



MERO

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

Final Claim Determination

**For Claims under 33 M.P.T.L.,
the Mashantucket Pequot Tribal and Native American Preference Law**

Case Name: Wanda Ward v. Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino	Case Number: 2012-33015
Date of Claim Filing: July 16, 2012	Date of Determination: April 26, 2013

On January 23, 2013, the MERO issued a Proposed Claim Determination in the above case. On February 6, 2013, Respondent filed a timely Request for Reconsideration. Respondent contends that the MERO erred in finding that Respondent’s Hiring of Relatives policy enforcement was not in compliance with the Preference Law and in finding harm to the Claimant requiring a remedial order.

The MERO granted the request for reconsideration and afforded both parties an opportunity to submit additional evidence and argument. The MERO issued a Request for Information to Respondent, in response to which Respondent submitted additional documentation in March and April, 2013. Having considered all the information, evidence and argument before the MERO, and as more fully articulated below, the MERO Director issues this Final Claim Determination.

Wanda Ward (“Claimant”) alleges in her Claim, filed on July 16, 2012, that she is a Native American who was denied employment by the Mashantucket Pequot Gaming Enterprise, d/b/a Foxwoods Resort Casino (“MPGE” or “Respondent”) in violation of 33 M.P.T.L., the Mashantucket Pequot Tribal and Native American Preference Law (“Preference Law”). The above-referenced claim has been investigated pursuant to 31 M.P.T.L., the Mashantucket Employment Rights Law, and the Preference Law.

I. Positions of the Parties

Claimant, a member of the Listuguj First Nation of Canada, applied for the position of Security Supervisor in Respondent’s security department. Claimant’s boyfriend, with whom she resided, held the position of Executive Director of the security department.¹ Claimant alleges that Respondent disparately applied its policy relating to hiring relatives to deem her ineligible for the employment opportunity, denying her employment preference. She alleges she was previously denied preference in hire by the Tribe as an employer in about November, 2011.

¹ Subsequent to the events at issue in the Claim, the Claimant and her boyfriend were lawfully married on November 5, 2012. (See April 1, 2013, e-mail Tribal Clerk to MERO)

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(01-17-13)

Respondent denies any violation of the Preference Law. Respondent asserts that Claimant does not meet the minimum necessary qualifications of the Security Supervisor position, because her employment as a Security Supervisor would violate the Hiring of Relatives policy. Furthermore, while Claimant was considered for an exception to the policy, such exceptions had previously been granted only to Tribal Members who were not residing with one another; therefore, Claimant was not eligible for an exception. Regarding Claimant's allegations that she was denied a prior employment opportunity in alleged violation of the Preference Law, Respondent denies the allegation and contends the Claimant failed to take reasonable steps to preserve the claim and failed to exhaust her internal remedies.

II. Procedural History

Claimant submitted a sworn affidavit dated July 16, 2012 with her Claim.² Claimant provided additional information during the course of the investigation, including response dated November 17 to the MERO's Request for Information.

In accordance with the MERO's order dated July 16, case processing was held in abeyance for a reasonable period pending Claimant's pursuit of a claim through Respondent's internal complaint process. The processing stay was lifted October 3.

Respondent submitted a response dated November 13, which included a Position Statement, Answer to Claimant's Affidavit, Affidavit of Dale Merrill, Executive Director of Human Resources, and several documents. Respondent further submitted a response dated November 15 to the MERO's Request for Information.

Pursuant to the MERO's interim order dated July 16, Respondent confirmed that the position of Security Supervisor would not be filled pending processing of the MERO charge or the expiration of 90 days of case processing. By correspondence dated December 3, Respondent submitted additional evidence and argument relating to Claimant being subject to an Exclusion Order effective November 15, based on which Respondent requested an alternative MERO order allowing it to post and fill the position. On December 10, the MERO denied Respondent's request.

