



**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS  
TRIBAL COURT-CIVIL DIVISION**

FREDERICK ROY HARRINGTON, JR.,  
Plaintiff,

Case No. C-023-1200  
Hon. Pat Sekaquaptewa

v.

AUDREY PERRY, GERALD CHINGWA AND  
THE TRIBAL COUNCIL OF THE LITTLE  
TRAVERSE BAY BANDS OF ODAWA INDIANS,  
Defendants.

FREDERICK ROY HARRINGTON, JR.  
In Pro per  
1111 Howard  
Petoskey, MI 49770

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**OPINION AND ORDER**

Hon. Pat Sekaquaptewa, Judge Pro Tempore

**PROCEDURAL HISTORY**

On December 15, 2000, Plaintiff Harrington, proceeding without counsel, filed a Civil Complaint (hereafter "Complaint") in the Tribal Court of the Little Traverse Bay Bands of Odawa Indians (hereafter "LTBB") naming Tribal Administrator Perry, Chairman Chingwa, and the LTBB Tribal Council as defendants.

On January 4, 2001, Attorney Harwood entered as attorney for Defendants and filed their Answer, Affirmative Defenses and Counterclaims.

In the same January 4, 2001 Answer, defendants counter-sued for libel, defamation, and damages. The counter-claims were subsequently severed by a scheduling order entered on March 7, 2001. The matter was assigned the caption "Perry, Chingwa and the Tribal Council of the Little Traverse Bay Bands of Odawa Indians v. Frederick Roy Harrington," and was assigned a separate case number. Consequently the counter-claims and further related pleadings are not addressed here.

On April 11, 2001, Plaintiff filed his First Amended Complaint (hereafter "Amended Complaint") suing Tribal Administrator Perry and Chairman Chingwa "individually and/or in their official capacities."

On April 23rd, 2001, Defendants filed their First Amended Answer, and Amended Affirmative Defenses (hereafter "First Amended Answer").

A Status Conference was held on June 21, 2002. This was followed by a Scheduling Order entered on July 8, 2002. The Scheduling Order required that "[a]ll dispositive motions and briefs ... are due on or before July 29, 2002." "Responses [are] due September 23, 2002. A hearing was set for October 4, 2002 on these motions. The Court also ordered that the parties follow the Michigan Court Rules "as a guide."

Plaintiff, once again proceeding without counsel, filed an untitled pleading on July 30, 2002.

On July 31, 2002, Defendants' Attorney filed a Motion for Summary Disposition.

On October 4, 2002, Plaintiff filed an untitled document stating: "... the deadline for motions expired prior to delivery of their motions. Motion to deny all of the defendants' motions for summary disposition."

On October 16, 2002, Defendants filed Defendants' Response to Plaintiff's Motion to Deny All of Defendants' Motions for Summary Disposition."

On October 23, 2002, Defendants filed a First Amended Response to Plaintiff's Motion to Deny All of Defendants' Motions for Summary Disposition.

On November 18, 2002, Plaintiff, proceeding without counsel, filed a Rebuttal to Answer.

On January 27, 2003, Defendants' Attorney filed Defendants' Reply to Rebuttal to Answer Regarding Plaintiff's Motion to Deny All of Defendants' Motions for Summary Disposition.

## STIPULATIONS AND FINDING OF FACT

The Parties stipulated that the following occurred:

(1) Plaintiff had a conversation with two tribal employees about a petition to remove a member of the Tribal Council at a picnic table behind the tribal offices while on break on September 20th, 2000.<sup>1</sup>

(2) Defendants terminated Plaintiff from his employment for engaging in political activity with fellow employees during work hours on LTBB property.<sup>2</sup>

The Court makes the following findings of fact:

(1) The trial court record in Case No. C-023-1200 contains two of Defendants' documents entitled "Motion for Summary Disposition" and "Brief in Support of Motion for Summary Disposition" with no official court date stamp.

(2) The trial court record in Case No. C-023-1200 contains a cover page for Defendants' "Motion for Summary Disposition" and "Brief in Support of Motion for Summary Disposition" with an official court date stamp of July 31, 2002.

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<sup>1</sup> Plaintiffs Civil Complaint, filed on December 15, 2000.

<sup>2</sup> Defendants' Response to Plaintiff's Motion for Summary Disposition, filed on August 27, 2002.

