 (Employee Rights Ordinance) of the Stockbridge-Munsee Tribal Code enacted June 28, 1995 by Resolution No. 1505-95. This ordinance gives the EMP "powers to hear complaints appealed to it by employees after other normal steps have not resolved the issues". Section 53.4 sets forth the APPEAL TO EMP PROCEDURES and Section 53.5 sets forth the "PANEL HEARING PROCESS".

Section 53.5(2) **DECISION**, states "the panel chairperson will prepare, within two (2) working days following the hearing, a written determination of the panel and deliver the recommendations to the parties." The Trial Court found an abuse of discretion because the EMP did not recommend a creditable resolution. We can find nothing in the EMP provisions that require the EMP to reach a yes or no answer. It is required to make a determination and make recommendations. We find the EMP did not abuse its discretion by making a determination that



they could not come to a yes or no answer. Further, we find the EMP did act in a prudent manner because it did make the following recommendations:

- 1) Your direct supervisor needs to review and update your job description and duties to correspond to the pay scale.**
- 2) The Tribal Council, Sr. Managers and Human Resource Manager need to make it a priority to address the issue of employees who reach the end of their pay scale.**

Therefore, we believe the Trial Court made an error of law by ruling the EMP had not acted in a prudent manner and had abused its discretion.

Now comes the question of “did the Trial Court err when it ordered Ms. Vlasak to receive a raise in compensation based on the Cost of Living Index”.

First we must look to who has been granted the authority to establish wages and salaries. Article VII, Section 1, Constitution and By-Laws of the Stockbridge-Munsee Community, enumerates the powers of the Tribal Council of the Stockbridge-Munsee Community stating “The Tribal Council of the Stockbridge-Munsee Community shall exercise the following powers, subject to any limitations imposed by the Constitution and laws of the United States and this Constitution and By-laws. Article VII, Section 1 (e) gives the Tribal Council power “To manage all economic affairs and enterprises of the community in accordance with the terms of a charter that may be issued to the Community by the Secretary of Interior;”. Article VII, Section 3, Reserved Powers, states “Any rights and powers heretofore vested in the Stockbridge-Munsee Band of Mohican Indians, but not expressly referred to in the Constitution, shall not be abridged by this Article, but may be exercised by the Community through adoption of appropriate by-laws and constitutional amendments.

We concur with the Trial Judge’s comments that “it feels the legislature should consider current needs and change outmoded, obsolete, poorly worded problematic law and policy i.e wage classification schedules, position classifications.....” We also empathize with Ms. Vlasak. However, we find that establishment of wages and salaries of employees of the Stockbridge-Munsee Tribal Community is an economic affair and the management of economic affairs rests with the Tribal Council under Article VII, Section 1 (e). We can find no by-laws or Constitutional amendments in which that power has been relinquished by or removed from the Tribal Council. Although respondent argued that the Director of Human Resources had added another pay step to each grade (which would indicate that power of managing economic affairs

had extended beyond the Tribal Council), there is nothing in the record to indicate that this was done without Council approval. Therefore, we can not find any expressed relinquishing of the power to manage economic affairs granted to the Tribal Council by the Constitution.

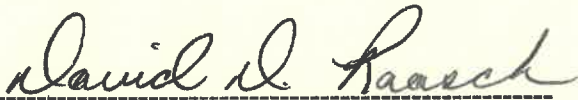
We then look to the Employee Rights Ordinance, Chapter 53 of the Stockbridge-Munsee Tribal Code. The statement of purpose of Chapter 53 indicates that the Stockbridge-Munsee Tribal Council (*emphasis*) seeks to insure, through this ordinance, that employees of the Mohican Nation have the need of protection of their rights. Chapter 53.3, GUARANTEED EMPLOYEE RIGHTS, ordains that all employees, salaried or hourly, are guaranteed basic employment rights. This chapter then lists eighteen employee rights including paid vacation, paid funeral leave, paid medical (sick time) leave, equal pay for men and women, paid jury duty leave and paid voting time. We mention this because it reaffirms the Tribal Council's assertion of its Constitutional Power to manage economic affairs by granting paid leaves. Section 53.3(18) establishes a Personnel Policies and Procedures which will reflect these 18 employee rights. Section 2 of the Personnel Policies and Procedures again suggests that the Mohican Nation (presumption is that Mohican Nation means Tribal Council) retains the Constitutional power to manage economic affairs by establishing certain pay rate schedules for non-exempt hourly paid employees based upon work classifications. It clearly states that "Being employed by the Mohican Nation, for any particular period of time, does not necessarily mean automatic pay increases". Although the record indicates that Respondent, Ms. Vlasak is a valued employee with an excellent work record and many years of service, this provision does not provide for any pay increase once she has reached the top level of her pay grade. This is unfortunate, however there are alternatives such as longevity, costs of living and merit increases that could be considered if the Tribal Council elected to enact such provisions.

Therefore, it is the finding of this Appellate Court that the EMP's determination that it could not come to a yes or no answer was not an abuse of its discretion. We also find that EMP did make recommendations for a creditable solution to this problem. We find the Tribal Council reserves the right to manage economic affairs, which includes the establishing of pay rate schedules for Tribal employees. In this case, barring any discriminatory abuse or application in the administration of the employee wage and classification schedules, we feel the Court cannot interfere with the management of economic affairs, as that right is constitutionally reserved to

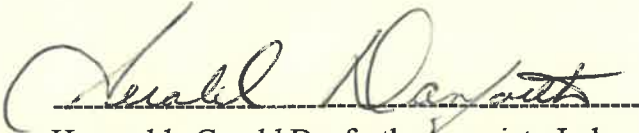
the Tribal Council. Based on these findings, we find the Trial Court made a material error of law in ordering a cost of living increase to Respondent.

Accordingly, we unanimously reverse the decision and stay the judgment of the Trial Court.

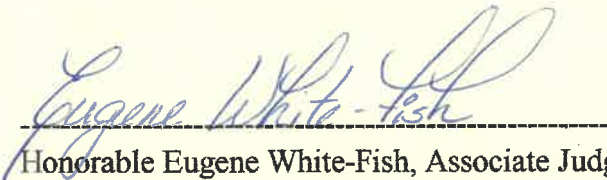
Dated this 20<sup>th</sup> day of August 1997.



Honorable David D. Raasch, Chief Judge  
Stockbridge-Munsee Tribal Court of Appeals



Honorable Gerald Danforth, Associate Judge  
Stockbridge-Munsee Tribal Court of Appeals



Honorable Eugene White-Fish, Associate Judge  
Stockbridge-Munsee Tribal Court of Appeals