The MERO's proposed claim determination issued January 23, 2013. Both parties were invited to provide additional information regarding the implications of the Claimant's period of exclusion from the Mashantucket Pequot Tribal Reservation on a remedy. Claimant was requested to submit to the MERO information regarding any earnings from other sources she has received since July 5, 2012.

² All dates hereinafter are in Calendar Year 2012 unless otherwise indicated.

On February 6, 2013, Respondent filed a timely Request for Reconsideration. The MERO issued Requests for Information to Respondent, in response to which Respondent submitted additional documentation.

III. Findings of Fact

Respondent is the Mashantucket Pequot Gaming Enterprise. (November 13 Response)³ Respondent admits that Claimant is a member of a First Nation of Canada, the Listuguj. (November 13 Response, Answer to Claimant Affidavit, ¶ 1)

A. Mental Health Coordinator Position

Claimant asserts she was the highest preference applicant for the position of mental health coordinator with the Mashantucket Pequot Tribal Nation in about November, 2011. (Claimant Affidavit, ¶ 3) She further asserts the first posting did not include a license requirement, and that she was told she would be awarded the position and would be given three (3) months to obtain her Connecticut license. (Id.) According to Claimant, she was subsequently told a “freeze” had been placed on filling the position and when the position was reposted on an unspecified date, a new license requirement resulted in her being considered ineligible for the position. (Id.)

Respondent provided a general denial of Claimant’s allegations relating to the mental health coordinator position.⁴ (November 13 Response, Answer to Claimant Affidavit, ¶ 3) Respondent further asserts that Claimant “failed to take reasonable steps to preserve her claim and failed to exhaust her administrative remedies as she did not file a complaint with the Office of Native American Preference in advance of filing the instant Claim.” (Id.)

B. Security Supervisor Position

The open position of Security Supervisor was posted on or about June 11. (November 13 Response, Merrill Affidavit, ¶ 5) Claimant applied for the Security Supervisor position with Respondent. (November 13 Response, Answer to Claimant Affidavit, ¶ 4) The summary description of the position provides, “Under the direction of the Shift Manager and/or Assistant Manager, the incumbent supervises assigned work area and security officers.” (November 13 Response, Exhibit 2, Job Description: Security Supervisor) The first entry on the job description

³ Each of Respondent’s submissions is generally referred to herein as “Response” or by other description, and identified by date, with specific documents referenced where appropriate by date and summary description and affidavits referenced by surname of affiant and paragraph number, if applicable. Claimant’s affidavit is referred to herein as “Claimant Affidavit.”

⁴ A respondent is required to answer claim allegations with specificity. *Compliance and Claims Procedures Manual for the Mashantucket Pequot Tribal and Native American Preference Law*, § 3.3.1 (Rev. 07-24-09); Failure to specifically deny an allegation constitutes an admission. *Colebut v. MPGE*, MERO Case No. 2010-33005, fn. 15, 9 (October 2010)

under “Essential Duties and Responsibilities” states, “Must adhere to the Mashantucket Pequot Tribe’s Policies and Procedures.” (Id.)

Claimant was interviewed by Barbara Pecuch, Director of Administration. (November 13 Response, Answer to Claimant Affidavit, ¶ 5) She was subsequently told by the Executive Director of Security that she could “expect good news” about the position. (Claimant Affidavit, ¶ 5) Thereafter, she was advised by the Human Resources department that pursuant to Respondent’s policies, Claimant was ineligible for hire because her relationship with the Executive Director of Security constituted a conflict of interest. (Claimant Affidavit, ¶ 5; November 13 Response, Answer to Claimant Affidavit, ¶ 5)

Respondent’s Hiring of Relatives Policy provides, in part:

Foxwoods permits and encourages referral and hiring of any capable person, including relatives and friends of employees...

A “Relative” or “Relatives” are defined as follows: spouse, mother, father, son, daughter, brother, sister, step-children, step-parents, grandparents, in-laws, and a companion or mate living in the same household where, due to the nature of a relationship between two persons, the same potential conflict of interest may arise as though they were related.