(3) Defendants' "Motion for Summary Disposition" and "Brief in Support of Motion for Summary Disposition" were untimely filed.

### **ISSUES RAISED**

Plaintiff was represented on and off by different counsel at different times throughout this litigation. He was unrepresented when he filed his first and third pleadings. Consequently this Court must look across three pleadings, the original Complaint (filed December 15, 2000), the Amended Complaint (filed April 11, 2001) and an untitled pleading that Defendants refer to as "Plaintiff's Motion for Summary Disposition" to construct a complete picture of Plaintiff's claims with respect to each defendant. The claims appear to fall into four categories: (1) Appeal of the Tribe's decision to terminate Plaintiff's employment; (2) Original actions against the Tribal government for violation of federal union organizing and civil rights laws; (3) Original action challenging the constitutionality of the application of the grievance procedure in the Tribal Government Employee Handbook; and (4) A suit against Defendants Perry and Chingwa, in their individual and/or official capacities to be found liable for damages for violation of Plaintiff's civil rights.

### **THRESHOLD LEGAL ISSUES**

(1) Should Defendants' Motion for Summary Disposition, filed July 31, 2002, be treated as a timely filed motion under applicable rules?

(2) With respect to claims against the Tribe, has the Tribe waived its sovereign immunity to suit?

(3) With respect to claims against Defendants Perry and Chingwa, does Plaintiff state a claim?

## DISCUSSION

I. Was Defendants' Motion for Summary Disposition timely filed?

Defendants' Motion for Summary Disposition was untimely filed. This Court entered a Scheduling Order on July 8, 2002 ordering that "[a]ll dispositive motions and briefs ... are due on or before July 29, 2002." The Court further ordered that the parties follow the Michigan Court Rules "as a guide." The Michigan Court Rules, Rule 2.119(C)(4) sets out that "Unless the court sets a different time, a motion must be filed at least 7 days before the hearing ...." In the Scheduling Order of July 8, 2002, the Court set the filing deadline for dispositive motions and briefs on or before July 29, 2002.

Defendants filed a "Motion for Summary Disposition" and a Brief in Support of Motion for Summary Disposition" with the Court. The Court's official date stamp indicates that these documents were filed on July 31, 2002 - two days after the deadline set in the Scheduling Order. The parties disagree about whether the motion and brief were timely filed. Defendants argue that these documents were timely filed, being faxed by the deadline. Plaintiff argues that there is no proof of receipt of a fax by the deadline. Further Plaintiff argues that the documents were hand delivered a day late and after hours

to court staff, and were stamped as received the following working day on July 31, 2002. The trial court record is devoid of any evidence of such faxed documents. This Court finds that Defendants' Motion for Summary Disposition and Brief in Support of Motion for Summary Disposition were untimely filed as they were not stamped as received by the Court Clerk until July 31, 2002. Defendants' Motion for Summary Disposition is hereby dismissed. However, because this Court must raise the issue of its own jurisdiction, authority, and powers where not raised by the parties, the following issues are addressed below:

- (1) Whether the Tribe is immune from suit under the doctrine of sovereign immunity and whether it has waived this immunity; and
- (2) Whether Plaintiff states a claim under applicable court rules.

## II. Waivers of Tribal Sovereign Immunity

- A. Has the Tribe waived its sovereign immunity generally for member suits in Tribal Court?

Defendants in their initial Answer argue that "Plaintiff's Complaint fails to state a claim upon which relief may be granted due in part to the sovereign immunity of Indian Tribes and their instrumentalities from unconsented suit for monetary damages." It is well established that federally recognized Indian tribes are inherently immune from suit unless that immunity has been waived by Congress or by the Tribe. *Lonchar v. Victories Casino*, Case No. C-022-1200 (Feb. 11, 2002) (citing *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) and *Oklahoma Tax Commission v. Citizen Band of Potawatomi*

Indian Tribe of Oklahoma, 498 U.S. 505 (1991)). It is also well established that Congress did not waive tribal sovereign immunity for suits by tribal members in tribal court by enacting the Indian Civil Rights Act. Lonchar at 2 (citing Santa Clara Pueblo and McCormick v. Election Committee of the Sac & Fox Tribe, Okla. Trib. 8, 20; WL 128844 (Sac & Fox CIO 1980)). This leaves the question as to whether the LTBB Tribal Council has waived tribal sovereign immunity for suits brought by tribal members in the LTBB Tribal Court.