To avoid any perception of favoritism or other disadvantages which might arise from having Relatives working in the same department or in certain positions which are incompatible, Foxwoods has established the following guidelines:

1. No employee may be hired, transferred, or assigned to a position which would result in a Relative supervising a relative. [2-3 omitted]

...Any exception to this policy must be reviewed on a case-by-case basis...

(November 13 Response, Exhibit 3, Hiring of Relatives, Section I – Policy 18; Effective Date 09/29/05)⁵

Absent the grant of an exception, under the Hiring of Relatives policy, an individual may not be hired if the result is a “Relative” supervising a “Relative,” as that term is defined in the

⁵ Use of the quoted terms “Relative” or “Relatives” herein are as those terms are defined in Respondent’s Hiring of Relatives policy. The relevant provisions of Respondent’s revised policy with an effective date of July 25 are substantially identical to the policy dated 2005. (See November 13 Response, Exhibit 4, Hiring of Relatives/Nepotism, Section I – Policy 18; Effective Date 07/25/12) For ease of reference, both policies are referred to herein as Respondent’s Hiring of Relatives policy.

policy.⁶ (November 13 Response, Exhibit 3 and Merrill Affidavit, ¶ 8) No written exception analysis guidelines are maintained. (November 13 Answer to Request for Information, No. 4) Respondent also contends that in the past, consideration of exceptions has been “purely discretionary.” (November 13 Response, Merrill Affidavit, ¶ 9)

Claimant was considered for an exception to the Hiring of Relatives policy that would permit her hire. (November 13 Response, Merrill Affidavit, ¶ 8) Respondent asserts that “only two factors are relevant” to its analysis: “whether the applicant is a Tribal Member and whether the applicant resides in the same household with a the (sic) person who met the definition of relative.” (Respondent’s February 20, 2013 correspondence, page 2) Respondent admits that Claimant and the Executive Director would have been separated by layers of management, but asserts that the number of layers of supervision or management between “Relatives” is “not relevant to the application of the policy.” (November 13 Response, Answer to Claimant Affidavit, ¶ 6)

An exception was denied Claimant based on the assessment of Larry Dutra, whose position at that time was not identified, and Dale Merrill, who at that time held the position of Executive Director, Talent Management & Culture, as adopted by Steve Heise, Vice President of Human Resources. (November 13 Response, Exhibit 5⁷; *See also* November 13 Response, Merrill Affidavit, ¶ 8) As summarized by Ms. Merrill in the e-mail exchange considering the issue, “Wanda is not a Tribal member and she is residing in the same home with the director of the department. As Larry indicated, the policy has been waived for Tribal members who do not reside in the home of their respective department heads.”⁸ (November 13 Response, Exhibit 5, July 5, 2012 e-mail from Ms. Merrill to Mr. Heise)

During an unspecified period prior to July 2010, exceptions to the application of the Hiring of Relatives policy were granted to Tribal members in situations where they did not reside with one another. (November 13 Response, Merrill Affidavit, ¶ 9; November 13 Response to MERO Request for Information, No. 5) Claimant cites at least seven (7) individuals within two (2) departments who she believes Respondent employed in violation of its Hiring of Relatives policy. (November 17 Claimant e-mail to MERO; December 3 Respondent Answer to Claimant’s Responses to MERO’s Information Request) At least two of the reporting

⁶ Respondent’s assertion that the policy prohibits “cohabitating relatives from working in the same department,” is not consistent with the explicit terms of the policy or Ms. Merrill’s explanation of the policy. (*Compare* December 3 Respondent Answer to Claimant’s Responses to MERO’s Information Request, pg. 1 *with* November 13 Response, Exhibit 3 and Merrill Affidavit)