Under prior LTBB case law, this Court has held that Article VIII of the Tribe's Interim Constitution expressly waived the Tribe's sovereign immunity for purposes of redressing grievances:

"ARTICLE VIII of the Tribe's Interim Constitution entitled 'Bill of Rights' expressly provides that members have '...the right to petition for action or the redress of grievances ...' This is the supreme law of [the] Tribe because the Tribal Constitution is the supreme law. It is the peoples' expression of its delegation of power to the government. The right to petition for action or redress would be rendered meaningless if sovereign immunity is deemed to be a bar. ...the Court construes the cited constitutional provision to be an express waiver of sovereign immunity by the Tribe." Deckrow v. LTBB, Case No. C-006-0398 (Feb. 22, 1999).

However, this Court reconsidered and overruled Deckrow in Lonchar v. Victories Casino:

"Defendant argues in this matter that the quoted language ["the right to petition for action or the redress of grievances"] is taken directly out of the First Amendment to the United States Constitution and the language has never been held to be a waiver of sovereign immunity by itself. It is further argued that one can only sue if government passes a specific law which explicitly allows such suit to occur. The Court finds that this argument is consistent with the federal law principle requirement that waivers of immunity must be explicit. The Interim Tribal Constitution does not contain an express and unequivocal waiver of tribal sovereign immunity."

This Court follows the precedent of Lonchar. Plaintiff's original actions, where they rely upon the LTBB's "redress of grievance" clause, for waiver of sovereign immunity and suit against the Tribe, namely the actions against the Tribe for violation of federal union organizing and federal civil rights laws, are barred by the Tribe's inherent immunity from suit in tribal court. The Court's exercise of its subject matter jurisdiction over these claims is barred absent tribal legislation explicitly waiving tribal immunity for these types of claims in tribal court.

However there is still a question as to whether other provisions in the LTBB Interim Constitution, under Article VIII, such as the right to free speech, operate as a waiver of sovereign immunity. This issue has not been adequately raised, briefed, or argued in any of Plaintiff's pleadings to date. This would be a necessary prerequisite to a successful action against the Tribe for violating a member's LTBB Constitutional right to free speech. Because this has not been properly put before this Court at this time, the Court does not address the issue here.

- B. Has the Tribe effected a limited waiver of sovereign immunity by amending its Employee Handbook and establishing a grievance and appeals procedure?

Whether this Court's exercise of its subject matter jurisdiction is barred with respect to Plaintiff's appeal of his termination from employment and/or his original challenge to the application of the grievance procedure turns upon whether the Tribe waived its immunity by amending the Employee Handbook. The LTBB Tribal Council amended the Handbook by inserting a new Section 711, entitled "Problem Resolution."

The Court looks to both the legislative history and the purpose of Section 711 as stated within the Employee Handbook to discern the intent of the LTBB Tribal Council. The LTBB Tribal Council minutes of August 22, 1999 record the following:

"Motion made by Councilor Shananaquet and Supported by Councilor Shomin to amend the Personnel Policy eliminating the 'at will' section and maintaining the grievance procedures outlined.

Vote:

7 Yes

0 No

0 Abstained

0 Absent

Motion Carried."

The Tribal Council minutes record unanimous approval of a new employee grievance procedure. The stated purpose of the new procedure, within Section 711 itself, [is] to ... settle disputes concerning ... the application of these Personnel Policies" and that "Employees are to be treated fairly ...." Section 711 then sets out an administrative grievance procedure. Complaints concerning misapplications of the personnel policies must be made within three days of the complained incident or event. Complaints must be made first to an employee's supervisor, then to that person's immediate supervisor, then to the Department Head, and finally to the Tribal Administrator. Section 711 states that the Tribal Administrator's response shall be final. It also requires that currently employees be required to sign a receipt stating that they have received and read the new procedure. This Court finds that the Tribal Council intended to establish a meaningful tribal employee grievance procedure. This Court further finds that the newly adopted Section 711 created a limited waiver of tribal sovereign immunity for tribal employees to grieve through the specified administrative process.