⁷ Only numbered pages 3 and 4 of the e-mail exchanges were provided in Exhibit 5. (November 13 Response, Exhibit 5) Although two additional pages numbered “1” and “2” were subsequently provided in response to the MERO’s Request for Information, based on the overlapping content, the additional pages do not appear to be from the same e-mail thread. (*See* March 28, 2013, Response to MERO Request for Information, No. 1)

⁸ Mr. Dutra’s analysis of the issue was not submitted by Respondent. (*See* November 13 Response)

relationships are direct supervisory-subordinate relationships. (December 3 Respondent Answer to Claimant's Responses to MERO's Information Request) Respondent does not contest the applicability of the Hiring of Relatives policy in each instance. Rather, Respondent contends that "all these individuals are Mashantucket Pequot Tribal Members;" therefore, the individuals "would be entitled to consideration for an exception." (December 3 Respondent Answer to Claimant's Responses to MERO's Information Request, pg. 1) Respondent proceeds to conduct an analysis and conclude that each person would be eligible for an exception, because each situation involves Tribal members not residing with one another. (December 3 Respondent Answer to Claimant's Responses to MERO's Information Request)

Thereafter, to evaluate the bases for Respondent's Request for Reconsideration, the MERO issued a Request for Information directed to Respondent that yielded documents that paint a different picture. Two of the seven employees cited by Claimant did not assert Tribal member status on their applications. (March 28, 2013, Response to MERO Request for Information, No. 4, and additional document received April 5, 2013, submitted for *in camera* review only) The two employees are Security Officers who were placed in their positions about June 2008 and May 2012. (See March 28, 2013, Response to MERO Request for Information, No. 4) The more recently hired Security Officer shares a surname with a Tribal member Security Shift Manager, who was identified on the Security Officer's application as a relative working for Respondent. (See March 28, 2013, Response to MERO Request for Information, No. 4 and additional document received April 5, 2013, submitted for *in camera* review only) The Tribal Clerk's office confirmed that neither Security Officer is a Tribal member. (See March 28, 2013, e-mail from Tribal Clerk to the MERO)

Respondent's documents also show two Tribal members who are employed in a supervisory-subordinate relationship, who have substantially similar surnames (one being hyphenated), and who listed identical home addresses on their applications.⁹ (March 28, 2013, Response to MERO Request for Information, No. 4, submitted for *in camera* review only) The two Tribal members are an Executive Director and Shift Supervisor, who were placed in their positions about January 2008 and April 2011, respectively. (See March 28, 2013, Response to MERO Request for Information, No. 4, submitted for *in camera* review only) Both Tribal members appear in the Tribal Clerk's records with the identical home address. (See March 28, 2013, e-mail from Tribal Clerk to the MERO)

According to the two factor analysis advanced by Respondent, the two Tribal member siblings would not have qualified for an exception because they report living at the same address. Respondent subsequently relied upon layers of management separating the siblings to justify their employment notwithstanding the Hiring of Relatives policy. (See November 13 Response,

⁹ Respondent initially confirmed that these employees are sisters and stated, "As far as HR is aware, these individuals list different home addresses and do not reside together. Thus, this situation would also be eligible for an exception." (December 3 Respondent Answer to Claimant's Responses to MERO's Information Request, pg. 2)

Exhibit 5, Wesolowski July 5 e-mail, "...whereas [one sister] is Executive Director and [the other sister] was hired as an Interior Shift Supervisor in said department. The reasoning was that there are a few layers of management between the relatives...")

No exceptions were requested or considered for any of the seven individuals cited by Claimant as employed in violation of policy. (December 3 Respondent Answer to Claimant's Responses to MERO's Information Request) With respect to the two year period prior to the Claimant filing her claim, no exceptions were requested or considered and no documented training of supervisory or managerial personnel with respect to policy implementation or enforcement was conducted. (November 13 Response to MERO Request for Information, No. 5; March 28, 2013, Response to MERO Request for Information, No. 7)

Respondent concedes that "it bears the burden of ensuring that its policies are implemented in a consistent manner." (Respondent's February 20, 2013, correspondence, pg. 2) With respect to the Hiring of Relatives policy, Respondent asserts that the Human Resources department is only able to respond to violations that are brought to its attention.¹⁰ (December 3 Respondent Answer to Claimant's Responses to MERO's Information Request) Of the seven individuals Claimant alleged were employed by Respondent in violation of the policy, five (5) were within the security department overseen by Claimant's boyfriend, who Respondent points out did not report any of the violations. (December 3 Respondent Answer to Claimant's Responses to MERO's Information Request)

C. Lost Wages

Claimant was subject to an Exclusion Order effective November 15 imposed *ex parte* by the Elders Council. (See ECR 120512-01 of 01, submitted for *in camera* review only) Pursuant to the Exclusion Order, Claimant was not permitted on Tribal lands and properties, including the Mashantucket Pequot Tribal Reservation, for a period of 30 days. (Id.) Subsequently, Claimant appeared before the Elders Council on December 5, resulting in the Exclusion Order being lifted the same day. (Id.) The Elders Council confirmed to the MERO that if an excluded individual is employed on the Reservation, limited exclusion exceptions have been considered on a case-by-case basis for the purpose of attending work. (Chairwoman Walker's April 11, 2013 e-mail to the MERO)

Claimant received no income from other sources between July 5, 2012 and February 6, 2013. (Claimant's February 6, 2013 e-mail to the MERO)

¹⁰ The only Hiring of Relatives policy workplace investigation conducted between about July 2010 and March 2013 was begun in September 2012 as the result of an employee inquiry about the implications of the 2012 revised policy on his live-in relationship with a subordinate. (March 28, 2013, Response to MERO Request for Information, No. 5) There is no indication that the information uncovered during the investigation of Claimant's Claim prompted any policy violation investigation. (See March 28, 2013, Response to MERO Request for Information, No. 5)

IV. Analysis and Conclusions of Law

Jurisdiction over the parties and with respect to the Claim is undisputed and asserted.

Generally, each alleged unlawful denial of an employment opportunity under the Preference Law is considered discrete. The MERO may, however, consider relevant background evidence. In this case, Claimant offered limited evidence regarding her pursuit of the mental health coordinator position. Even assuming Claimant's evidence is fully credited, it does not help inform the MERO's consideration of her Claim. The two situations appear to involve different Tribal employers, types of positions, reasons for denial of the opportunities, human resource personnel and decision makers. Based on the limited evidence, there is insufficient commonality of elements for Claimant's prior experience to be relevant to the analysis of her Claim allegations.

Employment opportunities under the Preference Law include hire for an open position. 33 M.P.T.L. ch. 1, § 4(c) The Preference Law requires that Tribal employers afford preference in hire to minimally qualified candidates in accordance with the law's priority, first to Tribal members, second to Tribal member spouses and third to Native Americans. 33 M.P.T.L. ch. 1, § 5(a) No Tribal members or Tribal member spouses applied for the Security Supervisor position at issue. Claimant, a Native American, would have been hired but for Respondent's determination that she was ineligible under the Hiring of Relatives policy. Respondent argues that compliance with the Hiring of Relatives policy is a minimum necessary qualification for employment.

The Preference Law generally does not preclude an employer from maintaining and enforcing reasonable policies that apply equally to preference and non-preference individuals or requiring compliance with such policies as a minimum necessary qualification for open positions.¹¹ The Hiring of Relatives policy precludes "Relatives" from being employed in positions where one would supervise the other, to "avoid any perception of favoritism." These aspects of the policy, if applied non-discriminatorily, are not inconsistent with the Preference Law and would preclude the hire of preference or non-preference applicants in violation of the policy. The policy further provides for exceptions to be considered "on a case-by-case basis" and decided at Respondent's discretion. The exceptions aspect of the policy also must be administered in a manner that is not inconsistent with the requirements of the Preference Law. Furthermore, in order to consider compliance with any particular policy to be a minimum necessary qualification, Respondent

¹¹ Respondent gives several examples of employment policies it believes it may lawfully enforce as a minimum necessary qualification for employment. (See November 13 Response) The MERO makes no findings or conclusions herein regarding Respondent's enforcement of employment policies other than the Hiring of Relatives policy.

must show that the policy has been administered in accordance with its terms and enforced consistently.