However, the limited waiver for purposes of grieving through the administrative process does not lift the bar to this Court's exercise of its subject matter jurisdiction over Plaintiff's claims here. This Court may review the legality and fairness of his termination only if Section 711's "Appeal" subsection constitutes a waiver of tribal sovereign immunity. The relevant subsection provides that "An employee making a good faith allegation of violation of the employee's legal rights may bring an action for redress in Tribal Court." Again, the Court finds that Tribal Council intended to establish a meaningful review process for tribal employee claims that their legal rights have been violated. This Court also finds that the "Appeal" subsection of Section 711 created a limited waiver of tribal sovereign immunity for tribal employees to appeal administrative decisions affecting their legal employment rights to the LTBB Tribal Court. Section 711 does not specify whether claimants must file the appeals with the trial or the appellate court in the first instance. Section 711 does not limit the time for the filing of Appeals.

Plaintiff, proceeding without the assistance of an attorney, initially filed his claims against the Tribe in the form of an original action in the Tribal Court. In most state courts this would result in a dismissal of the action. However, tribal courts, in an effort to further fundamental fairness for parties coming within their jurisdictions, will construe the reasonable intent of unrepresented indigents. This Court is persuaded that it is important to promote access and fair process to unrepresented individuals who are unable to afford counsel. Here the Court will construe claims made by the Petitioner in his initial complaint as an appeal of the Tribe's administrative decision to terminate his employment, including claims that the grievance process as applied was unfair.

### III. Appeal of Administrative Decision to Terminate Employment

#### A. Plaintiff's Pleadings & Claims

Plaintiff Harrington, without the assistance of an attorney, filed two pleadings that arguably comprise his overall complaint against the Tribe. On December 15, 2000 he filed his "Civil Complaint." On July 30, 2002, well after the deadline for filing an amended complaint,<sup>3</sup> he filed an untitled document including elaborated and additional claims. The timing of the filing of the later pleading is problematic for a number of reasons. First, the Court is unclear as to whether it was intended to be treated as a second amended complaint, a dispositive motion, or a response to defendants' dispositive motion. In the first two situations, the pleading would be considered to be filed late. Again, there is the problem that by this time Plaintiff appears to have been unrepresented by counsel. In an effort to promote access and fair process to unrepresented individuals who are unable to afford counsel, this Court will consider the later pleading to the extent that it is relevant to an appeal of the administrative decision to terminate Plaintiff's employment and to the fairness of that process.

Plaintiff in his untitled pleading filed July 30, 2002, makes two relevant arguments. First he argues that the adoption of the Section 711 amendment to the Employee Handbook by Tribal Council created a contract conditioning the grounds upon which employees could be terminated - conditions, he argues, that were not met in his

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<sup>3</sup> The latest relevant Scheduling Order, entered April 11, 2001, gave Plaintiff "fourteen ... days from March 28 ... to amend his complaint." I calculate this deadline to fall on April 11, 2001. It appears from the record that some verbal agreement had been reached in a telephonic Status Conference that was finally memorialized on April 11th. In any case, Plaintiff, with the benefit of counsel this time, filed a First Amended Complaint, dealing primarily with the claims against defendants Perry and Chingwa. By July of 2002, Plaintiff was once again without counsel during the motions phase of the litigation against the Tribe.

case. Second he argues that he was not afforded a hearing before or after being terminated.

B. The Employee Handbook and the Requirement of Termination for Cause

Plaintiff argues that "Tribal Government employees are 'just cause employees' ... as a just cause employer the Tribe may only release an employee for conditions stated in the Employee handbook. ...The Tribal Government Employee Handbook constitutes an employer-employee contract requiring the Tribe to act in accordance with the aforementioned handbook." Even assuming that the Employee Handbook does create legally enforceable mutually binding obligations based upon its terms, the Court does not find any provision binding the Tribe to terminate only for delimited reasons. Section 403, entitled "Employment Termination," states only that "Discharge - involuntary employment termination" is one of the "most common circumstances under which employment is terminated." This section goes on to discuss exit interviews and benefits. Section 701, entitled "Employee Conduct and Work Rules, sets out a list of examples of conduct "which may result in ... termination of employment." Relevant examples of actionable conduct include "violation of personnel policies," and "Creating or contributing to the creation of an intimidating, hostile or offensive working environment based on race, sex, age, marital status, sexual orientation, physical or mental disabilities, or other factors prohibited by law or in bad taste." However, in its introductory paragraph, Section 701 states: "However this list is not all-inclusive, as circumstances change, rules of conduct may also change." This introductory wording puts employees

on notice that there are other actionable types of conduct. Finally, even the prohibition against creating or contributing to a hostile environment, provides for tribal action where a person's conduct meets "other factors prohibited by law or [is] in bad taste."