Respondent alleges that it has satisfied its burden of administering the Hiring of Relatives policy in a consistent manner. Respondent admits, however, that its employees include individuals for whom exceptions to the policy would have been required in order for them to be placed in their positions, but no exceptions were requested or considered. According to Respondent, the individuals identified by Claimant as employed in violation of the policy would have been granted exceptions, because all purportedly fit within the only exception Respondent contends was previously recognized, Tribal members who do not share a residence.

A retrospective determination of eligibility for an exception to a policy does not equate to policy enforcement. Moreover, Respondent's factual bases for some of its retrospective determinations of eligibility are contradicted by its own documents. Respondent asserts that all seven employees Claimant alleges are employed in violation of the policy are Tribal members, but two are not Tribal members according to their employment applications and the Tribal Clerk. In addition, two of the seven are Tribal member siblings employed in a supervisor-subordinate capacity. The Tribal member siblings share a substantially similar surname (one is hyphenated) and reported the same home address on their applications and to the Tribal Clerk, notwithstanding Respondent's assertion that they listed different addresses.

Also undermined by its own evidence is Respondent's contention that its exceptions analysis consists of only two factors, Tribal membership and not residing in the same household as the employed "Relative." In contrast to Respondent's assertion that managerial separation between "Relatives" is inconsequential to the exceptions analysis, as confirmed in a July 5 e-mail, the two Tribal member sisters with a shared home address were permitted to be employed in a supervisory-subordinate capacity in the same department by virtue of the layers of management between the positions.¹²

The specific two factor analysis is not only inconsistent with Respondent's recent practice, but also not supported by the policy language. On its face, the Hiring of Relatives policy provides for Respondent to consider the particular facts of any given situation in determining whether or not to grant an exception. The amended policy was effective July 25, well after Respondent permitted and recognized intervening "layers of management" as an alternative analytic factor. Respondent could have limited the exception in the amended policy to a specific two factor test, but it elected to continue the original, broader exception language, consistent with its prior recognition of an alternative exception factor. The broader exception language is also consistent with Respondent's failure to enforce its policy against individuals who are not Tribal members,

¹² Although no exceptions to the Hiring of Relatives policy had been requested or considered between about mid-July 2010 and 2012, at some point on or after the second sister was hired in April 2011, the justification reflected in the July 5 e-mail presumably permitted the arrangement to continue.

such as when one of the two Security Officers, who is not a Tribal member, identified on her employment application a Tribal member Security Manager with the same surname as a “Relative” and no policy compliance analysis was performed.

Notably, Claimant’s circumstances were comparable to those when Respondent failed to apply any policy analysis. Claimant is not a Tribal member, but her “Relative” in the same department to which she was applying is a Tribal member, comparable to the Security Officer’s situation. Similar to the Tribal member sisters, Claimant’s “Relative” is the Executive Director of the department in which she sought to be employed in a supervisory capacity, and layers of management would have separated the two employees. In neither of the comparable cases would Respondent’s alleged two factor test, Tribal membership and not residing in the same household, have provided an exception to the Hiring of Relatives Policy.¹³

Respondent argues that its Human Resources department had insufficient knowledge of potential policy violations requiring consideration of an exception, pointing out that discovery of violations often depends on applicants being forthcoming with information on their applications. Yet, within even the smallest of samplings of potential violations identified by Claimant, the information provided on several applications disclosed circumstances Respondent alleges are disqualifying. The Human Resources department received sufficient information on the applications to identify more than one policy violation involving individuals (non-Tribal members) or circumstances (Tribal members residing together) that were not exception eligible according to the analysis advanced by Respondent. The violations were relatively recent, in Calendar Years 2011 and 2012, during a period when Respondent confirms that no exceptions were considered other than for Claimant. Simply put, during a period when other applicants provided application disclosures that implicated policy violations for which Respondent’s purported analysis would not provide an exception, only Claimant’s disclosures were acted upon by Human Resources.¹⁴

Considering the evidence in its entirety, Respondent has failed to demonstrate that the Hiring of Relatives policy was enforced at the time Claimant applied for the Security Supervisor position, much less enforced in a consistent manner.¹⁵ Under these circumstances, compliance with the

¹³ The MERO finds it unnecessary to determine whether or not an analysis limited to two (2) particular factors would meet the policy’s required individualized analysis given its determination that Respondent failed to establish a consistently applied exceptions analysis.

¹⁴ To the extent a supervisor failed to disclose potential policy violations, as Respondent alleges, it is noteworthy that Respondent possesses no documentation of training in policy administration and enforcement for at least the last two years and concededly bears the burden of ensuring consistent policy administration by all of its agents.

¹⁵ In its Proposed Claim Determination, the MERO observed that to the extent exceptions were previously granted, Respondent presumably determined that the exceptions do not substantially compromise the explicit policy goal of avoiding the perception of favoritism. The MERO found no reasonable basis to conclude that the policy

Hiring of Relatives policy could not be considered a minimum necessary qualification for Claimant's employment. Accordingly, Respondent's refusal to hire Claimant, a preference eligible applicant who met the minimum necessary qualifications of the Security Supervisor position, constitutes a violation of the Preference Law.

If Claimant had been awarded the Security Supervisor position, she would have been working on the Reservation when she was subject to an *ex parte* Elders Council Order effective November 15 excluding her from the Reservation for a period of 30 days. The Elders Council will consider an exception request that allows an excluded individual access to the Reservation for purposes of work, but the MERO finds it unlikely that an exception would have been considered at the time the Order issued because Claimant was not present at the proceeding.

After Claimant appeared before the Elders Council on December 5, the Exclusion Order was immediately lifted. The MERO finds that if Claimant had been working on the Reservation, she would have requested and received an appearance before the Elders Council earlier and a work exception or lifting of the Exclusion Order would have been ordered at that time.

V. Disposition¹⁶

Respondent's administration and enforcement of its Hiring of Relatives policy was not in compliance with 33 M.P.T.L., the Tribal and Native American Preference Law. Respondent is ordered to cease and desist from administering or enforcing the policy in a manner that is not compliant with the Preference Law.

Respondent was not in compliance with the Preference Law when it denied Claimant hire for the position of Security Supervisor. Respondent is ordered to offer Ms. Ward the Security

would suffer any greater compromise if exceptions were afforded to Tribal member spouses and Native Americans. In response, Respondent asserts that its exceptions are not based on the stated policy goal, but rather are driven by a "greater policy goal...of insuring the employment of Tribal members over other preference eligible groups..." (Respondent's February 20, 2013 correspondence, pg. 2) While the MERO applauds Respondent's efforts to provide employment opportunities to preference eligible individuals, Respondent's attempt to provide opportunities through a policy exemption that undermines the stated policy objectives may compromise the policy to such a degree that policy compliance may not be considered a minimum necessary qualification for employment. Given the decision in this case, the MERO finds it unnecessary to address the implications of a policy exemption that is not consistent with the policy's stated goals or Respondent's contention that the Law permits it to structure an exception to its Hiring of Relatives policy that would afford preference in employment opportunities only to Tribal members to the exclusion of Tribal member spouses and Native Americans.