The Tribe's stated grounds for terminating Plaintiff Harrington would meet the very low requirement of being, at least, in "bad taste." In any case, the Tribe, in Section 701, reserves the right to change the definitions of actionable conduct." Defendants state that "Plaintiff was not terminated for engaging in political activity but for doing so during work hours with fellow employees on LTBB property .... It is inappropriate in the job setting to lobby subordinates for the simple reason that a subordinate may feel that their job is threatened if they do not agree [sic] the position presented to them."<sup>4</sup> Plaintiff admits that he had a conversation with two tribal employees about a petition to remove a member of the Tribal Council at a picnic table behind the tribal offices while on break on September 20th, 2000.<sup>5</sup> Even if this Court were to interpret the terms of the Employee Handbook as a binding contract, Plaintiff would not likely succeed in showing that he was terminated without the requisite cause under its terms.

B. The claim of lack of fair process

Plaintiff also argues that he was not afforded a hearing before or after being terminated. If true, there are numerous ways in which this might affect the characterization of his claims here and his substantive rights in general. To remedy this, and should the Plaintiff desire to proceed, this Court orders further briefing and the setting of a hearing on the questions:

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<sup>4</sup> Defendants' Response to Plaintiff's Motion for Summary Disposition, filed on August 27, 2002.

<sup>5</sup> Plaintiff's Civil Complaint, filed on December 15, 2000.

- (1) Under tribal law and the terms of the Employee Handbook, what process is required?
- (2) Was this process followed in terminating Plaintiff's employment?
- (3) If it was not, under tribal law and the terms of the Employee Handbook, what remedies are available to Plaintiff in the Tribal Court?

IV. Suits Against Chairman Chingwa and Tribal Administrator Perry

A. Does Plaintiff state a claim under applicable court rules?

On April 11, 2001, Plaintiff, then represented by counsel, amended his Complaint to sue Tribal Chairman Chingwa and Tribal Administrator Perry in both their individual and/or official capacities.<sup>6</sup> Specifically, he sues them for acting beyond the scope of their authority in unlawfully conspiring or acting to deprive him of his constitutionally protected rights, thus resulting in the loss of his job. The cited rights violated include the "... Freedom of Speech, Freedom of Association, Freedom to Participate in Political Activities, ... [and] due process ...."<sup>7</sup>

Defendants in their First Amended Answer raise the affirmative defense that "Plaintiff has failed to allege facts sufficient to overcome the immunity of governmental officials and therefore this action should be dismissed."<sup>8</sup> The Court assumes that this is a reference to Michigan Court Rule 2.111(B)(1) requiring complaints to contain "A statement of the facts, ... on which the pleader relies in stating a cause of action, with

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<sup>6</sup> Plaintiff's First Amended Complaint, filed on April 11, 2001.

<sup>7</sup> Plaintiff later cites to a series of U.S. Supreme Court cases for the propositions that sovereign immunity bars suits against government agents when acting within the scope of their authority, and that when these agents act outside the scope of their authority, such as when they break the law, they are not protected by sovereign immunity. Plaintiff's untitled pleading filed July 30th, 2002 (citing *Ex Parte Young*, 209 U.S. 123 (1908); *Seminole Tribe of Florida v. Florida et al.*, 517 U.S. 44 (1996); *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261 (1997)).

<sup>8</sup> Defendants' First Amended Answer was filed on April 23, 2001.

specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called upon to defend." The Michigan Rule is designed to provide a fair process to defendants so that they have a clear idea of what they are being sued for and so that they may adequately prepare for trial. A court may dismiss a petition that fails to meet the requirements of the rule. Here Plaintiff, in his First Amended Compliant, alleges that:

"That the acts of the individual Defendants' allegations, concerning wrongdoing by them, individually and/or as Tribal Representatives, include, but are not limited to:

- a) Expending tribal funds to defend personal wrongful actions or failure to act, and
- b) Making and implementing decisions requiring Council vote, and undertaking actions without appropriate authority thereby obtained, and
- c) Conspired to violate your Plaintiff's civil rights, including Freedom of Speech, Freedom of Association, Freedom to Participate in Political Activities, that he be treated with due process and by individuals enabled by law with appropriate authority, and
- d) Soliciting signatures during work hours and on Tribal premises, and
- e) Failing to formulate and implement decisions in the best interests of LTBBOL."

There are numerous vagaries in Plaintiff's specific allegations. He refers to "personal wrongful actions or failure to act," "making and implementing decisions requiring Council vote," "undertaking actions without appropriate authority," "conspiring," "soliciting signatures," etc. Neither the Court nor the defendants are able to guess at what these "actions," "decisions," "conspiratorial activities," or "signatures" are. However, it may be argued that the discovery process would eventually produce sufficient information for the Plaintiff to be able to allege specific facts in an amended complaint. Thus discovery should have been carefully timed with respect to the deadlines for filing amended pleadings. Unfortunately here we are faced with the problem that Plaintiff has intermittently been represented by counsel, detrimentally affecting the pleading process

overall. While the Court seeks to provide fair access to all parties, including those who cannot afford counsel, there is only so far that the Court can go in assisting such a party without prejudicing the other side. Consequently, this Court finds that Plaintiff fails to state a claim such that Defendants are sufficiently on notice to adequately prepare their defense.

B. Does LTBB law recognize and enforce constitutional torts (a.k.a. "Section 1983")

Although this Court finds that Plaintiff fails to state a claim against Defendants Chingwa and Perry, the Court would like to note and address Plaintiff's free speech argument. Plaintiff, at various times and throughout his pleadings argues that his constitutional right to free speech, among others, has been violated by Chairman Chingwa and Tribal Administrator Perry in either their individual and/or official capacities. He further argues that this Court must find them liable for damages (even if it be only \$1 per violation) under a federal statute found at 42 U.S.C. §1983. This statute is sometimes referred to as creating a "constitutional tort." It reads:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

In the U.S. system Congress has made it possible to sue state officials for damages stemming from violations of federal Constitutional law. A "Section 1983" damages suit

proceeds under the legal fiction that one is suing a state official in his individual capacity for a violation of Section 1983. Section 1983 creates no substantive rights but it does provide a remedy against state officials who act under color of state law to violate a right guaranteed by federal law. Section 1983 has primarily been used for violations of the U.S. Constitution. While Section 1983 suits are suits against individual officers and not suits against the state, the state ends up being the "deep pocket" and is indirectly liable where it indemnifies its employees and agrees to reimburse monetary judgments against its officers.

The Court assumes that Plaintiff is making an argument that would go something like this: *Article VIII of the LTBB Interim Constitution creates a free speech right for its members where it states "No member shall be denied any of the rights or guarantees enjoyed by citizens under the Constitution of the United States, including but not limited to ... freedom of speech ..."* While I am not suing the Tribe directly, I am suing its officers who were acting beyond the scope of their authority when they violated my free speech rights. I seek a declaration that my rights have been violated by them and damages from them personally. Plaintiff's citation of Section 1983 suggests that he is arguing either that the Tribe is bound by this federal law or that the Tribe should be bound by this law. However, by its very words, Section 1983 excludes tribes from the list of governments bound: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia ..." It is clear that Congress did not intend for Section 1983 to apply to tribes. This leaves the argument that the LTBB should adopt a similar scheme for holding tribal officials accountable. While that may be a desirable policy, the Court has no notice that such a tribal statute has been

adopted. Until such tribal legislation exists, it will not be possible for tribal members to hold their officials liable in damages for violations of their tribal constitutional rights.

**IT IS HEREBY ORDERED:**

- (1) Defendants' Motion for Summary Disposition is dismissed as untimely filed.
- (2) Plaintiff's original actions against the Tribe for alleged violations of federal union organizing and civil rights laws are barred by the Tribe's sovereign immunity and are dismissed.
- (3) If Plaintiff elects to proceed with an appeal of his termination from employment, the Court orders further briefing and the setting of a hearing on the following questions: (a) Under tribal law and the terms of the Employee Handbook, what process is required? (b) Was this process followed in terminating Plaintiff's employment? (c) If it was not, under tribal law and the terms of the Employee Handbook, what remedies are available to Plaintiff in the Tribal Court? Plaintiff has 30 days from the filing of this order to notify the Court that he wishes to proceed or his appeal will be dismissed.
- (4) Plaintiff's Section 1983 claims against Defendants Perry and Chingwa for damages for violation of Plaintiff's civil rights are dismissed for failure to state a claim under applicable court rules.

**IT IS SO ORDERED.**

Entered: August 3, 2007

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Honorable Pat Sekaquaptewa, Judge Pro Tempore