¹⁶ As discussed in the Determination, certain of Respondent's material representations to the MERO were inconsistent with, or contradictory to, Respondent's evidence. In the future, Respondent's failure to make reasonable inquiry into matters in dispute or as requested and to provide accurate information to the MERO may result in Respondent being assessed a civil fine for intentional noncompliance with the duty to cooperate in the MERO investigation.

Supervisor position for which she applied if the position is available. If the position is no longer available, Respondent is ordered to offer Ms. Ward a comparable available position for which she meets the minimum necessary qualifications. In the absence of any comparable available position, Ms. Ward must be afforded the full preference to which she is entitled, currently as a Tribal Member spouse, above any other preference eligible individual from within the same preference group, for any position for which she applies and is minimally qualified, until the earlier of her hire by Respondent for an employment position at least comparable to the Security Supervisor position, or the expiration of two (2) years from this Final Claim Determination.

Respondent is further ordered to pay Claimant compensatory damages of lost wages at a rate of pay of a Security Supervisor with comparable qualifications and experience, for the period July 5, 2012 through the earlier of Claimant's hire by Respondent as provided herein, or July 5, 2013, minus 10 days of pay, applicable withholdings and interim earnings, which Claimant has a continuing duty to mitigate.

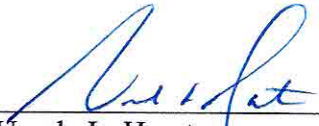
VI. Notice of Publication

This Final Claim Determination is available to the public through the MERO and subject to formal revision and publication by the MERO. Readers are encouraged to advise the MERO of any typographical or other formal errors so that corrections can be included in the published opinion.

VII. Appeal Rights

The parties are directed to the enclosed Notice of Appeal Rights. If no timely appeal is filed with the Tribal Court, this Final Claim Determination is final and binding upon the parties.

Dated this 26th day of April, 2013.



Ursula L. Haerter
MERO Director

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MERO

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

Notice of Parties' Appeal Rights

**For Claims under 33 M.P.T.L.,
the Mashantucket Pequot Tribal and Native American Preference Law**

Case Name:

Wanda Ward v. Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino

Case Number:

2012-33015

Date of Mailing of Final Claim Determination:

April 26, 2013

Pursuant to 33 M.P.T.L., the Mashantucket Pequot Tribal and Native American Preference Law, as amended, and the Compliance and Claims Procedures Manual for the Mashantucket Pequot Tribal and Native American Preference Law, the MERO has investigated the above-referenced claim and issued a Final Claim Determination. A party adversely affected by a Final Claim Determination of the MERO may appeal the determination to the Mashantucket Pequot Tribal Court as follows:

Form of Appeal: An appeal must be in writing on a form available from the Tribal Court clerk. A copy of the MERO Final Claim Determination from which an appeal is being taken must be submitted to the Tribal Court with the completed appeal form.

Deadline for Filing Appeal: To be timely filed, an appeal must be filed with the Tribal Court within thirty (30) days of the above Date of Mailing of Final Claim Determination.

Notice to the MERO: A copy of any appeal filed in Tribal Court must be forwarded to the MERO Director.

Appeal Hearings: Appeal hearings in Tribal Court are conducted in accordance with the rules of the court. The parties may not introduce evidence in court that was not submitted to the MERO during the investigation of the claim unless the evidence is newly discovered or was not available to the party during the investigation notwithstanding the party's best efforts to secure the evidence.

Representation in Court: If a party wishes to be represented in Tribal Court by an attorney, it is that party's responsibility to find and retain an attorney at that party's cost. The MERO represents the MERO's decision in court and does not represent any employer or claimant.

Contacting the Tribal Court: Mashantucket Pequot Tribal Court, Office of the Tribal Court Clerk, P.O. Box 3126 Mashantucket, CT 06338-3126. Telephone Number: (860) 396-6115.

**Please contact the Mashantucket Pequot Tribal Court clerk for Appeal Forms.
Any questions about Tribal Court appeal or other processes should be directed to the court.**

MERO Form-33-1690
(10-01-12)